AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

10-31-84
Vol. 49 No. 212
Pages 43619-43942

federal register

Wednesday
October 31, 1984

Selected Subjects

Administrative Practice and Procedure
Internal Revenue Service

Agricultural Commodities
Environmental Protection Agency

Air Carriers
Civil Aeronautics Board

Air Pollution Control
Environmental Protection Agency

Animal Diseases
Animal and Plant Health Inspection Service

Aviation Safety
Federal Aviation Administration

Bridges
Coast Guard

Chemicals
Environmental Protection Agency

Coal
Land Management Bureau

Community Development Block Grants
Housing and Urban Development Department

Cultural Exchange Programs
United States Information Agency

Drugs
Food and Drug Administration

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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.

Fisheries
National Oceanic and Atmospheric Administration

Government Employees
Personnel Management Office

Milk Marketing Orders
Agricultural Marketing Service

Pesticides and Pests
Environmental Protection Agency

Pipeline Safety
Research and Special Programs Administration

Radio
Federal Communications Commission

Reporting and Recordkeeping Requirements
Health Care Financing Administration

Contents

Federal Register
Vol. 49, No. 212
Wednesday, October 31, 1984

African Development Foundation
NOTICES
43836 Meetings; Sunshine Act

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
43692 Texas

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service.
NOTICES
43730 Agency information collection activities under OMB review

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
43803 Mental illness in nursing homes, research

Animal and Plant Health Inspection Service
RULES
Livestock and poultry quarantine:
43620 Lethal avian influenza; interim

Census Bureau
NOTICES
Surveys, determinations, etc.:
43732 Retail sales and inventories; annual

Civil Aeronautics Board
RULES
43622 Oversales, denied boarding compensation; interpretation
PROPOSED RULES
Policy statements:
43709 Unfair and deceptive for two or more carriers to share a single carrier designator code without giving reasonable notice
NOTICES
43732 Agency information collection activities under OMB review
43730 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications
Hearings, etc.:
43731 Chisum Flying Service of Alaska, Inc.
43731 Hawaii One Corp.
43731 Transporturile Aeriene Romane (TAROM)
43836 Meetings; Sunshine Act

Coast Guard
PROPOSED RULES
Drawbridge operations:
43715 Florida, Georgia, South Carolina

Commerce Department
See Census Bureau; International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service.

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
43745 Amex Commodities Corp.; gold bullion

Defense Department
See Navy Department.

Energy Department
See Federal Energy Regulatory Commission.

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
43647 Benzene equipment leaks; fugitive emission sources; correction
Air pollution; standards of performance for new stationary sources:
43838 Electric arc furnaces and argon-oxygen decarburization vessels in steel plants
Air quality implementation plans; delayed compliance orders:
43647 Wisconsin
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
43648 Bromoxynil
43648 Methylnaphthalene sulfonic acid formaldehyde condensate, sodium salt
Toxic substances:
43649 Substituted polyglycidyl benzeneamine; significant new uses
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
43906 Radionuclides; withdrawn
43916 Radon-222 emissions from licensed uranium mills
43915 Radon-222 emissions from underground uranium mines
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
43716 Benomyl
NOTICES
Pesticide programs:
43768 Liquid agricultural pesticide formulations; closed system packaging; industry plan for standardization of containers and closures
43772 Wood preservative uses of creosote, pentachlorophenol, and inorganic arsenicals; intent to cancel registration, etc.; effective date postponed
43766 Pesticides; receipts of State registration

Toxic and hazardous substances control:
43764 Southeast Chicago; initiation of investigations and rulemaking on unreasonable risk of injury to health and environment; denial of citizens' petition

Federal Aviation Administration
RULES
Airworthiness directives:
43621 Pilatus Britten/Norma, Ltd.
PROPOSED RULES
Airworthiness directives:
43707 Fairchild
NOTICES
43827 Exemption petitions; summary and disposition

Federal Communications Commission
RULES
Common carrier services:
43667 Customer premises equipment, detariffing procedures, etc. (Second computer inquiry)
PROPOSED RULES
Radio services, special:
43718 Maritime services; digital selective calling system
Television broadcasting;
43718 Instructional television fixed service; extension of time

Federal Deposit Insurance Corporation
NOTICES
43836 Meetings; Sunshine Act

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
43635 Pipeline minimum commodity bill provisions; elimination of variable costs; hearing denied
43625 Pipeline minimum commodity bill provisions; elimination of variable costs; rehearing
NOTICES
Hearings, etc.:
43746 Algonquin Gas Transmission Co.
43746 Canyon Creek Compression Co.
43747 Columbia Gas Transmission Corp.
43747, 43748 Columbia Gas Transmission Corp. et. al. (2 documents)
43749 Equitable Gas Co.
43749 Granite State Gas Transmission, Inc.
43750 Greensboro Lumber Co. et al.
43750 Gulf States Utilities Co.
43755 Natural Gas Pipeline Co. of America
43756 Pacific Gas & Electric Co.
43757 Pacific Power & Light Co.
43758 Pennzoil Co.
43759 Seagull Energy E&P, Inc., et al.
43759 Tennessee Gas Pipeline Co.
43761 Texas Eastern Transmission Co.
43759 Transcontinental Gas Pipe Line Corp. et al.
43760 Vidalia, LA
43750 Hydroelectric applications
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
43746 Amoco Production Co.
43755 Braun, Meridian
43760 University of San Diego

Federal Maritime Commission
PROPOSED RULES
Freight forwarders, independent ocean; licensing:
43718 Agreement filing; extension of time

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
43773 Albert City Bankshares, Inc., et al.
43774 Chemical New York Corp. et al.
43774 Commercial Bancshares et al.; correction
43836 Meetings; Sunshine Act

Fiscal Service
NOTICES
43830 Federal debt collection and discount evaluation; Treasury current value of funds rate

Food and Drug Administration
RULES
Human drugs:
43637 New drugs for investigational use; protection of human subjects

General Services Administration
NOTICES
Environmental statements; availability, etc.:
43774 Civic Center, Los Angeles, CA

Health and Human Services Department
See also Alcohol, Drug Abuse, Mental Health Administration; Food and Drug Administration; Health Care Financing Administration; Social Security Administration.
NOTICES
Social security benefits:
43775 Cost-of-living increases

Health Care Financing Administration
RULES
Medicare:
43654 Early and periodic screening, diagnosis, and treatment (EPSDT) program

Housing and Urban Development Department
PROPOSED RULES
43852 Community development block grants; update and revision

Immigration and Naturalization Service
NOTICES
43820 Guam; wage determination system

Interior Department
See Land Management Bureau; Reclamation Bureau.

Internal Revenue Service
RULES
Income taxes:
43639 Elections, etc., under Deficit Reduction Act of 1984; temporary; correction
Procedure and administration:
43640 Tax shelter registration and tax shelters, potentially abusive; investor list requirement; temporary
PROPOSED RULES
Income taxes:
43714 Consolidated returns; technical changes; hearing

Procedure and administration:
43714 Tax shelter registration and tax shelters, potentially abusive; investor list requirement; cross reference

International Trade Administration
NOTICES
Antidumping:
43733 Anhydrous sodium metasilicate from France
43735 Ceramic tile from Mexico
43732 Cold-rolled carbon steel flat-rolled products from Argentina; postponement
43737 Ferrite cores from Japan
43733 Galvanized carbon steel sheet from Australia; postponement
43738 Precipitated barium carbonate from West Germany
43738 Sugar from France, Belgium, and West Germany

International Trade Commission
NOTICES
43811 High technology products; duty free treatment of imports; investigation of probable economic effects
Import investigations:
43807 Alkaline batteries
43811 Butter from Australia
43807 Calcium hypochlorite from Japan
43808 Compound action metal cutting snips and components
43811 Ferroalloys from Spain
43808 Fluidized supporting apparatus and components
43809 Single handle faucets
43809 Softballs and polyurethane cores
43810 Stainless steel sheet and strip from Spain
43810 Stretch wrapping apparatus and components
43809 Vinyl-covered foam blocks

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
43812 Burlington Northern Railroad Co.

Justice Department
See also Immigration and Naturalization Service.
NOTICES
43812 Privacy Act; systems of records

Land Management Bureau
PROPOSED RULES
Coal management; exploration licenses:
43926 Coal exploratory drilling data, collection and sharing
43920 Federal coal lease sales, experimental auction techniques
NOTICES
Alaska native claims selection:
43804 Ninilchik Natives Association, Inc.
43804 Salamatof Native Association, Inc.
43805 Sealaska Corp.
Coal management program:
43935 Conceptual approaches to negotiating to achieve fair market value for coal leases
43937 Cooperative leasing procedures; inquiry
43928 Intertract bidding coal leasing guidelines; inquiry
43932 Tract delineation factors, alternative tract delineation procedures, and tract definitions; recommendations implementation; inquiry
Committees; establishment, renewals, terminations, etc.:
43805 Federal-State Coal Advisory Board
43803 National Public Lands Advisory Council; call for nominations
Meetings:
43805 Bakersfield District Advisory Council
43803 Salem District Advisory Council
Sale of public lands:
43806 Nevada
43803 Wyoming
Survey plat filings:
43806 Colorado

National Aeronautics and Space Administration
NOTICES
Meetings:
43820 Advisory Council

National Bureau of Standards
NOTICES
Information processing standards, Federal:
43740 Local area networks; baseband carrier sense multiple access with collision detection and physical layer specifications, etc.
43739 Metropolitan statistical areas; definitions
Laboratory Accreditation Program, National Voluntary:
43741 Quarterly report and status of programs

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
43829 American Honda Motor Co., Inc.

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
43676 Foreign fishing; Gulf of Maine boundary clarification
43679 Gulf of Mexico reef fish; correction
43679 Ocean salmon off the coasts of Washington, Oregon, and California

National Technical Information Service
NOTICES
Patent licenses, exclusive:
43743 Bristol-Myers Co.
43743 Stanford University

Navy Department
NOTICES
Meetings:
43745 Chief of Naval Operations Executive Panel Advisory Committee

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
43820 Carolina Power & Light Co. et at.
43823 South Carolina Electric & Gas Co. et al.
Environmental statements; availability, etc.:
43822 Duke Power Co.

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings:
43824 Economic Forecasting Advisory Committee

Personnel Management Office
RULES
Pay administration:
43619 Debt recovery; services of officials to conduct hearings; interim
PROPOSED RULES
43691 Administrative law judges, retired; reemployment

Reclamation Bureau
NOTICES
43807 Agency information collection activities under OMB review

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
43728 Natural and other gas transportation; ovality of field bends in steel pipe

Science and Technology Policy Office
NOTICES
Meetings:
43823 White House Science Council

Securities and Exchange Commission
NOTICES
Hearings, etc.:
43824 Presidio Management
Self-regulatory organizations; proposed rule changes:
43826 American Stock Exchange, Inc.

Small Business Administration
NOTICES
Authority delegations:
43827 Deputy Administrator et al.

Social Security Administration
NOTICES
Social security benefits:
Cost-of-living increases (For a document on this subject see entry under Health and Human Services Department)

Textile Agreements Implementation Committee
NOTICES
Textile consultation; review of trade:
43744 Indonesia

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration.

Treasury Department
See also Fiscal Service; Internal Revenue Service.
NOTICES
43829 Agency information collection activities under OMB review
Organization, functions, and authority delegations:
43830 Financial Management Service; name change from Government Financial Operations Bureau

United States Information Agency
RULES
Exchange-visitor program:
43638 Program designation delegated to General Counsel and Congressional liaison
NOTICES
Grants; availability, etc.:
43831 University affiliation program
President's International Youth Exchange Initiative:
43834 Approved logo usage
43833 Selective assistance through limited grant support to not-for-profit organizations

Veterans Administration
RULES
Adjudication; pensions, compensation, dependency, etc.:
43940 Pension rates and income limitations; cost-of-living adjustments

---

Separate Parts in This Issue

Part II
43838 Environmental Protection Agency

Part III
43852 Department of Housing and Urban Development

Part IV
43906 Environmental Protection Agency

Part V
43920 Department of the Interior, Bureau of Land Management

Part VI
43940 Veterans Administration

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.

5 CFR
550 43619
Proposed Rules:
930 43691

7 CFR
Proposed Rules:
1126 43692

9 CFR
81 43620

14 CFR
39 43621
250 43622
Proposed Rules:
39 43707
399 43709

18 CFR
154 (2 documents) 43625, 43635

21 CFR
312 43637

22 CFR
514 43638

24 CFR
Proposed Rules:
570 43852

26 CFR
5h 43639
301 43640
Proposed Rules:
1 43714
301 43714

33 CFR
Proposed Rules:
117 43715

38 CFR
3 43940

40 CFR
60 43838
61 43647
65 43647
180 (2 documents) 43648
721 43649
Proposed Rules:
61 (3 documents) 43906–43916
180 43716

42 CFR
400 43654
401 43654

43 CFR
Proposed Rules:
3410 (2 documents) 43920, 43926

46 CFR
Proposed Rules:
510 43718

47 CFR
Ch. I 43667
Proposed Rules:
74 43718
81 43718
83 43718
87 43718

49 CFR
Proposed Rules:
192 43728

50 CFR
611 43676
641 43679
661 43679

Rules and Regulations

Federal Register
Vol. 49, No. 212
Wednesday, October 31, 1984

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Interim regulations.

SUMMARY: The Office of Personnel Management (OPM) is publishing interim regulations to establish a Government-wide system through which agencies may obtain the services of officials to conduct hearings in connection with Federal employees who owe debts to the United States.

Such debts may be collected by offset from a Federal employee's salary; however, the employee has a right to a hearing before collection starts. The law, 5 U.S.C. 5514, states that the official who conducts the hearing can't be under the supervision or control of the head of the agency to which the debt is owed.

These interim regulations establish a system that may be used by creditor agencies to arrange for a Federal employee to serve as a hearing official.

DATE: Interim rule effective October 31, 1984; comments must be received on or before December 31, 1984.

ADDRESS: Send comments to Lucretia F. Myers, Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester, (202) 632–4634.

SUPPLEMENTARY INFORMATION: I find that there is good reason to make this amendment effective in less than 30 days (5 U.S.C. 553(d)(3)). The regulations are effective immediately to allow those agencies with approved regulations implementing section 5514 to arrange hearings needed to make collections.

A System for Obtaining Hearing Officials

Section 5514 authorizes collection of debts owed the United States from Federal employees' salary without their consent provided they are given certain rights, including an opportunity for a hearing. The hearing covers both the creditor agency's decision on the existence or amount of the debt and the repayment schedule, if the employee and agency have not established it by written agreement. The law also says that unless the creditor agency appoints an administrative law judge to conduct the hearing, it must obtain a hearing official who is not under the supervision or control of the head of the agency.

We have had questions from several agencies about how they are to arrange for hearing officials. All agencies are required to cooperate with each other in their debt collection activities (4 CFR 102.1), and all will need such officials from time to time. So, OPM is coordinating the establishment of this Government-wide system for making Federal employees available to act as hearing officials.

Creditor agencies are responsible for arranging for an official to hold the hearing (5 CFR 550.1104(d)(7)). The creditor agency is free to make any arrangements for hearing officials that are feasible for the workload and resources of the agency. For example, an agency may establish a reciprocal agreement with another agency to exchange the services of employees to hold salary offset hearings. An agency may also use its administrative law judges to hold these hearings. Another agency may find it more economical to contract for these services. These regulations will not interfere with such arrangements.

This system is principally for the use of those agencies that have not made such arrangements, yet have need of a hearing official before they can collect a debt by salary offset. The interim regulations provide for the following:

(1) If the debtor doesn't work for the creditor agency, the debtor's paying agency must provide a hearing official on request. To arrange for the hearing official, the creditor agency contacts a designated agent of the paying agency who is listed in Appendix A to Part 581 of Title 5, Code of Federal Regulations.

(2) If the debtor works for the creditor agency, it may arrange for a hearing official by contacting any agent (of another agency) designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations are on administrative practices that will affect only the Federal Government.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM amends 5 CFR Part 550 by adding a new § 550.1107 to read as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority for Part 550 reads as follows:

Authority: 5 U.S.C. 5514; sec. 8(1), E.O. 11609, 3 CFR, 1971–1975 Comp., 586; redesignated in sec. 2–1, E.O. 12107, 3 CFR, 1978 Comp.

2. Part 550 is amended to add a new § 550.1107 to read as follows:

§ 550.1107 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency, and in the event that the creditor agency cannot provide a prompt and appropriate hearing before an adminstrative law judge or before a hearing official furnished pursuant to another lawful arrangement, then the creditor agency may contact an agent of the paying agency designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations, to arrange for a hearing official, and the paying agency must cooperate as provided by 4 CFR 102.1 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations, to arrange for a hearing official. Agencies must cooperate as required by 4 CFR 102.1 and provide a hearing official.

[FR Doc. 84-28615 Filed 10-30-84; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 81

[Docket No. 84-106]

Lethal Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the Lethal Avian Influenza interim rule by deleting two premises in Lancaster County from the list of quarantined areas in Pennsylvania. The quarantined areas were established as part of a mechanism to help prevent the spread of lethal avian influenza. However, it is no longer necessary to quarantine the deleted premises for such purpose.

DATES: Effective date is October 26, 1984. Written comments must be received on or before December 31, 1984.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. H. A. McDaniel, Chief Staff Officer, Technical Support Staff, VS, APHIS, USDA, Room 757, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8087.

SUPPLEMENTARY INFORMATION:

Background

This document amends the "Lethal Avian Influenza" interim rule which is set forth in 9 CFR Part 81. Lethal avian influenza is defined as a disease of poultry caused by any form of H5 influenza virus that is determined by the Deputy Administrator to have spread from the 1983 outbreak in poultry in Pennsylvania. Among other things, the interim rule designates premises in Pennsylvania as quarantined areas and prohibits or restricts certain understated movements from the quarantined areas of live poultry, poultry eggs, and certain other items because of lethal avian influenza.

Prior to the effective date of this document, seven premises in Pennsylvania were designated as quarantined areas—two in Berks County, one in Franklin County, and four in Lancaster County. This document deletes the following two premises in Lancaster County from the list of quarantined areas:

The premises of Nelson Frey, RD #3, Box 192, Willow Street, PA 17584, located in Pequea Township approximately 1 mile south of West Willow on Millwood Road.

The premises of Alan and Charles Rohrer, RD #1, Strasburg Road, Paradise, PA 17562, located in Paradise Township approximately 2¼ miles west of Strasburg on PA State Route 741 (Strasburg Road).

The poultry on these premises have been depopulated and the premises have been cleaned and disinfected. Sufficient time has now elapsed to ensure that these premises are free of lethal avian influenza virus. Under these circumstances there is no longer a basis for imposing prohibitions or restrictions because of lethal avian influenza on the interstate movement of live poultry or other items from these two premises.

With the deletion of two premises in Lancaster County, the remaining quarantined areas in Pennsylvania consist of the following premises in Berks, Franklin, and Lancaster Counties:

(a) *Berks County.*

(1) The premises of Fred Wright, RD #1, Box 100, Richland, PA 17087, located in Bethel Township approximately 2½ miles south of Bethel on Bordner Road.

(2) The premises of Fred Wright, RD #1, Box 100, Richland, PA 17087, located in Bethel Township approximately 2½ miles northwest of Bethel on Schubert Road.

(b) *Franklin County.* The premises of Dwight Martin, 8933 Rowe Run Road, Schippensburg, PA 17257, located in South Hampton Township in Pinola at the junction of State Route 433 and Pinola Road.

(c) *Lancaster County.*

(1) The premises of Harold Dice, RD #1, Box 125, Fredricksburg, PA 17026, located in Bethel Township approximately 5½ miles west of Fredricksburg on Legionaire Road (T 510).

(2) The premises of Luke Hess, Box 52, Willow Street, PA 17584, located in Pequea Township approximately 2 miles south of West Willow on Byerland Church Road.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary prohibitions and restrictions on the movement of live poultry and certain other items from portions of Lancaster County in Pennsylvania.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the **Federal Register.**

Executive Order and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291, and has been determined to be not a major rule. The Department has determined that this action will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The portion of the poultry industry affected by this document represents less than one percent of the poultry industry in the United States.

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

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

PART 81—LETHAL AVIAN INFLUENZA

§ 81.4 [AMENDED]

Accordingly, § 81.4 of 9 CFR Part 81 is amended by removing paragraphs (c)(2)

and (c)(4) and by redesignating paragraph (c)(3) as paragraph (c)(2).

(Sec. 2, 23 Stat. 31, as amended; secs. 4–8, 23 Stat. 31–33, as amended; secs. 1–3, 32 Stat. 791, 792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; 41 Stat. 699; sec. 2, 65 Stat. 693; secs. 2–3, 5–6, and 11, 76 Stat. 129–132; 76 Stat. 663, 7 U.S.C. 450, 21 U.S.C. 111–113, 114a–1, 115–117, 119–126, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d))

Done at Washington, D.C., this 26th day of October 1984.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-28646 Filed 10-30-84; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-18-AD; Amdt. 39-4942]

Airworthiness Directives; Pilatus Britten-Norman Ltd. Model BN-2, BN-2A, BN-2A, BN-2B and BN-2T Islander Series and BN-2A Mark III Trislander Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Pilatus Britten-Norman Model BN-2, BN-2A, BN-2B and BN-2T Islander Series and BN-2A Mark III Trislander Series airplanes which supersedes AD 83-07-18, Amendment 39-4620 (48 FR 15452, 15453). The superseded AD required inspections and repairs or part replacement to the upper engine mount-to-wing brackets on the BN-2, BN-2A and BN-2B Islander Series airplanes and BN-2A MK III Trislander Series airplanes. Subsequent to the issuance of AD 83-07-18, the FAA became aware that Pilatus Britten-Norman (the manufacturer) had published Issue 5 of Mandatory Service Bulletin BN-2/SB.61, dated December 9, 1981, which requires more frequent and detailed inspections and contains improved modification/corrective action. This superseding AD incorporates this service bulletin which will assure early detection of deteriorated upper engine mount-to-wing brackets prior to failure and repair/replacement using currently available improved parts and procedures.

DATES: Effective date: December 6, 1984.

Compliance: As prescribed in the body of the AD

ADDRESSES: Pilatus Britten-Norman Ltd., Service Bulletin (SB) No. BN-2/SB.61, Issue 5, dated December 9, 1981, applicable to this AD, may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, England. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. H. Chimerine, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or Mr. H. C. Belderok, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD applicable to Pilatus Britten-Norman Ltd. BN-2, BN-2A, BN-2B and BN-2T Island Series and BN-2A MK III Trislander Series airplanes was published in the Federal Register on August 10, 1984 (49 FR 32083-32085). It would require visual inspection of the engine mount-to-wing brackets every 500 hours time-in-service, and specifies modification/corrective action for minimum bolt hole-to-edge distance, elongation of bolt holes, distortion, delamination, cracks flaking and corrosion, correct bolt bearing length, loose and fretted bushings. The proposal resulted from the FAA becoming aware that Pilatus Britten-Norman (the manufacturer) had published Issue 5 of Mandatory Service Bulletin BN-2/SB.61, dated December 9, 1981, which requires a visual inspection of the engine mount-to-wing brackets every 500 hours time-in-service, and specifies modification/corrective action for minimum bolt hole-to-edge distance, elongation of bolt holes, distortion, delamination, cracks, flaking and corrosion, correct bolt bearing length, loose and fretted bushings on affected airplanes to assure early detection of deteriorated upper engine mount-to-wing brackets prior to failure and repair-replacement using currently available improved parts and procedures.

The United Kingdom Civil Aviation Authority (UKCAA), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, classified this Bulletin (SB) No. BN-2/SB.61 Issue 5, dated December 9, 1981, and the actions recommended therein by the manufacturer, as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under UKCAA registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the UKCAA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Pilatus Britten-Norman Service Bulletin No. BN-2/SB.61 Issue 5, dated December 9, 1981, and the mandatory classification of this service bulletin by the UKCAA. The Agency concluded that the condition addressed by the service bulletin is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Therefore, the proposed AD was issued.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. In addition, the justification for issuing the notice still exists. Accordingly, the proposal is being adopted without change.

There are approximately 145 airplanes affected by the AD. The cost of complying with the AD is estimated to be $10,150 to the private sector. No small entities impacted by this AD own sufficient airplanes to cause their cost of compliance to equal or exceed the significant thresholds of the Regulatory Flexibility Act. Therefore, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); 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 action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

Pilatus Britten-Norman, Ltd: Applies to Model BN-2, BN-2A, BN-2B and BN-2T Islander Series, except those modified to

MOD NB/M/1147 (up to Serial No. 2034), and BN-2A MK III Trislander Series (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished. To prevent failure of the upper engine mounting brackets, accomplish the following:

(a) Within 100 hours time-in-service for airplanes with more than 400 hours time-in-service but not more than 1,000 hours time-in-service since complying with AD 83-07-18, or at the next scheduled or unscheduled engine removal, and every 500 hours time-in-service thereafter.

(1) Visually inspect in accordance with paragraphs 1 through 6 of the "Inspection" section of the Pilatus Britten-Norman, Ltd. Service Bulletin No. BN-2/SB.61 Issue 5, dated December 9, 1981 (hereinafter referred to as the SB);

(i) The upper engine to wing mounting brackets for minimum lug bolt hole-to-edge distance (0.2625 inches), elongation of the bolt holes, distortion, delamination, cracks, flaking and corrosion.

(ii) The bolts for correct bearing length.

(iii) Loose and fretted bushings.

(2) Prior to further flight, correct defects in accordance with the following:

(i) If lug bolt hole-to-edge distance is less than the specified minimum, correct as prescribed in paragraph 3 of the "Rectification/Modification" section of the SB.

(ii) If the bolt holes are elongated, or if any bushings are loose or fretted:

(A) On Islander Series airplanes, modify and correct as described in paragraph 2 of the "Rectification/Modification" section of the SB.

(B) On Trislander Series airplanes, modify and correct as described in paragraph 4 of the "Rectification/Modification" section of the SB.

(iii) If any mounting bracket is cracked, modify both brackets on the same engine installation (left side engine or right side engine) concurrently (even if only one bracket is defective) as described in paragraph 1 of the "Rectification/Modification" section of the SB.

(iv) If any lug is distorted or delaminated, replace the deficient parts in accordance with paragraphs 1 and 2 of the "Rectification/Modification" section of the SB.

(v) If any inspected part is corroded or flaking, replace in accordance with paragraph 1 of the "Rectification/Modification" section of the SB.

(vi) If any of the bolts are of incorrect length or damaged, replace with new units of the correct length.

(b) The repetitive inspection interval for the Islander airplanes only, may be increased to 1,000 hours time-in-service when all four engine mounting brackets have been rectified to Pilatus Britten-Norman Modification NB/M/1147 in accordance with the "Rectification/Modification" section of the SB.

(c) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(d) Aircraft may be flown in accordance with FAR 21.197 to a location where this Airworthiness Directive (AD) can be accomplished.

(e) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This AD supersedes AD 83-07-18, Amendment 39-4620.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective on December 6, 1984.

Issued in Kansas City, Missouri, on October 22, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-28602 Filed 10-30-84; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 250

[Economic Regs. Amdmnt. No. 22 to Part 250; ER-1394; Docket No. 42246]

Oversales; Interpretative Amendment

AGENCY: Civil Aeronautics Board.

ACTION: Interpretative amendment.

SUMMARY: The CAB issues an interpretative amendent to its Oversales (denied boarding compensation) rule to make it clear that bumped passengers must be paid by cash or an immediately negotiable check at the time of bumping. The action was initiated by a petition by People Express, and is taken to clarify the responsibilities of airlines and clear up any ambiguities in the rule.

DATES: Adopted: October 25, 1984. Effective: November 30, 1984.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Associate General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-5444.

SUPPLEMENTARY INFORMATION: In 1981 People Express Airlines (PE) received from the Civil Aeronautics Board partial exemptions from the Board's denied boarding compensation (14 CFR Part 250) and baggage liability (now 14 CFR Part 254) rules. (Order 81-6-41, June 6, 1981; affirmed by Order 82-11-49, November 10, 1982). With respect to denied boarding compensation, the only rule at issue here, these exemptions allowed PE to give to bumped passengers, instead of the immediate compensation required by the rule, tickets valid for transportation on its domestic system.

It should be noted that PE's plan was not a substitution of a different passenger benefit for an existing one. By Order 80-5-200, May 29, 1980, later codified as § 250.5(b), the Board had already granted all carriers the right to offer bumped passengers the *option* of accepting free or reduced-rate transportation in lieu of a cash-equivalent payment, on condition that the passengers be informed of what their payment rights were, and that the transportation offered have a value equal to or greater than the payment specified in the rule. Thus, what PE received by the exemption was simply the right *not* to offer passengers the option of immediate payment, which was otherwise required by the rule of all carriers using large aircraft.

By Orders 83-6-111, June 24, 1983, and (on reconsideration) 83-8-91, August 22, 1983, the Board revoked these exemptions. It had decided to retain the rules, which previously had been under reevaluation, and considered that basic considerations of evenhanded regulation required that all carriers within the class covered be treated alike. It rejected as insubstantial PE's arguments that it was somehow different from other airlines, by way of its ticketing practices and low cost structure, and therefore deserved different treatment.

In response to revocation of the exemption, but before its effective date, PE orally approached the Board's Acting General Counsel and other members of the Board staff for an opinion on a modification of its denied boarding procedure. PE proposed to give bumped passengers a voucher or a refundable ticket that could be either used for transportation on its domestic system or submitted for a refund. The Acting General Counsel expressed a tentative oral opinion that the system might satisfy the rule, but advised PE that it should submit a written request for an interpretation as to the validity of the scheme. PE did so by letter of September 19, 1983.

The PE letter relied mainly on the fact that the DBC rule used the word "draft" to describe the form of payment that a carrier must give immediately to a bumped passenger. It stated that the Board had not defined the word "draft," and asserted that "the clear intent of the rules is to require the tender of a document at the time and place of the denied boarding, but not to require that the document be subject to immediate

conversion to cash." It also referred to the fact that in one of the orders (83–8–91) revoking the exemption, the Board had used the words "checks or scrip—if not cash" to describe the form of payment required. PE asserted that its vouchers could be considered "scrip."

By letter of March 21, 1984, the Board's General Counsel issued a responsive letter of interpretation, in which he concluded that the PE denied boarding compensation scheme did *not* satisfy the requirements of the rule. The letter reviewed the purpose and intent of the rule, as providing immediate compensation to bumped passengers. It noted that the rule emphasized this immediacy requirement by a limited exception, § 250.8(b), where alternative transporation for the passenger has been arranged before the "draft" can be prepared, allowing the airline to make the payment within 24 hours after the denied boarding occurs. Under the PE scheme, the voucher would have to be mailed to PE headquarters, from which checks would be issued once a week. Since this scheme would normally require a substantial amount of time for the passenger to receive a check, it would not satisfy the rule.

The letter noted the one instance in a related Board order where the vague work "scrip" had been used—the only time that it had been used as a synonym for "draft." The opinion letter stated, "that one erroneous usage in an order discussion cannot be held, however, to have changed the longstanding policy and effect of the rule." The letter concluded that for these purposes the Board intends "draft" to mean "a negotiable instrument—normally a check—that is redeemable for cash through the normal processes of the banking system." Because of the previous ambiguity, however, the letter stated that the Board would not take any retrospective enforcement action based on its opinion. It also advised of PE's right to seek Board review.

PE responded with a letter of March 29, 1984, in which it set forth more detailed arguments in defense of its plan. (These arguments are essentially repeated in the petition that is the immediate occasion of this issuance, and are discussed below). The General Counsel responded with a letter affirming his previous position and reiterating PE's right to petition the Board for a final ruling.

Petition and Responses

On May 31, 1984, PE petitioned the Board for "Interpretation or Clarification of, Amendment to, or Industry-Wide Exemption from, the Board's Denied Boarding Compensation Rules." Answers in support were filed by Southwest and Continental, and answers in opposition by American, USAir, and Delta. PE submitted a reply to the answers upon request for leave to file an otherwise unauthorized document.

PE first reiterated the argument contained in its September 19, 1983, letter, described above, that its vouchers were "drafts" that satisfied the requirements of the rule. In addition to its previous citiations of Board language on the issue, it cited a 1975 interpretative amendment (ER–897, 40 FR 4409, January 30, 1975) that, in dealing with the question whether currency restrictions might make payment in other countries difficult, stated in the preamble that the DBC rule is "sufficiently flexible to allow a carrier to utilize foreign currency drafts or internal charge orders payable at one of its appropriate offices." It stated that its vouchers satisfied the description of "internal charge orders payable at one of its appropriate offices."

PE further argued that its system was well received by the public, in that only 14% of bumped passengers chose to redeem their vouchers for cash, and that the transportation offered instead of cash was often of "much greater value" than the cash. It argued that the purpose of the rule was not to provide immediate cash or cash-equivalent payment, but rather "compensation," and that the voucher system that it uses "in most instances, provides as prompt a means of monetary payment as the issuance of a check." It contested the position taken in the General Counsel's letter that a main purpose of the rule was to provide funds from which travelers could purchase transportation or ground accommodations, stating that a check given at an airport could not in most instances be used for that purpose. It stated that if the Board were "only concerned about passengers not having funds for alternate transportation," it would not have included in the rule exceptions for canceled flights or substituted aircraft. It also mentioned that in many cases the DBC payment would not be sufficient to purchase alternate transportation.

Finally, PE argued that the policy of the Airline Deregulation Act, to foster a variety of types of services, and to encourage low-priced services, justified its practices. It noted that its on-board ticketing was convenient for passengers, but also made it difficult for PE to comply with a rule requiring the writing of a check at the airport. It stated that to do so, its "entire accounting system and airport staffing structure will have to be revamped," at substantial cost.

American's answer stated that prompt compensation was certainly one of the main purposes of the rule, as illustrated by various Board statements and the rule itself. It stated that a "draft" had been defined [1] as "an open letter addressed by one person to a second, directing him, in effect, to pay absolutely and at all events, a certain sum of money therein named, to a third person or to any other to whom the third person may order to be paid; or it may be payable to bearer or to the drawer himself." American argued that the PE voucher was not such an instrument, since there was no place at which a passenger could immediately redeem the voucher for money, even at a PE facility. It stated that, contrary to PE's assertion, American would accept a check drawn on PE as payment for transportation, as long as it did not exceed the transportation cost by $25 and an American supervisor was available to supervise the transaction. American said that it had "no reason to believe that other carriers' acceptance policies differ substantially from American's."

American rejected PE's policy arguments, stating that "its real complaint is that it regards compliance with Part 250.8 as too costly." It questioned how costly it could be for PE to have an employee at an airport equipped with a checkbook. At any event, American argued, the Board had already considered the question of cost in terminating PE's exemption, and had determined that the cost to the airlines was outweighed by the benefit to the passengers of the rule. American also argued that PE's denied boarding practices were excessive.

Delta and USAir also argued that PE's practices did not satisfy the rule's requirement for prompt payment, and that no other airline had interpreted the rule to permit what PE was doing. They both emphasized the importance of clarifying the rule so that all carriers would be acting on the same interpretation.

Southwest and Continental's answers, supporting the PE petition, basically seconded PE's argument concerning the breadth of the term "draft," and cited the advantages to consumers of receiving transportation credits instead of cash.

In its reply, PE emphasized that it was not seeking special treatment but an interpretation of rule change applicable to all, and that it had sought advice of Board staff before proceeding. It disputed American's contention that its

[1] J. Brady, *Brady on Bank Checks*, section 1.1, n.3 (H. Bailey 5th ED. 1979.)

vouchers did not fit the meaning of "draft," that its practice did not satisfy that promptness requirement of the rule, and that its denied boarding practices were excessive relative to the rest of the industry.

Discussion

Some issues that were raised in the filings can be immediately disposed of. The Board agrees with PE that since revocation of its exemption, PE has not sought special treatment, but a reading of the denied boarding rule that would permit all airlines to use a voucher system as it does. Furthermore, with that being the case, the performance of PE or any other particular airline with respect to passenger bumping is irrelevant and will not be considered here. The Board finds no impropriety in PE's actions in seeking a favorable interpretation of Part 250.

The Board also finds irrelevant arguments put forth by PE concerning the value and the popularity of its free-transportation option. They are irrelevant because the option of offering bumped passengers free transportation, of equal or greater nominal value, is already permitted explicitly by the rule, 14 CFR 250.5(b), and is not affected at all by PE's requests or the Board's disposition of them. PE appeared to be arguing (Petition, pp. 8–9) that its system is an "enhancement" of passenger protection in that it allows the passenger to defer the decision to take cash or free transportation for up to a year. The premise of that argument is erroneous, however; there is nothing in § 250.5(b) that prohibits any carrier from keeping passengers' options open in that way. The question in a case such as this is not what carriers choose to do, or whether what they choose to do is laudable; it is what they are, as a minimum, required to do.

Thus, the only question actually raised by the PE petition is whether the rule allows, or should allow, PE to give to passengers at the time of bumping a voucher that must be mailed in to PE headquarters in order to receive by mail a check for the specified denied boarding compensation, rather than immediate cash or a check. The suggestion by PE that its system "in most instances, provides as prompt a means of monetary payment as the [immediate] issuance of a check" is plainly incorrect. Under PE's system, a check is received only after four discrete time periods have elapsed: the time for the passenger to arrange to mail the voucher; mail transit time to PE headquarters; handling time at PE headquarters; and mail transit time back to the passenger.

There was considerable discussion in the filings of the overall purpose of the denied boarding compensation rule. PE characterized as "erroneous" the General Counsel's "assumption that prompt *monetary* payment is the principal objective of the rule." (Emphasis in original). It cited a 1974 issuance (ER–880, 39 FR 38088, October 29, 1974) that mentioned three goals, "inter alia"; preventing unlawful discrimination in determining bumping priorities, providing "prompt, effective and adequate compensation" to bumped passengers, and encouraging improved carrier oversales performance.

The first goal mentioned, fairness in bumping priorities, is irrelevant here, since that goal was and is met by requirements that are separate from the question of payment to bumped passengers. While the third goal, deterring oversales, was considered important in 1974, its significance has faded since then. When the denied boarding rule was first being discussed and issued in the late sixties, overbooking was seen as a major problem in itself, and various "solutions" were considered, including requiring early notification of passengers, or requiring carriers to penalize "no-show" passengers who sought refunds without having canceled their reservations. At that time, with a tightly regulated system, dependability was considered a primary aim of government regulation. Since deregulation, the variety of price and service offerings has become more important. Most importantly, the denied boarding rule itself has become widely known and accepted by the public as a fair way to minimize hardship of bumped passengers.

Thus, compensation to bumped passengers has indeed become the main purpose of the rule. As the Board said succinctly in a 1982 amendment of the rule (ER–1306, 47 FR 52980, 52985, November 24, 1982): "The basic rationale is compensation of the passenger, not punishment of the airline."

The core issue remaining, then, is whether the rule itself, taken together with statements in the many issuances that have been made concerning it, can be said to permit the PE voucher system, and in either case whether it should be changed.

There is no doubt that in the dozens of pages of issuances the Board has made concerning this rule, a few ambiguous or inconsistent phrases have appeared. The one most favorable to PE's petition, on its face, is the Board statement in a 1975 amendment (ER–897, 40 FR 4409, January 30, 1975) that the rule was "sufficiently flexible to allow a carrier to utilize foreign currency drafts or internal charge orders payable at one of its appropriate offices." The context of that statement, however, was the specific problem that was cited of paying DBC in foreign countries that had restrictions on "foreign currency transactions." That problem has since been totally removed by limiting the application of the rule to bumping that takes place within United States territory. Furthermore, the statement in question does not address the main objection to the PE system, which is the long delay between bumping and receipt of a cash-convertible payment. There is no reason to assume, when the Board said "payable at one of its appropriate offices," that it meant anything other than *immediately* payable.

With respect to PE's argument concerning the single use in an order of the word "scrip," the General Counsel's letter discussed above correctly noted that it was an error—a usage not justified by the words of the rule.

PE's principal argument was that its vouchers satisfy the meaning of the word "draft," which the rule uses to describe the payment in the main requirement section, § 250.8. American disputed this contention, as noted above. "Draft" is a broad term that includes various types of instruments such as checks and bills of exchange. For the reasons set forth below in its resolution of the issues, the Board does not find it necessary to settle this rather obscure point of commercial law.

Resolution of Issues

It is self-evident that rules often do not specifically deal with every factual situations or issues that arise under them. Rule must be interpreted, and sometimes amended, to achieve the intended results. In this case the Board is of the opinion that the intended results of the DBC rule are clear, as evidenced by the fact that the airline industry has through the years given it the same universal meaning: that the passenger must be given a cash or cash-equivalent payment at the time of bumping (with the limited exception of the 24-hour relief in § 250.8(b)).

The main point in dispute is timing of the receipt of payment, as the term is commonly understood. PE's arguments concerning the ambiguity of the rule could have been raised just as well by the issuance of checks post-dated to one week after the time of bumping. The rule, in saying "draft" and "check or draft," does not expressly prohibit post-dating; but a post-dated check is not

generally considered to be immediate payment. The Board considers the rule, taken as a whole, to be quite clear on the immediacy requirement. The statement required to be given to passengers by § 250.9 is perhaps the clearest statement of this intent:

> The airline must give each passenger who qualifies for denied boarding compensation a payment by check or draft for the amount specified above, on the day and place the involuntary denied boarding occurs. However, if the airline arranges alternate transportation for the passenger's convenience that departs before the payment can be made, the payment will be sent to the passenger within 24 hours. The air carrier may offer free tickets in place of the cash payment. The passenger may, however, insist on the cash payment, or refuse all compensation and bring legal action.

The reference in the last two sentences to the requirement as a "cash payment" is revealing as to the Board's intent that the payment be cash or a cash equivalent. Similar references to "cash payment" are made in §§ 250.4 and 250.5(b). There would be little point to the insistence on immediate payment, with a limited 24-hour exception for passengers who are rushed off before a check can be drawn, if the document given could be either a post-dated check or any other document that merely entitled the recipient to convert it to cash at some point a week or more in the future.

The Board, therefore, considers the rule to have been clear in its intent and uniformly interpreted by the industry since its issuance in 1967.

Having considered the policies underlying the rule, the Board answers PE's requests in the negative, and with this issuance will make an interpretative amendment to align the language of the rule with the way it has been understood by both the Board and the industry.

While all the situations of individual travelers cannot be anticipated, prompt payment of DBC by cash or an immediately negotiable check unquestionably eases the hardship of bumping for many, and that is the central intent of the rule. The basic jusification for the rule has been amply discussed in previous issuances (*e.g.*, ER-1306, 47 FR 52980, November 24, 1982) and need not be repeated here. The rule has been well received by the public, and in the Board's judgment is a successful resolution of the bumping problem. The Board finds no sufficient reason in this proceeding to change it.

Interpretative Amendment

For the reasons set forth, the Board is hereby amending § 250.8 by deleting the word "drafts" from the title, so that the title reads, "Denied boarding compensation." In § 250.8(a), the words "a draft" are replaced by the words "cash or an immediately negotiable check." In § 250.8(b), the word "draft" is replaced by the word "payment." In the statement set forth in § 250.9, under the heading "Method of Payment," the words "check or draft" are changed to "cash or check."

Because this interpretative amendment merely clarifies a technical ambiguity in a rule, so that its language is consistent with the way it has generally been understood for many years, it is found for good cause that notice and opportunity for public comment thereon is unnecessary.

Regulatory Flexibility Statement

Pursuant to 5 U.S.C. 604, the Board finds that this interpretative amendment will not have a significant impact on a substantial number of small entities. The rule in question applies only to operators of large aircraft, which are not small entities within the meaning of the Regulatory Flexibility Act. Furthermore, the amendment evidently will make no change in the practice of any company other than People Express, which is not a small entity.

List of Subjects in 14 CFR Part 250

Air carriers, Consumer protection, Denied boarding compensation, Reporting and recordkeeping requirements.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 250, *Oversales*, as follows:

PART 250—[AMENDED]

1. The authority for Part 250 is:

Authority: Secs. 204, 401, 402, 403, 404, 407, 411, 416, 1002, Pub. L. 85-726, as amended, 72 Stat. 743, 757, 758, 760, 766, 769, 771, 788; 49 U.S.C. 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1386, 1482.

2. Section 250.8 is revised to read:

§ 250.8 Denied boarding compensation.

(a) Every carrier shall tender to a passenger eligible for denied boarding compensation, on the day and place the denied boarding occurs, except as provided in paragraph (b), cash or an immediately negotiable check for the appropriate amount of compensation provided in § 250.5.

(b) Where a carrier arranges, for the passenger's convenience, alternate means of transportation that departs before the payment can be prepared and given to the passenger, tender shall be made by mail or other means within 24 hours after the time the denied boarding occurs.

3. In § 250.9(b), in the required statement under the heading "Method of Payment," the first sentence is revised to read:

§ 250.9 Written explanation of denied boarding compensation and boarding priorities.

* * * * *

(b) * * *

Method of Payment

> The airline must give each passenger who qualifies for denied boarding compensation a payment by cash or check for the amount specified above, on the day and place the involuntary denied boarding occurs.

* * * * *

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-28729 Filed 10-30-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM83-71-001 through 030; Order No. 380-C]

Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions

Issued: October 24, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing reaffirming application of rule to minimum take provisions and denying requests for waiver.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Order No. 380-C to reaffirm the application of the Final Rule, as promulgated, to minimum physical take provisions in pipeline rate schedules or tariffs and to deny requests for waiver. Order No. 380 amended the Commission's regulations by adding a new § 154.111 that requires the elimination from natural gas pipeline tariffs of any provisions that operate to recover variable costs for gas not taken by the buyer. Order No. 380-A, *inter alia*, affirmed that the pipeline tariff provisions to which § 154.111 applies include minimum physical take provisions but stayed the effect of the rule with respect to such provisions until November 1, 1984, in order to permit additional public comment on and Commission reconsideration of this issue.

This order reaffirms that the pipeline tariff provisions to which § 154.111 applies include minimum physical take provisions in pipeline rate schedules or tariffs. The order also denies several requests for waiver and directs MIGC to file an Interim Agreement dated December 20, 1983, as part of its FERC Gas Tariff.

In addition to the above, the Commission responds in this order to various legal arguments and to other requests for clarification from commenters regarding the application of the Rule to their own particular circumstances. The instant order rejects the arguments raised and responds to the requests for clarification with respect to the application of the Rule to minimum physical take provisions.

EFFECTIVE DATE: November 1, 1984.

FOR FURTHER INFORMATION CONTACT: Cynthia A. Govan, Pipeline Rates and Valuation Section, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357–9119.

SUPPLEMENTARY INFORMATION: .

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is: (1) Reaffirming the application of the rule, as promulgated, to minimum physical take provisions in pipeline rate schedules or tariffs; (2) denying requests for waiver filed by Arkansas Louisiana Gas Company, and Pacific Gas Transmission Company; and (3) directing MIGC, Inc., to file an Interim Agreement, dated December 20, 1983, as part of its FERC Gas Tariff.[1]

II. Background

On June 1, 1984, the Commission issued Order No. 380 [2] which requires elimination from natural gas pipeline tariffs those provisions that operate to recover variable gas costs for gas not taken by the buyer. On July 30, 1984, the Commission issued Order No. 380–A,[3] which (1) grants a stay until November 1, 1984, with respect to the application of the final rule to minimum physical take provisions in pipeline rate schedules or tariffs; (2) clarifies that Order No. 380 does not apply to the stream of revenue approved by the Commission in authorizing the Alaska Natural Gas Transportation System; (3) grants a waiver of section 154.111 of the Commission's regulations, to the extent set forth in the body of the Order, with respect to Trunkline LNG Company; and (4) denies all other petitions for rehearing.

A number of petitioners filed requests for clarification and/or rehearing of Order No. 380 with respect to the application of the final rule to "minimum take" provisions in pipeline tariffs or in contracts with customers. Petitioners contended that since the application of the final rule to "minimum take" provisions was not expressly mentioned in the Notice of Proposed Rulemaking issued August 25, 1983,[4] application of the rule to minimum take provisions was outside the scope of the Notice. They also contended that there was insufficient record evidence to support the Commission's findings that minimum take provisions in pipeline tariffs are unjust and unreasonable. In order to accommodate the concerns raised by petitioners, the Commission stated that it would reconsider the question of applying the rule to minimum take provisions [5] and would issue a supplemental notice in this docket seeking further comment on the minimum take issue.

A Notice of Request for Further Comment was issued on August 10, 1984, providing for initial comments to be received on or before August 30, 1984, and reply comments to be received on or before September 13, 1984.[6]

This aspect of the rulemaking proceeding reconsiders whether the rule, as promulgated, should be applied to minimum take provisions in pipeline rate schedules or tariffs.[7] The Commission is considering whether the use of a minimum take provision which requires a customer to take and pay for a specific quantity of gas regardless of price results in pipelines charging customers a rate in excess of the lowest reasonable rate consistent with reliable, long-term supply. The Commission is also considering whether minimum take provisions share fully the market-distorting influences of variable costs in minimum commodity bills.

The presence of variable costs in a minimum commodity bill did two things which the Commission attempted to remedy. First, in cases where a customer was taking below its minimum commodity level, the minimum commodity bill operated to recover variable costs that were not actually incurred by the pipeline. Second, the minimum commodity bill served as a barrier to competition, thus inhibiting natural gas prices from responding to current market conditions.

The Commission is concerned that minimum take provisions do two things which must be remedied. First, the presence of minimum take provisions cause customers to take gas they would not otherwise take, thus resulting in charges to customers in excess of the lowest reasonable cost. Second, minimum take provisions, like minimum commodity bills, act as a restraint on competition because the pipelines and the producers remain artifically insulated from market risk.

III. Summary of Comments and Analysis

A. Overview

In response to the Notice requesting further comment, the Commission received sixteen initial comments reflecting the views of pipelines, distributors, a group of Canadian producers, a state regulatory commission and other entities. One commenter, the Independent Petroleum Association of Canada (IPAC), filed its initial comments five days late. While IPAC's comments are untimely, the Commission will accept the comments in view of the fact that no party has suffered a detriment as a result of the Commission's consideration of the late-

---

[1] The Commission issued, also on this date, companion Order No. 380–B.

[2] Order No. 380, Docket No. RM83–71–000, Final Rule, *Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions*, 27 FERC ¶ 61,318 (1984), 49 FR 22778 (1984), FERC Stats. and Regs. ¶ 30,571 (1984).

[3] Order No. 380–A, Docket Nos. RM83–71–001 through 030, Order Denying Rehearing and Granting in Part Applications for Stay, 28 FERC ¶ 61, 175 (1984), 49 FR 31259 (1984), FERC Stats. and Regs. ¶ 30,584 (1984).

[4] Notice of Proposed Rulemaking, Docket No. RM83–71–000, 24 FERC ¶ 61,254 (1983), 48 FR 39238, (1983); FERC Stats. and Regs., Proposed Regulations ¶ 32,334 (1983).

[5] A minimum take provision, unlike a minimum commodity bill, requires the customer to physically take possession of the gas. The customer does not have an option to simply pay for gas and not take it. According to a number of commenters, refusal to take the gas constitutes a breach of the contract, absent a valid claim of *force majeure*. *See e.g.*, Transwestern Pipeline Company, Rate Schedule CDQ–1, FERC Gas Tariff, Second Revised Vol. No. 1, Original Sheet No. 8; Arkansas Louisiana Gas Company, Rate Schedule X–26, FERC Gas Tariff, Original Vol. No. 3, First Revised Sheet No. 180; Pacific Gas Transmission Company, FERC Gas Tariff, First Revised Vol. No. 1, First Revised Sheet No. 53. While minimum take provisions generally take this form, they may vary depending on the contractual arrangements agreed to by the parties. *See e.g.*, Reply Comments of Michigan consolidated Gas Company and Inter-City Gas Corporation, filed September 13, 1984.

[6] Notice of Request for Further Comment, Docket No. RM83–71–001 through 030, 28 FERC ¶ 61,210 (1984), 49 FR 32764 (1984) (cited hereinafter as "Notice").

[7] The rule does not apply to minimum take provisions in contracts between producers and pipelines. The rule only applies to the tariffs and rate schedules under which jurisdictional pipelines sell natural gas to their customers.

filed comment. Nine comments in reply were received. *See* Appendix A.

The Commission's Office of Regulatory Analysis, the natural gas distributors, several jurisdictional natural gas pipelines, and the state regulatory commission expressed overwhelming support for the application of the rule to minimum physical take provisions. According to these commenters, the minimum take provisions cause customers to take gas they would otherwise not take, thus resulting in excessive rates to the consumer. The commenters also contend that minimum take provisions have at least as harmful an effect on competition as do minimum commodity bills, and for the same reasons. One commenter suggests that they may well have an even more harmful effect on competition than minimum commodity bills. These commenters conclude that there exists no redeeming purpose served by minimum take provisions that would distinguish them from minimum commodity bills. These comments are discussed at length *infra*.

In contrast, five of the nine jurisdictional natural gas pipelines who filed comments, in addition to a group of Canadian producers, oppose the application of the rule to minimum take provisions. These commenters state that minimum take provisions are necessary to assure the revenue stream necessary to maintain a viable pipeline. They also state that minimum take provisions are necessary to ensure sales of associated gas or other gas volumes which must be taken due to operational constraints caused by reduced takes. They further contend that such provisions are necessary to avoid erratic demands on their system supply by partial requirements customers. These comments are also discussed at length *infra*.

Upon review of the comments filed, the Commission has concluded that the presence of minimum take provisions cause customers to purchase gas they would otherwise not purchase because of its impact on the cost of their operations. The record reflects that minimum take provisions operate to prevent purchasers from pursuing a least-cost purchasing strategy, thereby resulting in charges to customers in excess of the lowest reasonable rate consistent with reliable, long-term supply. The Commission has also concluded that minimum take provisions in pipeline tariffs and contracts share fully the market-distorting influences of the variable costs in minimum commodity bills. Minimum take provisions have at least as harmful an effect on the marketability of natural gas as minimum commodity bills, and for the same reasons. The reasons offered for their continued use do not outweigh these adverse effects. For these reasons, the Commission concludes that the rule, as promulgated, should remain applicable to minimum take provisions or any other provisions which provides for recovery of variable costs for gas not taken by the buyer.

The rule as applied to minimum take provisions, as with minimum commodity bills, does not affect the pipeline's ability to seek recovery of fixed costs incurred as a result of a customer's failure to meet its minimum daily or annual purchase obligations. The pipeline is free to seek recovery of such costs in a general section 4 rate filing.

B. Responses to Specific Questions

The Commission posed four questions in its Notice requesting further comment. Comments were submitted on each of these questions.

1. What were the reasons for including such provisions in pipeline tariffs and do those reasons still apply?

While the commenters note that it is difficult to generalize with respect to the reasons for including such provisions in pipeline tariffs, they have identified two primary purposes served by the inclusion of minimum take provisions in their tariffs. First, they provide the pipeline with an assurance that it would have a means of disposing of certain volumes of gas which, for practical or contractual reasons, it was required to take from its suppliers. Second, they provide the pipeline with an assurance that it would not be subject to sudden and large swings in demand on the part of the partial requirements customers.[8]

The pipeline's need for assurance that it would have a means of disposing of certain volumes of gas is based on the fact, assert these commenters, that the pipelines, in many cases, are contractually obligated to actually take-*and*-pay for specific quantities of gas from their suppliers/producers, an amount which is similar to the minimum take level contained in their tariffs. The commenters state that these contractual requirements are imposed by the producers because the producers need protection against the operational problems created by the failure to take casinghead gas and the failure to take from plants producing natural gas liquids. The commenters also state that, in many instances, low capacity wells must be produced to protect against water incursion and the total loss of production and recoverable reserves. In addition to operational constraints caused by reduced takes, producers may also be under a contractual obligation to produce gas in "paying quantities" in order to maintain the mineral leases after the expiration of the primary term of the lease. The commenters also state that the producers require minimum purchases in order to assure a revenue stream sufficient to enable them to make the investment necessary to produce and process the underlying gas stream.

According to Transwestern Pipeline Company (Transwestern) and Arkansas Louisiana Gas Company (Arkla), a pipeline's need to be protected against sudden and large swings in demand is due to the pipelines' limited storage capacity and its continued obligation to meet its customer's contract demand for gas. A number of commenters have expressed concern about the inequities of having to stand ready to meet a customer's full contract demand, while at the same time being exposed to that customer choosing to swing off the system at any time. In addition, they state that reduced swings provide the pipeline with the ability to plan their gas acquisition and manage their gas supply.

A number of these commenters contend that the original justifications for the inclusion of minimum take provisions in tariffs are even more valid today. First, pipelines are still, and will continue to be, contractually obligated to meet certain minimum take requirements on behalf of their suppliers. They also note that there has not been a change in the requirements of producers with respect to the need for an assured minimum physical level of production. Second, pipelines must still acquire firm supplies in order to meet certificate obligations and their limited storage capacity does not provide the pipeline with the ability to absorb large quantities of gas at unexpected times. Third, the pipelines' exposure to reduced takes is exacerbated by the Commission's rule eliminating recovery of the variable cost portion of minimum commodity bills. They contend that these reasons support retention of minimum take provisions in pipeline rate schedules or tariffs.

The Commission finds that the reasons for inclusion of the minimum take provisions do not justify their continued use. The concerns raised by the pipelines that they will be unable to meet their contractual obligations with

[8] *See* Initial Comments filed by Transwestern Pipeline Company (Transwestern), Arkansas Louisiana Gas Company (Arkla), Pacific Gas Transmission Company (PGT), Pacific Gas and Electric Company (PG&E), and Independent Petroleum Association of Canada (IPAC), Docket No. RM83-71-001 through 030, filed August 30, 1984.

their suppliers/producers are exactly that—concerns. The pipeline may be able to meet its contractual obligations with its suppliers/producers regardless of the implementation of the rule.

Even if a pipeline is unable to meet its contractual obligations with suppliers/producers, this would not justify the continued use of a minimum take provision. The Commission is charged with the responsibility of protecting customers from excessive rates and charges.[9] To allow the continued use of a provision which restricts a purchaser's ability to reduce its gas costs, in order to alleviate a pipeline's contractual liability resulting from reduced takes would run counter to the intent of the Natural Gas Act and the Commission's obligations thereunder. Moreover, there is no justification for penalizing all customers by restricting their ability to purchase lower-priced gas where it has not been demonstrated that there is a clear nexus between the pipeline's incurrence of contractual liability with its suppliers/producers and the pipeline customer's reduction in takes below minimum take levels. A pipeline may not actually incur contractual liability as a result of a particular customer's inability to meet its minimum take obligation because another customer may increase its takes above minimum take levels.

The Commission is aware of the concerns raised by the commenters in this regard, but concludes that there are less restrictive alternatives available. For instance, to the extent that a pipeline actually incurs liability as a result of failure to meet its contractual obligations with its suppliers/producers, the pipeline is free to file for recovery of those costs. At that time, the Commission will consider on a case-by-case basis whether such costs have been prudently incurred and should be allowed to be recovered by the pipeline.

In addition, the concerns raised by commenters regarding the need for assurance against operational constraints caused by reduced takes also do not justify the continued recovery of purchased gas costs for gas not taken by the buyer. None of the commenters opposing application of the rule to minimum take provisions have demonstrated that the application of the rule to minimum take provisions would render the pipelines unable to sell the amount of gas necessary to maintain, for example, casinghead or processing plant production and no domestic producers have filed comments reflecting this concern. In addition, if pipelines are unable to meet these minimum production levels it would reflect the fact that the gas was not priced competitively. The producers are not likely to maintain high prices at the cost of losing valuable reserves.[10] If a specific amount of gas must be sold to maintain a well, the gas will, no doubt, be priced accordingly to accomplish that objective.

Similarly, minimum take provisions are not justified by the concerns raised by the pipelines that they will be unable to meet their customers' contract demands due to the erratic demand on their system supply. In essence, these commenters are asserting that they incur legitimate, prudent fixed costs in "standing by" to provide certificated service. The claim that the only way they can recover these costs is by being assured that their gas will be taken. We disagree. There is no clear nexus between the pipeline's incurring these costs and the minimum take obligation imposed on its customers. To the extent actual costs are incurred as a result of the erratic swings on its system, the pipeline is free to make changes in its rate structure to reflect these costs. The pipeline's customers and our Staff will then have an opportunity, in appropriate proceedings, to review the costs claimed. This is the essence of regulation under section 4 of the Natural Gas Act.

As discussed below, minimum take provisions restrict a purchaser's ability to reduce its gas costs and act as a restraint on competition. The record does not demonstrate that the purposes served by the inclusion of these provisions outweigh these adverse effects.

2. Would allowing minimum take provisions cause customers to purchase gas they would otherwise not take because of its impact upon the cost of their operations?

A number of commenters contend that the presence of minimum take provisions in pipeline rate schedules or tariffs cause customers to purchase gas they would otherwise not purchase because failure to take gas at minimum take levels constitutes a breach of contract and could result in damages which exceed the price of the gas.[11] Transwestern's 80 percent minimum daily take requirement in its tariff, under which Pacific Lighting Gas Supply Company (PLGS) purchases gas, provides a clear example of the impact minimum take provisions have on a customer's purchasing decisions. According to the California Public Utilities Commission (CPUC) and San Diego Gas & Electric Company, Transwestern's minimum take provision has caused PLGS and, in turn, Southern California Gas Company (SoCal), who purchases gas from PLGS, to reject lower-priced gas available from El Paso Natural Gas Company (El Paso) that they would otherwise have purchased to minimize their gas costs.[12] PLGS confirmed this fact by stating that "[u]nder present purchasing policies and conditions any shift away from Transwestern will have the result of the purchase of more El Paso gas".[13]

No commenter disputes the fact that the presence of minimum take provisions affect customer's purchasing decisions. However, those favoring retention of the minimum take provision argue that, in certain circumstances, mandating a certain level of sales may result in the purchase of lower-priced gas supplies, rather than the purchase of higher-priced gas which the Commission is attempting to eliminate.

Transwestern was one such commenter advancing this argument. Transwestern explains that it sells gas to PLGS who, in turn, sells gas to SoCal for distribution in southern California. According to Transwestern, absent a minimum take requirement, PLGS and, in turn, SoCal would improperly favor their affiliates over Transwestern as a result of their unique brand of

[9] *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944).

[10] Under state law governing contracts, it is generally the duty of the party injured through a breach of contract to mitigate damages and thus minimize the loss resulting from the breach. *TCP Industries, Inc.* v. *Uniroyal, Inc.*, 661 F.2d 542 (6th Cir. 1981). Under the mitigation doctrine, the seller must use every reasonable effort within its power to minimize damages. In the case of natural gas, this might mean a reduction in price in order to sell gas and maintain production levels. Thus, a correct measure of damages might be the difference between the market price and the contract price at the time of the breach.

[11] *See* Initial Comments filed by California Public Utilities Comm'n (CPUC), Southwest Gas Corp., Arizona Public Service Co., Southern Union Gas Co., Gas Company of New Mexico, San Diego Gas & Electric Co. (San Diego) and Commission Staff, Docket No. RM83-71-001 through 030, filed August 30, 1984.

[12] *See* Initial Comments of CPUC and San Diego. Under the tariffs which became effective April 1, 1984, (Docket No. TA84-2-42), PLGS purchased gas from Transwestern under Rate Schedules CDQ-1 and LX which reflected a commodity rate of $3.8102 per dekatherm (dth) and 3.8416 per dth, respectively. At the same time, SoCal was purchasing gas from El Paso under Rate Schedule G at a commodity rate of $3.5670 per dth.

[13] *See* Reply Comments of PLGS and SoCal, Docket No. RM83-71-001, filed September 13, 1984, at 5. The Commission's decision is not altered by the fact that effective October 1, 1984, Transwestern's commodity rate under Rate Schedules CDQ-1 and LX is below that currently available from El Paso under Rate Schedule G. Our goal is to establish regulatory ground rules that will encourage the lowest reasonable rates consistent with reliable, long-term supply.

sequencing gas purchases. Transwestern explains that this would occur as a result of SoCal implementing its "avoidable cost" principle, whereby a decision to purchase gas is not based on price alone, but rather on its "avoidable cost".[14] According to Transwestern, at least in the case of southern California customers, retention of its minimum take provision might force the purchase of lower-priced gas supplies.[15]

The Commission finds Transwestern's argument for retention of minimum take provisions unpersuasive. The Commission has no jurisdiction over how SoCal chooses to "sequence" its takes of natural gas. However, the CPUC requires the California utilities to pursue a least-cost purchasing policy for both their near-term and long-term purchases of natural gas. The prudence of the purchasing practices of PLGS, SoCal and other distribution companies are reviewed by the CPUC semi-annually in gas cost adjustment proceedings. To the extent they pursue a practice which unjustly or unreasonably favors affiliated companies, or is otherwise imprudent, the state commission is empowered to take remedial action. We, in turn, must focus on regulating those companies which are subject to our jurisdiction. A jurisdictional pipeline will not be able to circumvent the purpose of the Natural Gas Act if it is free to chose an alternate source of gas supply, because its purchasing practices are similarly reviewed semi-annually in a purchased gas adjustment (PGA) proceeding.

The comments demonstrate that a purchaser is more inclined to take the higher-priced gas than expose themselves to damages resulting from a claim involving breach of contract.

3. Do minimum take provisions result in charges to customers in excess of the lowest reasonable cost?

A number of commenters state that minimum take provisions result in charges to customers in excess of the lowest reasonable cost because minimum take provisions hamper the customers' ability to purchase the least expensive gas available.[16]

Several commenters contend that allowing minimum take provisions would not result in charges to customers in excess of the lowest reasonable cost. Pacific Gas and Electric Company (PG&E) contends that it "observes a 'least-cost' gas purchasing policy designed to protect California customers by ensuring long-term reliable supplies of natural gas at the lowest reasonable cost".[17] According to PG&E the concept of "lowest reasonable cost" must encompass more than simply transitory pricing differences. Such an analysis must also include consideration of "long-term pricing effects, supply quantity and reliability, and long-term gas needs".[18] The Commission agrees that these factors should be considered in establishing a comprehensive purchasing policy, but also states that a purchaser should not be restricted from selecting an alternate source of gas supply in order to provide its customers with gas at the lowest reasonable cost consistent with reliable, long-term supply.

Transwestern contends that minimum take provisions do not result in charge to customers in excess of the lowest reasonable cost because regulation prohibits the pipeline from charging unjust and unreasonable rates regardless of whether their tariffs contain minimum take provisions. Where, as in the instant proceeding, the Commission finds that a tariff provision, by its very terms, restricts a purchaser's ability to reduce its gas costs, it is clearly within its authority to prescribe the practice to be thereafter observed. The Commission need not consider the effects of such a provision on a case-by-case basis, as Transwestern suggests.

Transwestern also asserts that the Commission cannot and should not disregard the fact that it is dealing with a regulated industry, and thus, should not "attempt to translate competitive concepts applicable to a non-regulated market willy-nilly into transactions regulated under the Natural Gas Act."[19] Contrary to Transwestern's assertions, the Commission is not applying competitive concepts without consideration of the role competition should play in a regulated industry. As the Commission stated in *City of Florence, Alabama* v. *Tennessee Gas Pipeline Co.*, 24 FERC ¶ 61,395 at 61,839 (1983), competition can should play an important role even in a regulated industry such as the natural gas industry. "If competition exists, incentives are created for innovation by the regulated companies. This, in turn, encourages lower prices and better service." This is precisely what the Commission is attempting to do by adapting our regulations to respond to evolving competitive forces.

The Commission has consistently encouraged regulated companies to pursue a least-cost purchasing policy in order to provide their customers with the lowest reasonable rate consistent with reliable, long-term supply. *See* Order No. 380, 27 FERC ¶ 61,318 (1984), mimeo at 22–23, Opinion No. 186, 24 FERC ¶ 61,299 at 61,638–40 (1983), and Order No. 298, 23 FERC ¶ 61,224 (1983), FERC Stats. and Regs. ¶ 30,455 (1983). The Commission has concluded that a provision which mandates a specific level of sales, regardless of price and marketability of gas supplies, limits the ability of that pipeline's customers to strictly adhere to a least-cost purchasing policy. A provision which unreasonably restricts a least-cost purchasing policy results in charges to customers in excess of the lowest reasonable cost.

4. What is the effect of minimum take provisions on the marketability of natural gas?

According to most commenters, minimum take provisions, like minimum commodity bills, have a substantial and debilitating effect on the marketability of natural gas.[20] One commenter stated that minimum take provisions are even more harmful to competition than minimum commodity bills because when the the unmarketable gas is actually taken by the pipeline the producers remain ignorant to the fact that it is unmarketable.[21] This commenter further notes that having sold this high-priced gas, the producer may be encouraged to explore for additional supplies to replace those sold, thereby perpetuating an already bad situation. In response to this argument, one commenter stated that producers are well aware of the marketing problems faced by their buyers and are conducting their exploration and development activities accordingly.[22]

If, as suggested, the producers are aware of the marketing problems associated with the sale of their high-priced gas and are already conducting their operations accordingly, they do not need to require the pipeline and, in turn, the pipeline's customers to purchase a specific quantity of gas. If the gas is competitively priced it will be sold.

Transwestern contends that its minimum take provision has "absolutely

[14] The "avoidable cost" principle used by PLGS and SoCal is discussed in its reply comments at 5, *citing* the testimony of Mark C. Pocino filed in Docket No. RP83–113, *et al.*

[15] *See* Initial Comments of Transwestern at 13.

[16] *See* Initial Comments of CPUC, San Diego, and Staff.

[17] *See* Initial Comments filed by PGT/PG&E at 5–6.

[18] *Id.*

[19] *See* Initial Comments filed by Transwestern at 17–18.

[20] *See* Initial Comments filed by Northern Indiana Public Service Comm'n, Process Gas Consumers Group, *et al.*, Southwest Gas Corp., *et al.*, CPUC, San Diego Gas & Electric Co., and Staff, Docket No. RM83–71–001 through 030, filed August 30, 1984.

[21] *See* Initial Comments of Staff at 3–6.

[22] *See* Reply Comments of Arkla at 4–5.

no effect on the marketability of the gas," because it provides for a *pro rata* reduction in take obligations under certain circumstances.[23] Transwestern's *pro rata* reduction in takes does not eliminate the adverse effects minimum take provisions have on a purchaser's ability to reject unmarketable gas, as discussed *infra*.

Pacific Gas Transmission/Pacific Gas and Electric Company (PGT/PG&RE), who filed joint comments, contend that minimum take provisions do not themselves affect marketability. They explain that it is only when high minimum take provisions are combined with excessive prices that there is a potential adverse effect on marketability.[24] According to PGT/PG&E, its minimum take provisions do not adversely effect marketability because at the time of filing these comments its minimum take level had been reduced to 40 percent of the daily contract quantity and 50 percent on an annual basis, and new Canadian natural gas policies were implemented which will allow negotiated prices and enable Canadian prices to be reduced. Subsequently, PGT filed, in Docket No. RP85–2–000, to completely eliminate PG&E's minimum physical take obligations, with respect to its purchase of Canadian gas imports, substitute an "equitable purchase" clause based on achieving and maintaining a competitive price for the Canadian supply, reduce the annual take-or-pay level from 60 percent to 50 percent of the daily contract quantity, and alter the make-up rights for proviously incurred take-or-pay, with such changes to be effective November 1, 1984, assuming receipt of necessary regulatory approvals.

The Commission finds, based upon a review of the record, that the minimum take provisions share fully the market-distorting influences of the variable cost portion of minimum commodity bills, and for the same reasons. Both minimum take provisions and minimum commodity bills provide substantial financial pressure on a pipeline's customers to not reduce takes below the level of the applicable minimum. Thus, both provisions represent artificial constraints on the purchaser's choice of how much gas to purchase and at what price. A customer faced with a requirement to take a specific quantity of gas regardless of price or breach a contract becomes essentially indifferent to price. The resulting effect is that the pipeline and, in turn, the producers become artificially insulated from true market conditions and no longer have an opportunity to increase sales by adjusting the price. As we stated in Order No. 380, sellers, in an unregulated market, who are willing to accept a price that is below the prevailing price are generally able to increase their sales volumes. This ability to exchange price concessions for increased sales volumes is essential to the efficient functioning of a price responsive market.

C. Other General Issues

In addition to responding to the specific questions raised by the Commission in its Notice, a number of commenters have raised other issues regarding the application of the rule to minimum take provisions, which are addressed below.

1. Effect On Terms And Conditions Under Which A Pipeline Renders A Certificated Service

Similar to the argument raised on rehearing of Order No. 380, several commenters state that the minimum take provision in their tariff is a central and integral part of the certificate approved by the Commission. As such, they assert, it cannot be significantly or substantially altered by the Commission absent an adjudicatory proceeding.[25]

One commenter contends that: "the minimum take provision is not a term or condition of service, rather it is 'the service'. ", the essence of the service which has been approved by the Commission, and which forms the basis of the design of the facilities utilized to effect the sale and receipt of volumes.[26] In short, the commenter contends that the minimum take provision is the heart of the agreement and cannot be altered without significantly altering the balance between the parties that resulted from negotiation of the contract and the service undertaken upon acceptance of the certificate.

A minimum take provision, like a minimum commodity bill, merely represents a term or condition of service as set forth in the pipeline's tariff. As such, it represents one of many tariff provisions taken into consideration by the Commission in granting a certificate.[27] As we stated in Order No. 380–A, the alteration of pipeline tariffs which will result from applying the rule is clearly within the Commission's authority as set forth in sections 4, 5 and 16 of the Natural Gas Act.[28] The Commission's authority in this regard is clearly set forth at pages 7–9 of Order No. 380–A and need not be repeated here.

In sum, section 5(a), when read in concert with the broad language of section 16, permits the Commission to alter and amend the terms and conditions under which a pipeline renders a certificated service when the Commission determines, as in the instant proceeding, that those terms or conditions result in unjust and unreasonable rates. Accordingly, this argument is rejected.

2. Requirement For An Adjudicatory Proceeding

Several commenters also argue that even if proceedings under section 5 are lawful, factual issues raised by the Commission's proposal would preclude Commission action without an adjudicatory hearing to resolve the material issues of fact raised by the proposal and to make the type of findings required by section 5.[29]

The Commission disagrees. If, as in the instant case, there is neither a dispute as to material facts, nor a need to discover the underlying facts to aid in policy determinations, the Commission is under no obligation to grant the party and adjudicatory hearing. *See United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 205 (1956); *Jersey Central Power & Light Co.* v. *F.E.R.C.*, 730 F.2d 816 (D.C. Cir. 1984); *Citizens for Allegan County, Inc.* v. *F.P.C.*, 414 F.2d 1125 (D.C. Cir. 1969). The Commission has considered the factual issues raised by the commenters in this phase of the proceeding and has concluded that no issues of fact raised by the commenters warrant the need for an adjudicatory proceeding. The factual issues raised by commenters are addressed *infra*.

The Commission has also concluded that the problems resulting from inclusion of minimum take provisions are so pervasive as to affect the industry as a whole, thus supporting the need to resolve this matter on a generic basis, as opposed to considering these issues on a pipeline-by-pipeline basis. The legal precedent for such an approach is clearly set forth at pages 45–49 of Order No. 380 and need not be repeated here.

3. Effect On Negotiated Contracts

Several commenters argue that when tariff provisions are a matter of private contract, the Commission may not make a finding that the provision is unjust and unreasonable absent "circumstances of

[23] *See* Initial Comments of Transwestern at 17–18.

[24] *See* Initial Comments of PGT/PG&E at 7–8.

[25] *See* Initial Comments of Arkla and Transwestern.

[26] *See* Initial Comments of Arkla at 5.

[27] Pipelines are generally granted certificates on the basis of maximum throughput, not minimum takes.

[28] 15 U.S.C. 717–717w (1976).

[29] *See* Initial Comments of Arkla, Transwestern, PGT/PG&E.

unequivocal public necessity". *Citing United Gas Pipe Line Co.* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956) and *FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (hereinafter referred to as *"Mobile-Sierra"* doctrine).[30] According to these commenters, the Commission has not attempted to find, and the record would not permit a finding, that retention of the minimum take provision would impair the pipeline's customers' financial ability to continue to render service to the public. One commenter also asserts that such a finding cannot be made on a generic basis in a rulemaking proceeding.[31] The commenters' contentions are without merit.

First, the *Mobile-Sierra* doctrine only applies to fixed-price contracts and none of the commenters who raise this argument have shown that they are operating under fixed-price contracts.

Second, even if the contracts affected by the rule are fixed-price contracts, the *Mobile-Sierra* doctrine does not impair "the regulatory powers of the Commission, for the contracts remain fully subject to the paramount power of the Commission to modify them when necessary in the public interest." 350 U.S. at 344. A similar argument was rejected by the Supreme Court in *F.P.C.* v. *Louisiana Power & Light Co.*, 406 U.S. 621, 646–47 (1972).

The *Mobile-Sierra* doctrine merely enables a purchaser of gas to enter into a fixed-price contract with the assurance that those rates will not change *absent* a Commission determination under section 5(a) that the filed rate is unjust or unreasonable. The instant proceeding involves a determination under section 5(a) that the presence of minimum take provisions prevent customers from purchasing lower-priced gas, thus resulting in charges to customers in excess of the lowest reasonable rate. Minimum take provisions have also been fouind to be anticompetitive. For these reasons, the Commission has concluded that minimum take provisions in pipeline rate schedules or tariffs are contrary to the public interest and should be modified accordingly.

4. Establishing An Appropriate Non-discriminatory Level For Minimum Takes

While there was overwhelming support for applying the rule to minimum bill provisions, several commenters stated that minimum take provisions at appropriately determined and non-discriminatory levels can serve a useful purpose.[32] One commenter noted that some reasonable level of minimum take can serve a public purpose in maintaining the viability of each of several suppliers to a common market, thus helping to insure the availability of reliable sources of gas supply at reasonable prices to consumers over the long-term.[33]

The only evidence submitted proposing the establishment of an appropriate level for minimum takes was provided by El Paso. Under the approach advanced by El Paso, the level of minimum takes would be set "to insure, at a minimum, that adequate and reliable supplies of gas are available over the longer term to those higher-priority consumers which constitute the purchaser's 'core market'".[34] Takes by the common purchaser from each supplier would be ratable up to an established threshold[35] in instances where, as today, gas supply exceeds demand.[36] Each pipeline, under this approach, would be assured of attaining a certain minimum level of sales since it would bear only its *pro rata* share of any downturn in the market below the minimum take level. Above the minimum level, takes would be permitted on a least cost basis. According to El Paso, such an approach would provide pipelines and their suppliers with at least some minimum assurance of a market for their gas if they are to remain viable.[37]

PGT/PG&E, who filed joint reply comments, oppose El Paso's approach arguing that such an approach would not foster price competition. According to PGT/PG&E, there is a need for flexibility in minimum take provisions and recognition that such a provision should reflect particular conditions of the system.[38]

The Commission finds, based on the evidence presented, that minimum take provisions *at any level* are anticompetitive and can result in unjust and unreasonable rates or charges to the extent they restrict a purchaser's ability to purchase gas at the lowest reasonable cost. While the Commission is concerned about the long-term availability of gas supplies, the Commission does not believe that minimum take provisions provide such an assurance. To the extent that special circumstances exist which support the pipeline's need to mandate a particular level of sales regardless of price, that pipeline is free to file a petition for waiver of the regulations under 18 CFR 385.207. The Commission reiterates that it will not be generally inclined to grant exceptions to the rule in light of the strong public interest considerations that it embodies.

5. Interstate versus Intrastate Pipelines

One commenter, Transwestern, asserts that the application of the rule to minimum take provisions would have the effect of severely disadvantaging interstate pipelines vis-a-vis their intrastate competitors. Transwestern also asserts that such action is contrary to the intent of Congress in enacting the Natural Gas Policy Act of 1978 (NGPA).[39] According to Transwestern, a critical Congressional policy embodied in the NGPA was to put interstate and intrastate pipelines on an equal footing in competing for gas supplies. Transwestern contends that because the Commission's rule would only reach jurisdictional interstate pipelines, it would place them at a significant disadvantage in competing for gas supplies against an intrastate pipeline who can guarantee a supplier/producer a certain percentage of sales, regardless of price.

Based upon a review of the record, the Commission finds that this argument has no more merit than when it was raised by Transwestern on rehearing of Order No. 380. In addition to our addressing this argument at pages 57–58 of Order No. 380–A, we note that no evidence has been presented which demonstrates that applying the rule to minimum take provisions would severely disadvantage interstate pipelines in their attempt to acquire natural gas supplies.[40]

[30] *See* Initial Comments of Arkla and Transwestern.

[31] *See* Initial Comments of Transwestern at 22.

[32] *See* Initial Comments on Columbia Gas Transmission Corporation and El Paso, Docket No. RM83–71–001 through 030, filed August 30, 1984.

[33] *See* Initial Comments of El Paso at 4.

[34] *See* Initial Comments of El Paso at 4, *citing* the testimony of El Paso's witness C. R. Jack, Docket No. RP83–113, *et al.*, filed February 21, 1984.

[35] *Id.*, El Paso presented testimony in Pacific Gas Transmission Co., *et al.*, Docket No. RP83–113, *et al.*, recommending that the appropriate minimum take level for the southern California market should be set at 60 percent of the volumes available from all interstate suppliers to that market. *Id.*

[36] El Paso notes that exceptions might be allowed where the suppliers' sole supply of gas is casinghead or associated gas production. Initial Comments of El Paso at 4, n. 3.

[37] *See* Initial Comments of El Paso at 4–5.

[38] *See* Reply Comments of PGT/PG&E at 5.

[39] *See* Initial Comments of Transwestern at 22–24.

[40] Transwestern has not submitted data demonstrating to what extent intrastate pipeline contracts and tariffs contain minimum take provisions.

Transwestern was the only commenter which has raised this argument and Transwestern has neither alleged nor shown that it competes for gas supplies with any intrastate pipelines. Moreover, the fact that the Commission does not have jurisdiction over intrastate pipelines cannot be used as a basis for frustrating the Commission's regulation of interstate pipelines.

IV. Requests for Waivers and/or Clarification [41]

A. Arkansas Louisiana Gas Company (Arkla)

Arkla asserts (at 21) that the "unique factual circumstances" that exist on its customer's system (Northwest Central Pipeline Corporation), warrant waiver of any rule that would otherwise eliminate the minimum take provisions in the Arkla-Northwest Central contract. It bases this assertion on the following factual situation.

Arkla has a daily minimum purchase obligation in its Rate Schedule X–26 under which it sells gas to Northwest Central Pipeline Corporation (Northwest Central), the successor to Cities Service Gas Company, at Jane, Missouri. Arkla contends that if its minimum take provision in its X–26 rate schedule is eliminated, Northwest Central will not purchase Arkla's gas for the following reasons. First, Northwest Central has substantial take-or-pay obligations under its contracts with certain Wyoming producers. Under these contracts, Northwest Central is required to take-or-pay for a certain quantity of high-priced gas. Second, the Commission has imposed a minimum throughput condition in the certificate issued to Northwest Central authorizing the construction and operation of Northwest Central's Rawlins-Hesston line to Wyoming. Under that condition, Northwest Central is exposed to underrecovery of costs of that line to the extent throughput falls below a specific minimum level, specifically 43 Bcf per year.[42]

According to Arkla, because Northwest Central's shareholders will bear the brunt of any undercollection resulting from the Rawlins-Hesston line, Northwest Central has every incentive to maintain throughput on that line, regardless of the price of the gas purchased from the Wyoming producers. Consequently, if Arkla's minimum take provision is eliminated, Northwest Central would have a strong economic incentive to swing off its system in order to assure recovery of the fixed costs of the Rawlins-Hesston line.

In addition, Arkla notes that Northwest Central has the contractual right to take substantial volumes of lower-priced gas from the Hugoton producers in Kansas. Arkla contends that absent an obligation to take gas from Arkla, Northwest Central would increase its takes of this lower-priced gas to offset the effects of its increase in purchases of higher-priced gas from the Wyoming producers.

Assuming all the facts set forth by Arkla to be true, the Commission sees no reason to exempt the minimum take provision in the Arkla-Northwest Central contract from the rule. The throughput condition imposed on Nothwest Central "does not require Cities [now Northwest Central] to transport a minimum amount of gas through the Rawlins-Hesston line".[43] Rather, it is a ratemaking mechanism used for the purpose of placing an appropriate amount of risk on Northwest Central's shareholders. The condition does *not* relieve Northwest Central of its duty to provide gas at the lowest reasonable rate. As the Commission specifically stated:

> [T]he minimum throughput condition does not exempt any volumes purchased and transported through the Rawlins-Hesston line from the general inquiry into [Northwest Central's] prudence in its gas acquisition practices.[44]

Thus, Northwest Central's minimum throughput condition does not allow Northwest Central to engage in imprudent gas purchasing practices. What appears to be Arkla's concern, as one commenter noted,[45] is not the fact that Northwest Central will increase its takes of higher-priced gas from the Wyoming producers; rather, that Northwest Central will increase its takes from the Hugoton producers who are offering lower-priced gas.

Based upon the foregoing, the Commission finds that Arkla has failed to demonstrate that unique factual circumstances exist sufficient to grant waiver of the application of the rule to the Arkla-Northwest Central contract.

B. Pacific Gas Transmission Company (PGT)/Pacific Gas & Electric Company (PG&E)

PGT/PG&E filed comments stating that the minimum take provisions of the type set forth in the PGT/PG&E Service Agreement should not be governed by the rule. Subsequently, PGT filed to eliminate this minimum take provision with respect to PG&E's purchases of Canadian gas imports and substitute an "equitable purchase" clause, as discussed *supra*. Because Docket No. RP85–2–000 is pending Commission action and the minimum take provisions contained in the PGT/PG&E Service Agreement are still in effect, the Commission will address the arguments raised by PGT/PG&E in their comments filed in this proceeding.

According to PGT/PG&E, the characteristics of minimum take provisions described by the Notice as synonymous with "a minimum purchase requirement or a take-*and*-pay provision", are not characteristic of the PGT/PG&E Service Agreement. Among other differences, PGT/PG&E notes:

> [t]he minimum take definition set forth in the Notice assumes that the full commodity price is paid for gas not taken. The PGT/PG&E Service Agreement is not such a take-*and*-pay arrangement. If PG&E fails to take gas at the minimum levels, PG&E is *not* required to pay PGT in any event for the minimum volumes. Rather, a failure by PG&E to meet the minimum take obligation under the PGT tariff involves a breach of contract, absent a "force majeure" situation.[46]

The rule was intended to eliminate a pipeline's ability to recover purchased gas costs for gas not taken by the buyer. This includes the pipeline's attempt to recover damages for breach of contract where the damages represent the purchase gas costs for gas not taken by the buyer. Thus, as one commenter noted, the PGT/PG&E distinction is a distinction without a difference.

PGT/PG&E also argue that their minimum take provision differs from those contemplated by the Notice because there is a direct link between the minimum take provisions contained in the PGT/PG&E contract and the take-and-pay PGT has with its Canadian suppliers, Alberta and Southern. PGT/PG&E notes that the minimum volumes reflected in these contracts are based on volumes authorized by the National Energy Board (NEB) for export under the licenses held by Alberta and Southern, and the corresponding section 3 import authorizations held by PGT which are issued by and under the jurisdiction of the Economic Regulatory Administration

---

[41] A number of requests have been filed for waivers of the rule as applied to minimum commodity bills. *See* Great Lakes Gas Transmission Company, Docket Nos. RP84–10–1–000, et al.

[42] The condition was imposed by the Commission "to protect Northwest Central's ratepayers from bearing the full risks that the record had disclosed were involved in the proposed project." Northwest Central Pipeline Corp., 26 FERC ¶ 61,372 at 61,827 (1984).

[43] Cities Service Gas Co., Docket No. CP76–500–001, 23 FERC ¶ 61,193 at 61,410, n. 2 (1983).

[44] *Id.*, at 61,410.

[45] *See* Reply Comments of Staff at 13.

[46] Initial Comments of PGT/PG&E at 4–5.

(ERA).[47] PGT states that it has one pipeline sales customer, PG&E, and serves only one market. PGT further states that it is merely an arm of the distributor PG&E, created to serve as an interstate jurisdictional link between PG&E and the Alberta gas producers from whom Southern and Alberta purchases gas. As such, PGT contends that if its minimum take provision is modified or eliminated it will have a direct and significant adverse effect on the Canadian producers, who starting November 1, 1984, will have the freedom to negotiate prices with their customers.[48] Thus, PGT/PG&E asserts that to apply the rule to their minimum take provisions would be inconsistent with established governmental policy regarding Canadian imports.[49] They also assert that the Commission lacks authority to act on PGT's Canadian gas imports in the manner which may result from applying the rule to the PGT/PG&E minimum take provision.

The Commission rejects these arguments for the following reasons: First, as the Commission stated in Order No. 380–A, at pages 88–91, Order No. 380 is not inconsistent with the established government policy regarding Canadian imports as set forth in the *New Policy Guidelines And Delegation Orders On The Regulation Of Imported Natural Gas*, 49 FR 6684 (1984), issued recently by ERA.[50]

Second, the rule does not apply to minimum take provisions in any contracts between foreign and domestic companies. The rule only applies to the tariffs and rate schedules under which jurisdictional piplelines sell natural gas to their customers. The fact that the Commission's ruling *may* adversely impact on the terms or conditions of a contract beyond the Commission's jurisdiction, a fact which has not been deomonstrated by record evidence, cannot be relied upon to frustrate the Commission's authority to regulate interstate pipelines.

Third, the single market characteristic of the chain of contracts between PGT/PG&E and its supplier Alberta and Southern, and, in turn, the Alberta producers is not unique. The circumstances facing Canadian producers are analogous to those facing many pipeline suppliers and their producers. To exempt a pipeline from the rule because of the adverse affects on a Canadian producer, where domestic producers would be equally affected, would unfairly discriminate among pipelines and tend to perpetuate the very problems which the rule is intended to eliminate.

C. Great Lakes Gas Transmission Company (Great Lakes)

Great Lakes takes the position that the rule should not take effect under any circumstances. Great Lakes made a number of arguments in opposition to the application of the rule to minimum take provisions which have already been addressed above or in Order Nos. 380 and 380–A.

Several of Great Lakes' customers filed comments stating that Order Nos. 380 and 380–A should govern Great Lakes' minimum take provision because it is in actuality a minimum commodity bill.[51] The Commission need not decide whether the Great Lakes' provision is in actuality a minimum take or a minimum commodity bill because the rule is equally applicable to both.

In addition to arguments in opposition to the rule, Great Lakes requests clarification regarding how a pipeline, if it incurs take-and-pay liability with its supplier, can recover such costs. Great Lakes asserts that "[i]t is unreasonable and unjust to have a situation whereby Great Lakes makes take-and-pay payments to [its supplier], but cannot receive corresponding payments from those customers whose failure to comply with their recent contract amendments cause Great Lakes to incur take-and-pay liability with [its supplier]."[52] It is Great Lakes' position that the only just and reasonable solution is to allocate the costs to those customers who have caused the pipeline to incur take-and-pay liability with its suppliers.

The Commission need not reach the issue of how costs incurred by the pipeline for take-and-pay liability with its suppliers will be recovered, because the Commission is not presently confronted with that issue. Indeed, the issue may never arise. But to the extent that it does, the pipeline is free to file for recovery of such costs in its rate case and the issue will be decided on a case-by-case basis.

With respect to Great Lakes' contention that such liability, if incurred, should be directly assigned, the Commission reiterates that such questions of cost incurrence and cost responsibility may be addressed in appropriate rate proceedings.

D. Transwestern Pipeline Company (Transwestern)

Transwestern raises a number of arguments which have already been addressed above. In addition to the arguments addressed above, Transwestern contends that "the Rule carries the potential for denying the pipeline the opportunity to recover its costs".[53] Transwestern's argument is presented as follows. The Commission in Order No. 380 stated that due to the Commission's filing requirements and the five month suspension period ordered by the Commission in most rate cases, the pipeline could be required to carry for a period of approximately six months any increased costs resulting from load loss. Based on this statement, Transwestern concludes that "nonrecovery of at least six months' worth of the carrying costs of take-or-pay liability caused by the Commission's rule is automatic and could well be more that the pipeline could financially withstand". Transwestern contends that this would be so in its case.[54]

As we stated in Order No. 380–A at pages 59–60, the pipeline has some flexibility in managing its take-or-pay costs during a suspension period because, in most instances, take-or-pay liability is determined on an annual basis, based on the "contract year" of each contract. If the company does find itself in a severe financial condition as a result of take-or-pay carrying costs, the Commission can suspend the company's filing for only one day, where circumstances so warrant. Moreover, a pipeline has some control over the price of its "mix" of gas supply. For example, effective one day after the effective date of Order No. 380 and 380–A, Transwestern reduced the price it pays under "market out" type clauses from $4.00 to $2.95, thereby making possible a significant reduction in its purchased gas costs.[55] Decreased prices will mean increased takes which, in turn, translates into reduced take-or-pay liability.

E. Colorado Interstate Gas Company (CIG) and MIGC, Inc. (MIGC)

CIG urges the Commission to apply the rule to the minimum take provisions in pipeline tariffs, as well as to all contracts or agreements between jurisdictional pipelines and their resale customers which establish a physical minimum take level on the part of such

[47] *See* Order 380–A, mimeo at 83, n. 46.

[48] *See* Appendix A of Order No. 380–A.

[49] Joint Requests of PGT/PG&E for Clarification, Reconsideration and/or Rehearing, Docket No. RM83–71–001 through 030 filed June 25, 1984, at 39.

[50] *See* letter from Rayburn Hanzlik, Administrator, ERA, to Raymond J. O'Connor, Chairman, FERC, dated July 13, 1984.

[51] *See* Reply Comments of Michigan Consolidated Gas Co. and Inter-City Gas Corp., Docket No. RM83–71–001 through 030, filed September 13, 1984.

[52] See Initial Comments of Great Lakes at 7.

[53] Initial Comments of Transwestern at 24.

[54] *Id.*, at 25.

[55] *See* Transwestern Pipeline Co., Docket No. TA85–1–42–000 and 001 Schedule A–2.

customers.[56] CIG's principal concern regards the rule's applicability to an Interim Agreement [57] entered into between CIG and MIGC on December 20, 1983, which governs the terms and conditions of a sale for resale of natural gas in interstate commerce.

MIGC responded in its reply comments that CIG is requesting that the Commission improperly extend the rule to apply to a judgment entered by a Judge in the United States District Court for the District of Wyoming.[58] On July 26, 1983, MIGC instituted a proceeding in the United States District Court for the District of Wyoming, *MIGC, Inc.* v. *Colorado Interstate Gas Company*, No. C83–0299, in which MIGC brought action against CIG alleging certain tariff and contractual violations. On July 28, 1983, CIG filed with the Commission a complaint and request for an order to show cause in Docket No. RP83–116–000, alleging certain tariff and certificate violations with respect to MIGC's sales of gas to CIG. On October 11, 1983, CIG filed a petition for declaratory order assigned Docket No. RP84–7–000, which requested the Commission to state that CIG has no minimum bill obligation to MIGC for the 1983 contract year. On October 4, 1983, the Commission denied CIG's request for a show cause proceeding and ordered CIG to reopen its purchase valve.[59] On December 20, 1983, MIGC and CIG entered into an "Interim Agreement" which provides, *inter alia*, that CIG will accept up to 32,000 MMBtu of gas per day. The Interim Agreement is currently in effect and, by its terms, will remain in effect until the Commission issues a final non-appealable order in Docket No. RP84–7–000,[60] but in no event later than June 30, 1986. On December 22, 1983, the Judge in the United States District Court issued an order approving the settlement agreement (Interim Agreement) and dismissing the action without prejudice.

According to MIGC, the Interim Agreement was intended to establish a working relationship between MIGC and CIG pending a resolution of these issues in Docket No. RP84–7–000. MIGC contends that because the purpose of the Interim Agreement was to permit a working relationship to exist between MIGC and CIG pending litigation regarding MIGC's tariff, the Interim Agreement, by its terms does not operate or vary the terms or conditions of any contract or arrangement between the parties. MIGC also contends that CIG wrongfully urges the Commission to regard the Interim Agreement as though it were part of MIGC's tariff and, as such, to modify it. MIGC asserts that for the Commission to do this would "involve the Commission in a wrongful collateral attack on the District Court Order and would be contrary to both law and policy."[61]

The questions confronting the Commission in the instant proceeding concern: (1) Whether the Interim Agreement constitutes a contract governing the terms and conditions for the jurisdictional sale of natural gas in interstate commerce and, therefore, should be on file with the Commission; and (2) whether the District Court's approval of the Interim Agreement and dismissal of the complaint action takes the matter outside the purview of the Natural Gas Act.

MIGC is an interstate pipeline engaged in the transportation and sale for resale of natural gas in interstate commerce and thus is subject to this Commission's jurisdiction under the Natural Gas Act. 15 U.S.C. 717 *et seq.* Congress has provided in section 4(c) of that Act, that all natural gas companies subject to the Commission's jurisdiction shall file with the Commission "all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the charges, *together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.*" (Emphasis added) 15 U.S.C. 717c(c). This provision has the effect of giving certainty to both buyers and sellers of natural gas in the interstate market, since only the rate filed with the Commission may be charged.[62]

Under the terms of the Interim Agreement, MIGC is obligated to deliver and CIG is obligated to accept and pay for the quantity of gas set forth in the Agreement, until a final, non-appealable order resolving Commission Docket No. RP84–7–000 is issued or June 30, 1986, whichever is earlier. While the Interim Agreement does not operate to alter or vary the underlying terms or conditions of any contract or agreement between the parties, it does constitute a contract affecting or relating to rates during the interim period. As such, it should have been filed by MIGC as part of its FERC Gas Tariff as required by the Natural Gas Act. Accordingly, MIGC is ordered to file the Interim Agreement as part of its FERC Tariff in accordance with the Act.

All contracts which are or should be on file with the Commission are under the exclusive jurisdiction of the Commission regarding a determination as to whether the rate or charge is "just and reasonable". 15 U.S.C. 717c(a). *Montana Dakota* v. *Northwestern Public Services Co.*, 341 U.S. 246, 250 (1951). *See e.g., Maryland* v. *Louisiana*, 451 U.S. 725, 746–752 (1981); *F.P.C.* v. *Louisiana Power & Light Co.*, 406 U.S. 621 (1972); *Northern Natural Gas Co.* v. *State Corporation Commission of Kansas*, 372 U.S. 84 (1963). Thus, the Commission's authority to prescribe just and reasonable rates will extend to the Interim Agreement entered into between MIGC and CIG.

In sum, the Commission finds that the Interim Agreement governs the terms and conditions for the jurisdictional sale of natural gas in interstate commerce and, thus, should be on file with the Commission in accordance with section 4 of the NGA. All such contracts are subject to the Commission's exclusive jurisdiction to determine just and reasonable rates or charges. Therefore, the Commission's rule with respect to minimum take provisions applies to the Interim Agreement which should be on file with the Commission.

F. Pan Alberta Gas Ltd. and Foothills Pipe Lines (Yukon) Ltd. (Pan Alberta/Foothills)

Pan Alberta/Foothills requests that if the Commission reaffirms its decision to apply the rule broadly to minimum take provisions, that it continues to ensure that the tariffs underlying the minimum revenue stream established for the pre-built portions of the Alaska Natural Gas Transportation System project are exempted in accordance with the findings in Order No. 380–A.

The Commission hereby confirms that the rule as applied to minimum take provisions does not apply to the stream of revenue defined in the orders issued by the Commission [63] authorizing the construction and operation of the "pre-built" portions of the United States segment of the Alaska Natural Gas Transportation System, for the reasons

[56] *See* Initial Comments of Colorado Interstate Gas Co., Docket No. RM83–71–001 through 030, filed August 30, 1984, at 4.

[57] This "Interim Agreement" is not on file with the Commission regardless of the fact that CIG is currently purchasing gas from MIGC in accordance with its terms and conditions.

[58] *See* Reply Comments of MIGC, Inc., Docket No. RM–83–71–001 through 030, filed September 13, 1984, at 1.

[59] 25 FERC ¶ 61,000 (1983).

[60] CIG's petition for a declaratory order in Docket No. RP84–7–000 has been consolidated with MIGC's general rate case in Docket No. RP84–15–000, 25 FERC ¶ 61,309 (1983), and three of MIGC's PGA filings in Docket Nos. TA83–2–47–000, TA84–1–47–000, and TA84–2–47–001, 26 FERC ¶ 61,369 and 27 FERC ¶ 61,163 (1984).

[61] *Id.*, at 2.

[62] *See* Transwestern Pipeline Co., Docket No. RP–81–130–000, *et al.*, 27 FERC ¶ 61,255 at 61,481 (1984); Michigan Wisconsin Pipe Line Co., Opinion No. 471, 34 FPC 621, 626 (1965).

[63] *See* Order 380–A, at 96, n. 62.

stated in Order No. 380–A, which will not be repeated here.

G. Independent Petroleum Association of Canada (IPAC)

IPAC, a group which represents 200 Canadian producers, suggests (at 2) that minimum take provisions in existing contracts be allowed to stand until modified by the parties. According to IPAC, extending minimum take provisions beyond November 1, 1984, to a date appropriate in each case, will provide protection to consumers consistent with the intent of the Commission in issuing Order Nos. 380 and 380–A.

The Commission rejects this suggestion because the pipelines have been made aware of the Commission's inquiry into this matter for over a year. Thus, the pipelines have had sufficient time to begin renegotiating the terms of their contracts which would ultimately be affected by the implementation of this rule. The Commission rejects IPAC's suggestion and affirms that the rule as applied to minimum take provisions will become effective November 1, 1984.

H. Algonguin Gas Transmission Company (Algonguin)

In addition to the arguments raised in Algonguin's pleadings on rehearing, which are incorporated by reference and which have been addressed above, Algonguin requests that the Commission clarify that "the rule is not applicable to such physical take provisions where the service itself or service reliability may be threatened if the minimum take provisions are not enforced." [64]

The Commission has considered all of the comments in this phase of the proceeding regarding the impact application of the rule will have on service reliability. These comments fail to demonstrate that the pipeline's ability to continue to serve its customers will be threatened if the minimum take provisions are not enforced. If Algonquin believes that its ability to continue to serve its customers is threatened without a minimum take provision, Algonquin is free to file for a waiver of the regulation.

I. Columbia Gas Transmission Corporation (Columbia)

Columbia, which neither sells nor purchases gas under tariffs containing minimum take provisions, believes that the Commission should recognize that while minimum purchase requirements may not be proper in all (or even most) circumstances, special circumstances may exist under which such arrangements are appropriate and consistent with the overall public interest.

The Commission acknowledges that special circumstances may exist under which the minimum take provision may be considered appropriate and in the public interest. Those circumstances have not been demonstrated nor is the Commission aware of any circumstances which would justify the use of a minimum take provision in light of their adverse effect on competition. Nevertheless, as noted above, any person is free to file a petition for waiver of that regulation who believes the unique factual circumstances justify an exemption.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) [65] requires certain statements, descriptions, and analyses of proposed rules that will have "a significant economic impact on a substantial number of small entities." [66] The Commission is not required to make an RFA analysis if it certifies that a proposed rule will not have "a significant economic impact on a substantial number of small entities." [67]

The rule affects the contents of tariffs filed by pipelines which are regulated as natural gas companies under the Natural Gas Act. These regulated pipelines are virtually all large-size companies that do not fall within the RFA's definition of small entity.[68] The rule denies these regulated natural gas companies the ability to recover purchased gas costs for gas not taken by the buyer, regardless of what form that requirement takes in a pipeline's rate schedule or tariff. By making the rule applicable to take minimum take provisions, no additional refiling requirements are imposed on the pipeline.

Accordingly, the Commission certifies that this rule as applied to minimum take provisions will not have a significant economic impact on a substantial number of small entities.

The Commission Orders:

(A) Section 154.111 of the Commission's regulations will apply to minimum take provisions as the Commission stated in Order Nos. 380 and 380–A and the stay will be lifted as of November 1, 1984.

(B) All requests for waiver, as described in the body of this order, are hereby denied.

(C) MIGC, Inc. shall file, within 7 days of the issuance of this order, an Interim Agreement between MIGC and CIG, dated December 20, 1983, as part of its FERC Gas Tariff.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appendix A

Initial Comments

Algonquin Gas Transmission Company
Arkansas Louisiana Gas Company
California Public Utilities Commission
Colorado Interstate Gas Company
Columbia Gas Transmission Corporation
El Paso Natural Gas Company
Federal Energy Regulatory Commission Staff
Great Lakes Gas Transmission Company
Independent Petroleum Association of Canada
Northern Indiana Public Service Company
Pacific Gas Transmission Company and Pacific Gas & Electric Company
Pan-Alberta Gas Ltd. and Foothills Pipe Lines (Yukon) Ltd.
Process Gas Consumers Group *et al.*
San Diego Gas & Electric Company
Southwest Gas Corporation *et al.*
Transwestern Pipeline Company

Reply Comments

Arkansas Louisiana Gas Company
Federal Energy Regulatory Commission Staff
Inter-City Gas Corporation
Michigan Consolidated Gas Company
MIGC, Inc.
Pacific Gas Transmission Company and Pacific Gas & Electric Company
Southern California Gas Company and Pacific Lighting Gas Supply Company
Southwest Gas Corporation, *et al.*
Transwestern Pipeline Company

[FR Doc. 84–28609 Filed 10–30–84; 8:45 am]
BILLING CODE 6717–01–M

---

18 CFR Part 154

[Docket No. RM83–71–032, 033, 034; Order No. 380–B]

Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions

Issued: October 24, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Denying Rehearing and Granting Clarification.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Order No. 380–B to deny rehearing and grant a clarification to Order Nos. 380 and 380–A.

[64] Initial Comments of Algonquin Gas Transmission Co., Docket No. RM83–71–001 through 030, filed August 30, 1984, at 2.

[65] Section 8, 5 U.S.C. 601–612 (1982).

[66] *Id.*, section 603(a).

[67] *Id.*, section 605(b).

[68] *Id.*, section 601(3)–(6). *See* Order No. 380, pp. 58–59, n. 62.

On July 30, 1984, the Commission issued Order No. 380–A, which denied in part and clarified in part Order No. 380. Order No. 380 was a final rule issued by the Commission on May 25, 1984, requiring elimination from natural gas pipeline tariffs of any minimum commodity bill provisions that operate to recover variable costs.

The Commission received two timely petitions for rehearing of Order No. 380–A. In addition, the Commission received a request for a declaratory order with respect to the effect of the rule on the provisions of a pipeline's cost-of-service tariff.

For the reasons detailed in its order, the Commission denies rehearing of Order No. 380–A and clarifies that the subject provision of the petitioning pipeline's cost-of-service tariff provision remains valid after the effective date of Order Nos. 380 and 380–A.

DATE: This order was issued October 24, 1984.

FOR FURTHER INFORMATION CONTACT: Fred A. Wolgel, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On May 25, 1984, the Federal Energy Regulatory Commission (Commission) issued Order No. 380,[1] a final rule requiring elimination from natural gas pipeline tariffs of any minimum commodity bill provisions that operate to recover variable costs. On July 30, 1984, the Commission issued Order No. 380–A [2] denying rehearing in part and clarifying the rule in part. Transwestern Pipline Company (Transwestern) and Indiana Gas Company, Inc. (Indiana Gas) filed timely petitions for rehearing of Order No. 380–A.[3] On August 24, 1984, Pacific Offshore Pipeline Company (POPCO) petitioned the Commission to clarify Order 380–A and issue a declaratory order with respect to the effect of the rule on POPCO's tariff. The issues raised in these three petitions are dissussed below. The Commission is also issuing today a companion Order No. 380–C which, among other things, realffirms the applicability of the rule to minimum physical take provisions in pipeline rate schedules or tariffs.

Indiana Gas

In Order No. 380–A, the Commission noted that the cost a downstream pipline pays an upstram pipeline for gas is a "purchased gas cost" regardless of what types of costs make up the total charge for the gas. As a "purchased gas cost" the entire amount paid for the gas by the downstream pipeline is considered variable and recovered through the purchasing pipeline's commodity charge.[4] Indiana Gas notes that the fixed costs incurred by a downstream pipeline in payment of an upstream pipeline's minimum commodity bill will be recovered via the PGA mechanism designed to recover variable purchased gas costs. Indiana Gas asserts that partial requirements customers could evade their fixed cost responsibility simply by discontinuing their gas purchases. These customers would then not be billed for purchased gas costs and would avoid paying for the embedded costs discussed above. Indiana Gas alleges that such costs will be shifted to the full requirements customers.

In Order Nos. 380 and 380–A, the Commission addressed this issue in the context of treatment of the take-or-pay payments, and decided to refrain from imposing any methodology for assigning cost responsibility for take-or-pay costs. The Commission notes that the issue of cost shifting may be raised in a section 4 rate case or a semi-annual PGA adjustment case filed by a downstream pipeline. In those proceedings, the Commission can determine whether a partial requirements customer should be responsible for shouldering some of the cost burden incurred by a downstream pipeline with respect to its minimum commodity bill payments to an upstream pipeline and if there are other countervailing considerations. Accordingly, Indiana's request for rehearing is denied.

Transwestern

The Commission clarified, in Order No. 380–A, that the rule does not apply to the revenue stream approved by the Commission in its orders authorizing the construction and operation of the "prebuilt" segments of the ANGTS.[5] Transwestern argues that interstate pipelines receiving gas through the "prebuilt" portion of the Canadian segment of the ANGTS should be subject to the rule. In particular, Transwestern argues that a competitor, PITCO, which purchases gas from the "prebuilt" segment, has been granted an undue preference and advantage which unlawfully discriminates against Transwestern. The company also argues that the Commission failed to adequately explain its decision based on substantial record evidence.

The Commission is unpersuaded that the exemption granted to the "prebuilt" segments of the ANGTS should be rescined because those segments are treated differently from other pipelines. As explained in Order No. 380–A and Appendix D to that order, the ANGTS is a unique international project governed by a unique legal framework which has been upheld by the courts. The Commission's decision to exempt the pre-built segments of the ANGTS is consistent with its past actions recognizing that uniqueness. Moreover, as further explained in Order No. 380–A, the exemption is based on the Commission's repeated assurances of a stream of revenues for the construction and operation of the "pre-built" segments of the ANGTS.[6] Those assurances, in turn reflect the mutual trust and cooperation between the governments of the U.S. and Canada with respect to the ANGTS. Therefore, the Commission may not and will not subject PITCO to the rule, as requested by Transwestern. Accordingly, Transwestern's request for rehearing is denied.

Transwestern further argues that the Commission failed to analyze Transwestern's tariff "while relying on tariffs and contracts in exempting other interstate pipelines from Order Nos. 380 and 380–A." Transwestern argues that the Commission failed to consider Transwestern's take-or-pay exposure and placed Transwestern at undue risk in recovering its costs.

The Commission in Order No. 380–A found that Transwestern had presented no factual situation that would justify reaching a different result.[7] To the extent that Transwestern can demonstrate unique circumstances on its system, Transwestern can file a request for waiver of the rule to its tariffs. Since the rule was designed to encourage competition, a showing of temporary competitive disavantage without any other particular circumstances is insufficient for waiver. If Transwestern can demonstrate other compelling circumstances showing why it should not be subject to the rule, the Commission will consider such a

[1] Docket No. RM83–71–000 (issued May 25, 1984), 49 FR 22778 (June 1, 1984), FERC Stat. & Reg. ¶ 30,571 (hereinafter cited as Order No. 380).

[2] Docket No. RM83–71–000 (issued July 30, 1984), FR 31259 (August 6, 1984), FERC Stat. & Reg. ¶ 30,584 (hereinafter cited as Order No. 380–A).

[3] An Order Granting Rehearing Solely for the Purpose of Further Consideration was issued on September 28, 1984. 49 FR 39042 (October 3, 1984).

[4] Order No. 380–A, FERC Stat. & Reg. at 31,042.

[5] *Id.* at 31,061–62

[6] *Id.* 31,062, 31,067 note 62.

[7] *Id* at 31,049.

request in a separate proceeding, as described in Order No. 380.[8]

POPCO

POPCO seeks clarification that the Comission's treatment in Order No. 380–A regarding Pacific Gas Transmission's (PGT) cost-of-service tariff should also be granted to it. POPCO asserts that its cost-of-service tariff is identical to PGT's cost-of-service tariff, which, as noted in Order No. 380–A, provides for PGT to pay the principal amount of its take-or-pay payment to its supplier and flow that amount through to its sole customer. The Commission stated that "whatever automatic take-or-pay recovery is dictated by PGT's current tariff continues unchanged by this Rule."[9] POPCO asserts that its flow through provision, like that of PGT, remains valid and operative after the effective date of Order Nos. 380 and 380–A.

The Commission has examined the subject provision of POPCO's tariff and agrees that its provision is nearly identical to PGT's take-or-pay tariff provision. Both tariff provisions provide that the customer will pay for volumes of gas paid for but not taken by the pipeline. In Order No. 380–A, the Commission noted that a cost-of-service tariff provision providing for the automatic recovery of principal amounts of take-or-pay payments would not be invalidated by this Rule.[10] Thus, the Commission will grant POPCO's request by clarifying that the above-mentioned provision of its tariff remains valid after the effective date of the rule.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–28608 Filed 10–30–84; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 78N–0400]

Protection of Human Subjects; New Drugs for Investigational Use; Conforming Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing conforming amendments to the regulations governing the investigational use of a new drug. This document removes an inconsistency with the regulations establishing standards for institutional review boards.

DATES: Effective October 31, 1984; comments by November 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drugs and Biologics (HFN–360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3640.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 27, 1981 (46 FR 8942 and 8958), FDA published final regulations establishing (1) requirements for informed consent of human subjects involved in research activities that fall within FDA's jurisdiction (21 CFR Part 50) (46 FR 8942); and (2) standards governing the composition, operation, and responsibility of any institutional review board (IRB) that reviews research conducted under FDA's regulatory requirements (21 CFR Part 56) (46 FR 8958). The agency also adopted amendments to other agency regulations to conform them to Parts 50 and 56.

In the amendments conforming Part 312 (21 CFR Part 312) to the provisions of Parts 50 and 56, FDA incorrectly revised Forms FD–1572 and FD–1573 (approved by the Office of Management and Budget under control numbers 0910–0015 and 0910–0013, respectively) in § 312.1(a). Section 56.108(a), in part, requires that an IRB ensure "prompt" reporting to the IRB of changes in a research activity and unanticipated problems involving risks to subjects and that changes in approved research may not be initiated without IRB review and approval except where necessary to eliminate apparent immediate hazards to the human subjects. The conforming amendments to § 312.1(a) inadvertently omitted the word "promptly" in stating an investigator's reporting obligation concerning changes in a research activity and unanticipated problems involving risks to subjects and incorrectly stated that an investigator assure that prior IRB approval will be obtained only for changes in a research activity that would increase the risks to human subjects. Thus, the amendments are inconsistent with the provisions of § 56.108(a). FDA is correcting these errors by amending item 3 of Form FD–1572 in § 312.1(a)(12), and item 2a of Form FD–1573 in § 312.1(a)(13).

Because these are merely clarifying amendments to conform the investigational new drug regulations to 21 CFR Part 56, notice, public procedure, and delayed effective date are unnecessary in accordance with 5 U.S.C. 553(b)(B) and (d)(3). The agency nevertheless, is providing a 30-day period during which it will accept comments on these conforming amendments. If FDA decides on the basis of comments received that the changes should be modified, it will provide further notice in the **Federal Register**.

List of Subjects in 21 CFR Part 312

Drugs, Medical research.

Therefore, under the Federal Food, Drug, and Cosmetic Act secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 312 is amended in § 312.1 by revising item 3 of Form FD–1572 in paragraph (a)(12) and item 2a of Form FD–1573 in paragraph (a)(13), to read as follows:

PART 312—NEW DRUGS FOR INVESTIGATIONAL USE

§ 312.1 Conditions for exemption of new drugs for investigational use.

(a) * * *

(12) * * *

Form FD–1572

* * * * *

3. The investigator assures that an IRB that complies with the requirements set forth in Part 56 of this chapter will be responsible for the initial and continuing review and approval of the proposed clinical study. The investigator also assures that he/she will promptly report to the IRB all changes in the research activity and all unanticipated problems involving risks to human subjects or others, and he/she will not make any changes in the research without IRB approval, except where necessary to eliminate apparent immediate hazards to the human subjects. FDA will regard the signing of the Form FD–1572 as providing the necessary assurances stated above.

* * * * *

(13) * * *

Form FD–1573

* * * * *

2a. The investigator assures that an IRB that complies with the requirements set forth in Part 56 of this chapter will be responsible for the initial and continuing review and approval of the proposed clinical study. The investigator also assures that he/she will

---

[8] Order No. 380, FERC Stat. & Reg. at 30,973.

[9] Order No. 380–A, FERC Stat. & Reg. at 31,061.

[10] *Id.*

promptly report to the IRB all changes in the research activity and all unanticipated problems involving risks to human subjects or others, and that he/she will not make any changes in the research without IRB approval, except where necessary to eliminate apparent immediate hazards to the human subjects. FDA will regard the signing of the Form FD–1573 as providing the necessary assurances stated above.

* * * * *

Interested persons may, on or before November 30, 1984, submit to the Dockets Management Branch (address above) written comments on this final rule. Such comments will be considered in determining whether further amendments, modifications, or revisions to the final rule are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. October 31, 1984.

(Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: October 15, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–28614 Filed 10–30–84; 8:45 am]

BILLING CODE 4160–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange-Visitor Programs

AGENCY: United States Information Agency.

ACTION: Interim rule.

SUMMARY: 22 CFR 514.11(a) and 514.15(a) are modified in order to reflect the development of eight points used as standards in evaluating applications for Exchange-Visitor Program designation. 514.15(a) is further modified to reflect that the Exchange-Visitor Program designation has been delegated to the General Counsel and Congressional Liaison.

EFFECTIVE DATE: The interim rule is effective October 24, 1984, and shall remain in effect until publication of the final rule. Comments are due on or before November 30, 1984.

ADDRESSES: Send comments to: Merry Lymn, Attorney Advisor, United States Information Agency, Office of the General Counsel, Rm. 700, 301 4th Street, SW, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Attorney Advisor, United States Information Agency, Office of the General Counsel 301 4th Street, SW, Room 700, Washington, DC 20547; (202) 485–7976.

SUPPLEMENTARY INFORMATION: Under § 514.11(a), an organization may apply to the Exchange-Visitor Facilitative Staff of the Office of the General Counsel and Congressional Liaison of the USIA for designation as an Exchange-Visitor Program using Form IAP–37, "Exchange-Visitor Program Application." The General Counsel has the discretion to designate or deny the sponsor's program as an Exchange-Visitor Program. It is proposed that §§ 514.11(a) and 514.15(a) be revised to reflect that certain standards are applied to every application that is received by the General Counsel. The revision is a codification of existing Agency practice in the evaluation of applications and is being published so that the public is aware of Agency procedure.

The first standard defines which organizations may be considered for designation as an Exchange-Visitor Program. The J–1 visa is intended for participants in a program under the jurisdiction of the Mutual Educational and Cultural Exchange Act of 1961 as amended (Pub. L. 87–256) (Fulbright-Hays Act). An organization applying for an Exchange-Visitor Program must establish to the Agency's satisfaction that it is an educational or cultural exchange program which meets the requirements set forth in the Act.

The second standard enables the Agency to require a six-month lead-time to evaluate an application. Often an organization submits an application to the Agency for an Exchange-Visitor Program and presses for a designation merely for the purpose of admitting a particular foreign national or nationals to enter the United States on short notice under the J–1 visa. In order to prevent organizations from exerting pressure for an Exchange-Visitor Program which may not be based on genuine educational and cultural exchange and to insure the integrity of the proposed program, the Agency reserves the right to take six months to evaluate the application. It is possible that designation may be forthcoming within a shorter time.

The third standard reemphasizes the Agency's desire to foster reciprocal exchange programs. Under the Fulbright-Hays Act, the Exchange-Visitor Program must demonstrate that it is a two-way exchange. In other words, foreign exchangees will be coming to the United States while American exchangees are going abroad. While reciprocity is required, this does not necessarily imply a one-for-one situation. Potential sponsors must demonstrate reciprocity.

The fourth standard establishes a minimum size of five Exchange-Visitors per year for each program. This requirement was developed to reduce the proliferation of Exchange-Visitor Programs created for the admission of merely one or two aliens into the United States. It is our belief that fewer than five Exchange-Visitors per year does not constitute an exchange program as envisioned by the Fulbright-Hays Act. We encourage institutions which cannot support five Exchange-Visitors per year to form consortia with other institutions. The consortia can then apply to this office for Exchange-Visitor Programs

The fifth standard establishes a three-week minimum stay in the United States for the non-governmentally sponsored Exchange-Visitor. This is to ensure that Exchange-Visitor Programs are of sufficient length to bring about a meaningful exchange experience. Visits of less than three weeks permit only a superficial exposure to the United States.

The sixth standard codifies a long-standing requirement that an audited financial statement be submitted to the Agency as indication of financial solvency. To permit more flexibility in the regulations, the Agency will allow organizations to submit evidence of liquid assets or reserves which equal the return-trip airfare for all Exchange-Visitors in the program.

The seventh standard establishes that evidence of health/accident insurance and repatriation and dismemberment coverage be demonstrated to the Agency as a requisite to establishing an Exchange-Visitor Program. The Agency reserves the right to adjust the amount of the insurance coverage to reflect inflation. The present regulations specify the amount of insurance Teenage Exchange-Visitor Programs are required to provide. The Teenage Exchange-Visitor Program requirements are not modified by this standard.

Under the eighth standard, the Agency is broadening its practice of temporarily designating programs. All new Exchange-Visitor Programs will be designated as temporary during the initial year of operation. This will allow the Agency to monitor a new program through its first year and determine at

the end of the first year whether the program merits continuation as a permanent Exchange-Visitor Program. Temporary programs must reapply after the first year.

Lists of Subjects in 22 CFR Part 514

Cultural exchange programs.

E.O. 12291 Federal Regulation

USIA has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) 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.

PART 514—[AMENDED]

1. Section 514.11(a) is revised to read as follows:

§ 514.11 Application for Exchange-Visitor Program designation.

(a) *Application.* Any intending sponsor may apply to the Exchange-Visitor Facilitative Staff of the Office of the General Counsel and Congressional Liaison of the United States Information Agency for designation of one of the organization's programs as an Exchange-Visitor Program. Such aplication should be made on Form IAP–37, "Exchange-Visitor Program Application." The application shall be completed in all details and shall be submitted to the Exchange-Visitor Facilitative Staff, United States Information Agency, GC/V, Washington, DC 20547 with required supporting documentation. The application will be evaluated on the basis of the information contained in the application, and other information which may come to the staff, and the criteria listed below. The designation decision is discretionary.

(1) Only sponsors of bona-fide educational and cultural exchange programs as described in the Mutual Educational and Cultural Exchange Act of 1961, as amended (Pub. L. 87–256) may be considered for Exchange-Visitor Programs.

(2) The Agency reserves the right to require a six-month lead-time from the time the application is submitted until the first IAP–66 forms are issued to insure Exchange-Visitor Program integrity.

(3) Programs shall be reciprocal wherever possible.

(4) The minimum size for a proposed Exchange-Visitor Program is five Exchange-Visitors per year.

(5) The minimum stay in the United States for any single Exchange-Visitor in a non-government sponsored Exchange-Visitor Program is three weeks.

(6) Non-government Exchange-Visitor Program applicants must provide proof of liquid assets or reserves satisfactory to the Agency which equal the amount needed to provide return-trip airfare for all Exchange-Visitors to their home countries.

(7) Health/accident insurance coverage, repatriation costs for remains, and dismemberment coverage must be provided for all Exchange-Visitors. The Agency reserves the right to establish the amount and nature of the insurance coverage for individual programs.

(8) The initial designation will be of a temporary nature. The temporary Exchange-Visitor Program sponsor may apply for permanent program status after one year.

The officer who signs the application thereby indicates a willingness to assume the duties of Responsible Officer for administering the sponsor's program if it is designated. Official correspondence concerning a designated program will be conducted only between the Agency and the Responsible Officer or duly designated alternate.

* * * * *

2. Section 514.15(a) is revised to read as follows:

§ 514.15 Action on applications for Exchange-Visitor Program designation.

(a) An application for program designation on Form IAP–37 submitted to the Exchange-Visitor Facilitative Staff of the Office of the General Counsel and Congressional Liaison shall be examined to ascertain the adequacy of the information furnished. If sufficient information has not been furnished, the intending sponsor shall be requested to supply information in which the application is deficient. In addition to the information furnished on Form IAP–37, the Exchange-Visitor Facilitative Staff may require an intending sponsor to present any evidence of a documentary nature, such as program reports, institutional catalogues, letters of recognition, accreditation, certification or approval, which the Staff may consider necessary in determining the eligibility of the program to be designated as an Exchange-Visitor Program. The application will be evaluated according to the criteria established in § 514.11(a).

* * * * *

(Sec. 101(a)(15)(J) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(J); Mutual Educational and Cultural Exchange Act of 1961, as amended, 22 U.S.C. 2451; Reorganization Act No. 2 of 1977; E.O. 12048 of March 27, 1948; and Delegation Order No. 83–5 FR 2490)

Dated: October 24, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison, United States Information Agency.

[FR Doc. 84–28629 Filed 10–30–84; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 5h

[T.D. 7976]

Certain Elections Under the Deficit Reduction Act of 1984; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary rule.

SUMMARY: This document contains corrections to the **Federal Register** publication beginning at 49 FR 35486 of the temporary regulations which were the subject of Treasury Decision 7976 relating to the time and manner of making certain elections under the Deficit Reduction Act of 1984.

EFFECTIVE DATE: The temporary regulations that are the subject of these corrections are effective September 10, 1984. Except as provided otherwise, the regulations apply to elections made after July 18, 1984. The corrections are to be effective with respect to the same dates.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On September 10, 1984, the **Federal Register** published temporary regulations relating to certain elections under various sections of the Internal Revenue Code of 1954 and the Deficit Reduction Act of 1984 (the Act) (98 Stat. 494). These regulations were included in Part 5h, Temporary Elections Under Various Public Laws, and Part 18,

Temporary Elections Under the Subchapter S Revision Act of 1982.

Need for Correction

As published, Treasury Decision 7976 cites two references incorrectly. In the table on page 35487, under the heading "Section of act", the last line is a reference to "217 (l) (2) (b)" that should read "217 (l) (2) (B)". In the middle column of page 35489, the fourth and fifth lines incorrectly include a reference to "41(a) (Code section 1238(b)(2)),".

A third correction is required in § 5h.4(p), left-hand column, page 35492. The text of paragraph (p) omitted the word "section" immediately following the language "For the election provided under" and preceding the reference to "721(i)".

Correction of Publication

Accordingly, the publication of Treasury Decision 7976, which was the subject of FR Doc. 84–23870 (September 10, 1984), is corrected as follows:

PART 5h—[AMENDED]

§ 5h.h [Corrected]

Paragraph 1. On page 35487, in the last line of the table, under the heading "Section of act", the language "217 (l) (2) (b)" is removed and the language "217 (l) (2) (B)" is added in its place.

Par. 2. On page 35489, in the fourth and fifth lines of the middle column, the language "41(a) (Code section 1283(b)(2))," is removed.

Par. 3. On page 35492, in § 5h.4(p), the word "section" is added immediately following the language "For the election provided under" and preceding the language "721(i)".

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84–28740 Filed 10–30–84; 8:45 am]

BILLING CODE 4830–01–M

---

26 CFR Part 301

[T.D. 7990]

Tax Shelter Registration and the Requirement To Maintain Lists of Investors in Potentially Abusive Tax Shelters

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to tax shelter registration and the requirement to maintain lists of investors in potentially abusive tax shelters. In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the **Federal Register**. Changes to the applicable tax law were made by the Tax Reform Act of 1984. The regulations affect organizers, sellers, investors and certain other persons associated with investments that are considered tax shelters.

EFFECTIVE DATE: The regulations apply to tax shelters in which any interest is first sold after August 31, 1984, and are effective after August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Clark (with respect to tax shelter registration) or Alice M. Bennett (with respect to the requirement to maintain lists of investors) of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3828, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the temporary Procedure and Administration Regulations (26 CFR Part 301) relating to tax shelter registration under section 6111 of the Internal Revenue Code of 1954, as added by section 141 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 678) (49 FR 32712, August 15, 1984). This document also amends the temporary Procedure and Administration Regulations (26 CFR Part 301) relating to the requirement to maintain lists of investors in potentially abusive tax shelters under section 6112 of the Internal Revenue Code of 1954, as added by section 142 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 681) (49 FR 34200, August 29, 1984).

The temporary regulations have been drafted in question and answer format. No inference should be drawn regarding issues not raised herein or because certain questions and not others are included. The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the **Federal Register.**

Explanation of Provisions

The temporary regulations relating to tax shelter registration (§ 301.6111–1T) define a tax shelter and prescribe the obligations of organizers, sellers, investors and certain other persons associated with tax shelters. Questions have arisen concerning both the scope of the definition of a tax shelter and the obligations imposed.

Organizers of investments that meet the definitional requirements for a tax shelter, but that are not expected to reduce the tax liability of an investor, have questioned both the statutory authority for and the utility of the registration requirements as applied to such investments. The Service believes that section 6111 applies to an investment, whether or not the investment is expected to reduce the tax liability of its investors, if the investment meets the definition of a tax shelter set forth in § 301.6111–1T. Thus, these amendments do not modify the definition of a tax shelter. Instead, the amendments provide special rules that apply to tax shelters that are not expected to reduce the tax liability of any investor (a "projected income investment"). For this purpose (and for purposes of determining whether the tax shelter is subsequently required to register), an investment does not reduce an investor's tax liability unless, in one of its first 5 years, cumulative reductions in tax liability attributable to the investment exceed cumulative increases in tax liability attributable to the investment. In addition, both reductions and increases in tax liability are determined for these purposes as if each investor's income were taxed at a 50-percent rate.

A tax shelter organizer is not required to register a projected income investment at the time it is first offered for sale. In addition, sellers of interests in a projected income investment are not required initially to furnish a registration number to investors and investors are not required to include a registration number on their tax returns. If, however, the tax shelter subsequently reduces the cumulative tax liability of any investor, a tax shelter organizer must register the tax shelter within 30 days after the end of the year of the tax shelter that causes a reduction in the cumulative tax liability of any investor and before the tax shelter or the tax shelter organizer sends the investor a Schedule K–1 or similar form relating to that year. In addition, the tax shelter organizer who registers the tax shelter must furnish the registration number of the tax shelter to all investors of whom the organizer knows or has reason to know. The registration number must be furnished before the tax shelter or the tax shelter organizer sends the investor a Schedule K–1 or similar form relating to the year of the tax shelter that causes a reduction in the cumulative tax liability of any investor. If no such schedule or form is sent to the investor,

the registration number must be furnished within 60 days after the end of such year. Investors will not be required to include the registration number on their tax returns for their taxable years ending before the end of such year.

The regulations do not provide special rules relating to the subsequent registration requirement for cases in which no tax shelter organizer actively participates in the ongoing management of a projected income investment. The Service recognizes that in such cases it may be difficult for the tax shelter organizer to determine whether subsequent registration is required and invites comment on this issue. Such comment should take into account the Service's need for information on investments that actually reduce the cumulative tax liability of an investor during the first 5 years of the investment.

The temporary regulations provide that for the purpose of computing the tax shelter ratio, all persons with interests in the tax shelter, including general partners, are considered investors. Organizers of limited partnerships in which the tax shelter ratio is 2 to 1 or less with respect to all the limited partners but greater than 2 to 1 with respect to the general partners have objected to this rule. Accordingly, these amendments provide that for purposes of computing the tax shelter ratio for a year, general partners in a limited partnership will not be treated as investors in the partnership if the general partners' aggregate interest in each item of partnership income, gain, loss, deduction, and credit for such year is not expected to exceed 2 percent. For purposes other than the computation of the tax shelter ratio, however, general partners will be treated as investors.

Section 6111 and the temporary regulations provide that a substantial investment must be registered as a tax shelter if the tax shelter ratio as to any investor exceeds 2 to 1 in the first 5 years of the investment. An investment is a substantial investment if the aggregate amount that may be offered for sale to all investors exceeds $250,000 and 5 or more investors are expected. These amendments provide that for the purpose of determining whether 5 or more investors are expected in an investment involving real property (and related personal property) used as a farm for farming purposes, interests in the investment expected to be held by a husband and wife, their children and parents, and the spouses of their children (or any of them) will be treated as held by one investor.

These amendments also provide special rules with respect to tangible personal property and services. Under these rules, a person who, in the ordinary course of a trade or business, sells or leases tangible personal property (other than collectibles (as defined in section 408 (m) (2)), master sound recordings, motion picture or television films, videotapes, lithograph plates, or other property that includes or relates to a literary, musical, or artistic composition) to a purchaser or lessee who is reasonably expected to use the property either for a personal use or in the purchaser's or lessee's principal active trade or business is not required to treat the purchaser or lessee as an investor in a tax shelter. Similarly, a person who performs services for another person in connection with the principal active trade or business of the recipient of the services or for the recipient's personal use is not required to treat the recipient as an investor in a tax shelter.

The temporary regulations relating to the requirement to maintain lists of investors in potentially abusive tax shelters (§ 301.6112–1T) provide that until further regulations are prescribed, the requirement to maintain lists of investors applies only to tax shelters that are required to be registered with the Internal Revenue Service under section 6111. Before the amendments relating to tax shelter registration discussed above, the registration requirement and the list-keeping requirement applied to all tax shelters (including projected income investments). Although these amendments provide that a tax shelter that is a projected income investment is not generally required to be registered under section 6111, the amendments retain the requirement that lists of investors be maintained with respect to such a tax shelter. However, the amendments provide that the requirement to maintain a list of investors does not apply to investors who retransfer their interests in those tax shelters unless the tax shelter ceases to be a projected income investment prior to the retransfer. In addition, the amendments provide that organizers and sellers otherwise required by the temporary regulations to provide notices to investors need not provide those notices if the tax shelter is a projected income investment under section 6111. If, however, the tax shelter ceases to be a projected income investment, the amendments provide that organizers and sellers must provide notices to investors as required by the regulations.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required for temporary regulations. Accordingly, the temporary regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act. (Control No. 1545–0865)

Drafting Information

The principal authors of these regulations are Alice M. Bennett and Cynthia L. Clark of the Legislation and Regulations Divison of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List or Subjects in 26 CFR Part 301

Administration practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Statistics, Taxes, Disclosure of information, Filing requirements.

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

PART 301—[AMENDED]

Paragraph 1.—Section 301.6111–1T is amended by revising A–14(2), A–15, and A–22, adding three sentences to A–21, adding new questions and answers 24A and 57A through 57J at the appropriate place, and amending the table of contents to reflect the additional questions and answers. The revised and added provisions read as follows:

§ 301.6111–1T Questions and answers relating to tax shelter registration (temporary).

* * * * *

TABLE OF CONTENTS

* * * * *

Certain persons not treated as investors, A–24A

* * * * *

Projected income investments

Special rules for projected income investments, A–57A
Definitions relating to projected income, investments A57B—A–57D
Tax shelters ineligible for the special rules, A–57E
Consequences of bad faith or unreasonable projections, A–57F
When a tax shelter ceases to be a projected income investment, A–57G
Special rule for registration, A–57H
Special rule for furnishing registration number, A–57I
Special rule for including registration number on tax return, A–57J

* * * * *

A–14. The investment base must be reduced by the following amounts:

* * * * *

(2) Any amount borrowed by the investor, even if borrowed on a recourse basis, from a person, if the loan is arranged by a participating (or related) person, unless the amount is unconditionally required to be repaid by the investor before the close of the year for which the determination is being made. Any borrowing that is represented (orally or in writing) as being available from a specific source will be treated as arranged by a participating (or related) person, if the participating (or related) person provides a list of investors, or information relating to the investment, to the lender or otherwise informs the lender about the investment. However, in the case of an amount borrowed on a recourse basis, the mere fact that a lender who is actively and regularly engaged in the business of lending money obtained information relating to the investment, from a participating (or related) person, solely in response to a lender's request made in connection with such borrowing or a prior loan to the investment, a participating (or related) person, or an investor, will not, by itself, result in a determination that the loans are arranged by a participating (or related) person. Financing may be treated as arranged by a participating (or related) person regardless of whether a commitment to provide the financing is made by the lender to the participating or related person.

For example, assume that a tax shelter organizer represents that the purchase of an interest in a tax shelter may be financed with the proceeds of a revolving loan, and the tax shelter organizer provides investors with the names of several banks or other lending institutions to which the tax shelter organizer has provided information about the investment. Assume further that the information was not provided in response to requests from such lending institutions made in connection with prior loans. The proceeds of the revolving loan will be excluded from the investment base because the loan is not unconditionally required to be repaid and it is treated as having been arranged by the tax shelter organizer.

* * * * *

A–15. Yes. If the tax shelter ratio for any one investor may be greater that 2 to 1, the investment satisfies the the tax shelter ratio requirement and is a tax shelter if it also meets the requirement in A–4(II) of this section. Moreover, an investment will satisfy the tax shelter ratio requirement even if the tax shelte ratio for a single investor exceeds 2 to 1 as of the close of only one of the first five years.

For purposes of computing the tax shelter ratio for a year, all persons with interests in the investment are considered investors, except that general partners in a limited partnership will not be treated as investors in the partnership if the general partners' aggregate interest in each item of partnership income, gain, loss, deduction, and credit for such year is not expected to exceed 2 percent. In determining the general partners' interest in such items, limited partnership interests owned by general partners shall not be taken into account. For purposes other than the computation of the tax shelter ratio, however, all general partners will be treated as investors. Thus, for example, a general partner with a 1 percent interest in a limited partnership will be treated as an investor for the purpose of determining whether the partnership is a substantial investment.

* * * * *

A–21. * * *

For purposes of determining whether 5 or more investors are expected in an investment involving real property (and related personal property) that is used as a farm (as defined in section 2032A(e)(4)) for farming purposes (as defined in section 2032A(e)(5)), interests in the investment expected to be held by a husband and wife, their children and parents, and the spouses of their children (or any of them) will be treated as if the interests were to be held by one investor. Thus, for example, interests in a farm that are offered to two brothers and their wives would be treated as interests offered to one investor. Such an investment could be a substantial investment only if four or more persons who were not members of the family were expected to be investors in the farm.

* * * * *

A–22. Yes, under the circumstances described in this A–22. For purposes of determining whether investments are parts of a substantial investment, similar investments offered by the same person or related persons (as defined in section 168(e)(4)) are aggregated together. Investments are considered similar if they involve similar principal business assets and similar plans or arrangements. Investments that include no business assets will be considered similar if they involve similar plans or arrangements.

Similar investments are aggregated solely for the purpose of determining whether investments involving fewer than 5 investors or an aggregate amount of $250,000 or less are substantial investments. For this purpose, similar investments are aggregated even though some, but not all, of the investments are (i) required to be registered under a Federal or State law regulating securities or are sold pursuant to an exemption from securities registration requiring the filing of a notice with a Federal or State agency regulating the offering or sale of securities (*i.e.*, required to be registered as tax shelters whether or not a substantial investment) or (ii) substantial investments without regard to aggregation.

Assume, for example, that a person develops similar arrangements involving 8 different partnerships, each investing in a separate but similar asset (such as a separate master recording or separate piece of similar real estate), each with a different general partner and each with 3 different limited partners. Assume further that the arrangements of all the partnerships are similar. These partnerships involving similar arrangements and similar assets would be aggregated together. Thus, if each partner is expected to invest $11,000, there will be 32 investors (1 general partner plus 3 limited partners times 8 partnerships) and an aggregate investment of $352,000 (32 partners times $11,000). Accordingly, each partnership will constitute part of a substantial investment. If representations are made that $1,000 in tax credits and $3,000 in deductions are available to each limited partner in the first year and $10,000 of the cash invested was expected to be the proceeds of a loan arranged by the organizer, the tax shelter ratio as of the close of the first year (assuming there are no deductions or credits typically associated with such investment, as described in A–9 of this section) would be 5 to 1 ($5,000 in total tax benefits and $1,000 investment base). Accordingly, the organizer would be required to

register the partnerships with the Internal Revenue Service.

* * * * *

Q–24A. Under what other circumstances are particular sales or leases of tangible personal property to certain persons or the performance of particular services for certain persons exempt from tax shelter registration?

A–24A. A person who, in the ordinary course of a trade or business, sells or leases tangible personal property (other than collectibles as defined in section 408(m)(2)), master sound recordings, motion picture or television films, videotapes, lithograph plates, or other property that includes or relates to a literary, musical or artistic composition) to a purchaser or lessee who is reasonably expected to use the property either for a personal use or in the purchaser's or lessee's principal active trade or business is not required for any purpose to treat such a purchaser or lessee as an investor in a tax shelter. Property may be reasonably expected to be used by a purchaser or lessee for personal use only if sold or leased to the purchaser or lessee in a quantity that is customary for such use. Similarly, a person who performs services for another person in connection with the principal active trade or business of the recipient of the services or for the recipient's personal use is not required to treat the recipient as an investor in a tax shelter. Persons who are not reasonably expected to use property or services either in their principal active trade or business or for personal use must be treated as tax shelter investors in the event the sales, leases, or performance of services otherwise constitute a tax shelter.

Assume, for example, that an organizer forms Z corporation to feed cattle and to provide services in connection with the cattle feeding operations. Z will agree to serve customers with a minimum of 200 head of cattle. The fee for the services is $20 per head. Feed for cattle will cost $280 per head. Z represents that the service fee and the cost of the feed may be financed by $5,000 of cash and $55,000 of proceeds of a revolving recourse note that Z has arranged be available. Z provides its services to 100 customers. Ninety-five of the customers are persons whose principal active trade or business is reasonably expected to be farming (as defined in section 464(e)(1)). Five of the customers are not reasonably expected to engage in farming as their principal active trade or business. Although all the individual investments involve similar principal business assets and similar plans or arrangements, only the 5 customers who are not reasonably expected to be in the principal active trade or business of farming will be treated as investors in a tax shelter and aggregated to determine whether a substantial investment exists. Thus, there will be 5 investors and an aggregate investment of $300,000. If representations are made that the service fee and the cost of the feed are tax deductible, the tax shelter ratio (assuming there are no deductions or credits typically associated with such an investment, as described in A–9 of this section) would be 12 to 1 ($60,000 in total tax benefits and $5,000 investment base) and the organizer would be required to register the five aggregated feeding arrangements as a tax shelter. The registration number of the tax shelter must be provided to the five customers treated as investors in the tax shelter, but would not be required to be furnished to the customers whose principal active trade or business is reasonably expected to be farming.

* * * * *

Projected Income Investments

Q–57A. Are the registration requirements suspended with respect to any tax shelters?

A–57A. Yes. If a tax shelter is a projected income investment, it is not required to be registered before the first offering for sale of an interest in the tax shelters occurs, but is subject only to the registration requirements set forth in A–57H through A–57J of this section. A tax shelter is a projected income investment if—

(a) The tax shelter is not expected to reduce the cumulative tax liability of any investor for any year during the 5-year period described in A–4 (I) of this section; and

(b) The assets of the tax shelter do not include or relate to any property described in A–57E of this section.

Q–57B. Under what circumstances does a tax shelter satisfy the requirement of paragraph (a) of A–57A of this section?

A–57B. A tax shelter is not expected to reduce the cumulative tax liability of any investor for any year during the 5-year period described in A–4 (I) of this section only if—

(a) A written financial projection or other written representation that is provided to investors before the sale of interests in the investment states (or leads a reasonable investor to believe) that the investment will not reduce the cumulative tax liability of any investor with respect to any year (within the meaning of A–7 of this section) in such 5-year period; and

(b) No written or oral projections or representations, other than those related to circumstances that are highly unlikely to occur, state (or lead a reasonable investor to believe) that the investment may reduce the cumulative tax liability of any investor with respect to any such year.

Thus, a tax shelter for which there are multiple written or oral financial projections or other representations is not a projected income investment if any such projection or representation that relates to circumstances that are not highly unlikely to occur states (or leads a reasonable investor to believe) that the investment may reduce the cumulative tax liability of any investor. See A–57D and A–57F of this section for rules relating to financial projections or other representations that are not made in good faith, that are not based on reasonable economic and business assumptions, or that relate to circumstances that are highly unlikely.

Q–57C. When does an investment reduce the cumulative tax liability of an investor?

A–57C. (a) An investment reduces the cumulative tax liability of an investor with respect to a year during the 5-year period described in A–4 (I) of this section if, as of the close of such year, (i) cumulative projected deductions for the investor exceed cumulative projected income for the investor, or (ii) cumulative projected credits for the investor exceed cumulative projected tax liability (without regard to credits) for the investor.

(b) The cumulative projected deductions for an investor as of the close of a year are the gross deductions of the investor with respect to the investment, for all periods up to (and including) the end of such year, that are included in the financial projection or upon which the representation is based. The deductions with respect to an investment include all deductions explicitly represented as being allowable and all deductions typically associated (within the meaning of A–9 of this section) with the investment. Therefore, interest to be paid by the investor that is taken into account in determining the tax shelter ratio of the investment (see A–11 of this section) is treated as a deduction with respect to the investment.

(c) The cumulative projected income for an investor as of the close of a year is the gross income of the investor with respect to the investment, for all periods up to (and including) the end of such year, that is included in the financial projection or upon which the representation is based. For this

purpose, income attributable to cash, cash equivalents, or marketable securities (within the meaning of A–14 (4) of this section) may not be treated as income from the investment.

(d) The cumulative projected credits for an investor as of the close of a year are the gross credits of the investor with respect to the investment, for all periods up to (and including) the close of such year, that are included in the financial projection or upon which the representation is based. The credits with respect to an investment include all credits explicitly represented as being allowable and all credits typically associated (within the meaning of A–9 of this section) with the investment.

(e) The cumulative projected tax liability (without regard to credits) for an investor as of the close of a year is 50 percent of the excess of cumulative projected income for the investor over cumulative projected deductions for the investor with respect to the investment as of the close of such year.

(f) The following examples illustrate the application of the principles of this A–57C:

Example (1). The promotional material with respect to a tax shelter includes a written financial projection indicating that the expected income of the investment in each of its first 5 years is $800,000. In subsequent oral discussions, investors are advised that, in certain circumstances that are not highly unlikely, the income expected from the investment may be as little as $500,000 per year. The subsequent oral discussions are taken into account in determining whether any projections or representations state or lead a reasonable investor to believe that the investment may reduce the cumulative tax liability of any investor. Thus, if the written financial projections indicate that the gross deductions attributable to the investment in each of its first 5 years are expected to be $600,000 and the subsequent oral discussions do not indicate that the amount of those deductions will change under the circumstances in which the income expected may be as little as $500,000, the subsequent oral discussions taken together with the written financial projections state (or lead a reasonable investor to believe) that the cumulative tax liability of an investor may be reduced (*i.e.*, the subsequent oral discussions (taken together with the projections) state or lead a reasonable investor to believe that cumulative projected deductions may exceed cumulative projected income under circumstances that are not highly unlikely). Accordingly, under paragraph (b) of A–57B of this section, the tax shelter would not qualify as a projected income investment.

Example (2). The written promotional material with respect to a tax shelter states that certain deductions are allowable to an investor (without specifying their amount), but there is no written statement relating to the amount of income expected from the investment. Because there is no written financial projection or other written representation that states or leads a reasonable investor to believe that the investment will not reduce the investor's cumulative tax liability (*i.e.*, the cumulative projected deductions, although not specified in the projections, may exceed the cumulative projected income (0)), the requirement of paragraph (a) of A–57B of this section would not be satisifed. The result in this example would be the same if there were only oral representations that the income to be derived from the investment would exceed the deductions with respect to the investment, because there would be no written statement as required by paragraph (a) of A–57B of this section. The tax shelter in this case would qualify as a projected income investment, however, if the written promotional material contains good-faith representations based on reasonable economic and business assumptions that state or lead reasonable investors to believe that the cumulative projected income from the investment will exceed the cumulative projected deductions allowable with respect to the investment for each year in the 5-year period, even though the amounts of income and deductions are not specified.

Example (3). The written promotional material with respect to a tax shelter includes a good-faith financial projection for the first 5 years of the investment. Based on reasonable economic and business assumptions, the projection indicates that the expected net income of the investment in each of its first 4 years is $100,000 ($500,000 of gross income and $400,000 of gross deductions), but as a result of the anticipated acquisition of new business assets a loss of $20,000 is expected in the fifth year of the investment ($500,000 of gross income and $520,000 of gross deductions). The projection also indicates that a credit of $50,000 is expected in the fifth year of the investment. Such a written financial projection would be considered to state that the investment will not reduce the cumulative tax liability of any investor with respect to any year in the 5-year period described in A–4 (I) of this section. Although a loss and a credit are projected in the fifth year of the investment, as of the close of such year, cumulative projected income ($2,500,000) exceeds cumulative projected deductions ($2,120.000), and cumulative projected tax liability (without regard to credits) ($380,000 x 50 percent = $190,000) exceeds cumulative projected credits ($50,000). Assuming no contrary oral or written projections or representations are made, the tax shelter would thus be a projected income investment.

Example (4). The written promotional material with respect to a tax shelter states that an investor will be entitled to a "1.5 to 1 write-off" in the year of investment. This statement is a representation that the investment will reduce the cumulative tax liability of an investor with respect to the first year of the investment and, accordingly, the investment is not a projected income investment. The result in this example would be the same if any "write-off" were represented, even if the write-off were less than 1.5 to 1.

Q–57D. Are all financial projections and representations relating to the cumulative tax liability of an investor taken into account for purposes of A–57B of this section?

A–57D. (a) No. A financial projection or other representation relating to the cumulative tax liability of an investor is not taken into account for purposes of A–57B of this section unless it is made in good faith and is based on reasonable economic and business assumptions. In addition, a financial projection or other representation is not taken into account if it relates to circumstances that are highly unlikely. Moreover, a general statement or disclaimer indicating that projected income is not guaranteed or otherwise assured, standing alone, is not a projection or representation for purposes of paragraph (b) of A–57B of this section.

(b) The following example illustrates the application of the principles of this A–57D:

Example. The written promotional material with respect to a tax shelter contains a representation stating that the investment is projected to produce net income for all investors in each of its first five years and there are no credits potentially allowable with respect to the investment. This statement is based on reasonable economic and business assumptions. Such a written representation, if made in good faith, would be considered under paragraph (a) of A–57B of this section to state that the investment will not reduce the cumulative tax liability of any investor with respect to any year in the 5-year period described in A–4(I) of this section. In addition, no oral or written statements or representations are communicated to investors that would indicate under paragraph (b) of A–57B of this section that the investment might reduce the cumulative tax liability of any investor with respect to any year in the 5-year period.

Assume the tax shelter organizer has knowledge of certain other facts that lead the tax shelter organizer to believe that it is more likely than not that the investment will produce a net loss in the first year. The representation projecting net income is thus contrary to the tax shelter organizer's belief that it is more likely than not that the investment will produce a net loss in the first year. Therefore, the representation is not made in good faith. Since representations not made in good faith are ignored under A–57D, the tax shelter would not be a projected income investment. If, on the other hand, the tax shelter organizer did not know of the other facts so that the tax shelter organizer did not believe that the investment would produce a net loss in the first year, the representation projecting income is made in good faith. In that case, the tax shelter would be a projected income investment.

Q–57E. What assets may not be held by a projected income investment?

A–57E. A tax shelter is not a projected income investment if more than an incidental amount of its assets include or relate to any interest in a collectible (as defined in section 408 (m) (2)), a master sound recording, motion picture or television film, videotape, lithograph plate, copyright, or a literary, musical, or artistic composition.

Q–57F. What are the consequences if financial projections or other representations are not made in good faith or are not based on reasonable economic and business assumptions?

A–57F. If a tax shelter is not a projected income investment because the financial projections or other representations are not made in good faith or are not based on reasonable economic and business assumptions, it must be registered not later than the day on which the first offering for sale of an interest in the tax shelter occurs. If the tax shelter is not registered timely, the tax shelter organizer may be subject to a penalty. (See A–1 of § 301.6707–1T.)

Q–57G. When does a tax shelter cease to be a projected income investment?

A–57G. A tax shelter ceases to be a projected income investment on the last day of the first year (as defined in A–7 of this section) in the 5-year period described in A–4 (I) of this section for which, for any investor, (i) the gross deductions allocable to the investor for that year and prior years exceed the gross income allocable to the investor for such years, or (ii) the credit allocable to the investor for that year and prior years exceed 50 percent of the amount by which gross income allocable to the investor exceeds gross deductions allocable to the investor for such years. For purposes of determining when a tax shelter ceases to be a projected income investment, the tax shelter organizer is not required to take into account interest that may be incurred by an investor with respect to debt described in A–14 (2) or (3) of this section, but is required to take into account interest incurred by an investor with respect to debt described in A–14 (1) of this section. In addition, the tax shelter organizer may not take into account income attributable to cash, cash equivalents, or marketable securities (within the meaning of A–14 (4) of this section).

Q–57H. How does the requirement to register apply with respect to a tax shelter that is a projected income investment?

A–57H. In the case of a tax shelter that is a projected income investment, registration is not required unless the tax shelter ceases to be a projected income investment under A–57G of this section. If the tax shelter ceases to be a projected income investment, the tax shelter organizer must register the tax shelter in accordance with the rules set forth in A–1 through A–39 and A–41 through A–50 of this section. The tax shelter must be registered—

(a) Within 30 days after the date on which the tax shelter ceases to be a projected income investment, and

(b) Before the date on which the tax shelter or a tax shelter organizer sends the investor any schedule of profit or loss, or income, deduction, or credit that may be used in preparing the investor's income tax return for the taxable year that includes the date on which the tax shelter ceases to be a projected income investment. If a tax shelter organizer fails to register timely as required by this A–57H, the tax shelter organizer may be subject to a penalty. (See A–1 of § 301.6707–1T.) For example, assume that C is the principal organizer and general partner of a limited partnership. Interests in the partnership will be offered for sale in a public offering required to be registered with the Securities and Exchange Commission. C knows that the tax shelter ratio (as defined in A–5 of this section) for the limited partners will be 5 to 1. Although C knows the partnership is a tax shelter, C does not register the partnership by the day on which the first offering for sale of an interest occurs because C believes the partnership is a projected income investment. In the second year of the partnership, the gross deductions allocable to each of the limited partners for the first two years of the partnership exceed the gross income allocable to the limited partners in such years. Thus, the partnership ceases to be a projected income investment under A–57G of this section. Assuming further that C continues as the general partner and knowingly fails to register the partnership as a tax shelter within the time prescribed in this A–57H, C will be subject to a penalty of 1 percent of the aggregate amount invested in the partnership. Because there is an intentional disregard of the registration requirements, the $10,000 limitation will not apply.

Q–57I. How does the requirement to furnish registration numbers (A–51 through A–54 of this section) apply in the case of a tax shelter that is a projected income investment?

A–57I. In the case of a tax shelter that is a projected income investment, a person who sells or transfers an interest in the tax shelter is not required to furnish a registration number under A–51 of this section or a notice under A–54 of this section unless the tax shelter ceases to be a projected income investment. If the tax shelter ceases to be a projected income investment, the tax shelter organizer who registers the tax shelter is required to furnish the registration number to all persons who the tax shelter organizer knows or has reason to know are participating in the sale of interests in the tax shelter and to all persons who the tax shelter organizer knows or has reason to know have acquired interests in the tax shelter. A person who sold (or otherwise transferred) an interest in the tax shelter before the date on which the tax shelter ceased to be a projected income investment is required to furnish the registration number to the purchaser or transferee as provided in A–51 of this section only if the seller or transferor knows or has reason to know that the tax shelter has ceased to be a projected income investment and that the tax shelter organizer who registered the tax shelter has not provided a registration number to such purchaser or transferee. In the case of persons who acquired interests in the tax shelter before the date on which the tax shelter ceased to be a projected income investment, the registration number must be provided not later than the date described in paragraph (b) of A–57H of this section or, if the tax shelter does not provide any schedule described in paragraph (b) of A–57H of this section, within 60 days after the date on which the tax shelter ceases to be a projected income investment. Thus, for example, if a tax shelter that ceases to be a projected income investment is a partnership, the tax shelter organizer would be required to provide the registration number to each partner not later than the date the Schedule K–1 for the year in which the tax shelter ceases to be a projected income investment is provided to each partner.

The registration number must be provided in accordance with A–51 and A–52 of this section and must be accompanied by a statement explaining that the tax shelter has ceases to be a projected income investment and instructing the recipient to furnish the registration number to any persons to whom the recipient has sold or otherwise transferred interests in the tax shelter. A tax shelter organizer who fails to provide the registration number as provided in this A–57I may be subject to penalties. (See A–12 of § 301.6707–1T.)

Q–57J. How does the requirement to include the registration number on tax returns (A–55 through A–57 of this section) apply in the case of a tax shelter that is a projected income investment?

A–57]. In the case of a tax shelter that is a projected income investment, an investor is not required to report a registration number on the investor's tax return unless the tax shelter ceases to be a projected income investment. If the tax shelter ceases to be a projected income investment, the requirements of A–55 through A–57 apply with respect to returns for taxable years ending on or after the date on which the tax shelter ceases to be a projected income investment.

* * * * *

Par. 2. Section 301.6112–1T is amended by revising answers 4, 11, 13, and 14, question and answer 15, and answers 17 and 18 to read as follows:

§ 301.6112–1T Questions and Answers relating to the requirement to maintain a list of investors in potentially abusive tax shelters (temporary)

* * * * *

A–4: Yes. For purposes of the list requirement, a tax shelter includes any tax shelter that is a projected income investment, as defined in A–57A of § 301.6111–1T. The extent, if any, to which any other entity, plan or arrangement will be treated as a potentially abusive tax shelter for purposes of the list requirement will be prescribed in future regulations.

* * * * *

A–11: Yes. Organizers and sellers who are required to maintain a list (or a portion of such a list) of persons who have acquired interests in the same tax shelter may designate one of the organizers (but not a seller who is not also an organizer) to maintain the required list or portion of the list ("designated person"). Organizers and sellers may not designate one person to maintain a list for the tax shelter, however, unless the tax shelter is timely and properly registered under section 6111 or unless the tax shelter is a projected income investment (as defined in A–57A of § 301.6111–1T). If the tax shelter is registered with the Internal Revenue Service under section 6111, the organizer who registered the tax shelter ordinarily should be the designated person, although any other organizer who meets the requirements of this A–11 may be the designated person. An organizer may not be a designated person, however, unless—

(a) It is reasonably expected that the organizer will actively participate in the management of the tax shelter as (i) a general partner of the tax shelter, (ii) an officer or director of the tax shelter, (iii) an officer or director of a corporate general partner of the tax shelter, or (iv) a trustee of the tax shelter; and

(b) The organizer is not a resident of, and does not maintain its principal place of business in, a foreign country.

* * * * *

A–13: (a) If the tax shelter is not a projected income investment (as defined in A–57A of § 301.6111–1T) at the time an agreement under A–12 of this section is signed, a seller or organizer who signs the agreement shall not be subject to penalty under section 6708 for failing to maintain a list provided that the seller or organizer—

(1) Submits to the designated person all of the information that the organizer or seller otherwise would be required to maintain on a list (as described in A–8, A–10, and A–17 of this section), and

(2) Provides to each investor (within the meaning of paragraph (c) of A–6 of this section) otherwise required to be included on a list maintained by such organizer or seller a notice in the form prescribed in paragraph (c) of this A–13.

(b) If the tax shelter is a projected income investment (as defined in A–57A of § 301.6111–1T) at the time an agreement under A–12 of this section is signed, a seller or organizer who signs the agreement shall not be subject to penalty under section 6708 for failing to maintain a list provided that the seller or organizer submits to the designated person all of the information that the organizer or seller otherwise would be required to maintain on a list (as described in A–8, A–10, and A–17 of this section). If the tax shelter ceases to be a projected income investment under A–57G of § 301.6111–1T, the designated person must provide to each investor (within the meaning of paragraph (c) of A–6 of this section) required to be included on the list an explanation that the tax shelter has ceased to be projected income investment and a notice substantially in the form prescribed in paragraph (c) of this A–13.

(c) Any notice required to be provided to an investor (within the meaning of paragraph (c) of A–6 of this section) under paragraph (a) or (b) of this A–13 must be substantially in the form set forth below:

> You have acquired an interest in [name and address of tax shelter]. If you transfer your interest in this tax shelter to another person, you are required by the Internal Revenue Service to keep a list containing that person's name, address, taxpayer identification number, the date on which you transferred the interest, and the name, address, and tax shelter registration number of this tax shelter. If you do not want to keep such a list, you must (1) send the information specified above to [name and address of designated person], who will keep the list for this tax shelter, and (2) give a copy of this notice to the person to whom you transfer your interest.

This notice may be incorporated into the notice required by A–53 or A–54 of § 301.6111–1T (relating to tax shelter registration).

(d) A designated person who fails to maintain a list shall be subject to penalty under section 6708. For special rules for determining the amount of the penalty imposed on a designated person under section 6708, see A–6 of § 301.6708.–1T.

* * * * *

A–14: Yes. Any seller described in paragraph (a) of A–6 of this section who does not sign a designation agreement under A–12 of this section (including organizers who are such sellers) with respect to a tax shelter that is not a projected income investment must provide a notice to all investors (within the meaning of paragraph (c) of A–6 of this section) who acquire interests in the tax shelter from the seller. The notice must be substantially in the form prescribed in paragraph (c) of A–13 of this section except that the notice must include the name and address of the seller in place of the name and address of the designated person. In the case of a tax shelter that is a projected income investment (as defined in A–57A of § 301.6111–1T), a notice to investors need not be provided until such time, if any, as the shelter ceases to be a projected income investment under A–57G of § 301.6111–1T. In such a case, the seller shall provide, with the notice, an explanation that the tax shelter has ceased to be a projected income investment.

Special Rules Applicable to Investors

Q–15: Under what circumstances is an investor described in paragraph (c) of A–6 of this section who retransfers an interest in a tax shelter not required to maintain a list disclosing the transferee's name and the other information required by A–17 of this section?

A–15: An investor who retransfers an interest in a tax shelter that is projected income investment (as defianed in A–57A of § 301.6111–1T) is not required to maintain a list with respect to the retransfer unless the tax shelter ceases to be a projected income investment under A–57G of § 301.6111–1T prior to the retransfer. In addition, any investor who is required to maintain a list for a tax shelter (including a tax shelter that has ceased to be a projected income investment) may require a designated person or a seller identified in a notice provided under either A–13 or A–14 of this section to maintain the investor's list (and the investor will thus not be

subject to any penalty under section 6708 for failing to maintain the list) by—

(a) Submitting to the designated person or seller so identified all of the information that the investor otherwise would be required to maintain on a list for that tax shelter, and

(b) Providing a copy of the notice furnished to the investor under either A–13 or A–14 of this section to the person or persons to whom the investor retransfers an interest in the tax shelter.

Example. Assume that X, an organizer, retains brokers A and B to sell interests in a tax shelter that is not a projected income investment. In 1985, A and B each negotiate sales of interests in the tax shelter to investors. Assume that X timely and properly registered the tax shelter under section 6111. A, B, and X enter into an agreement to designate X to maintain the list of investors who acquired interests in the tax shelter through A and B. Pursuant to the agreement, A and B submit the required information to X and provide the required notice to the investors who acquired interests through A and B. On January 1, 1986, C, an investor who acquired an interest through A, sells the interest to D. Since C was provided with the notice required by A–13 of this section, C may require X to maintain C's list with respect to the sale to D by submitting to X all of the required information regarding the sale and by providing a copy of the notice to D. If A, B, and X had not signed an agreement, X, a seller described in paragraph (a) of A–6 of this section, would nevertheless have been required to provide a notice to C (under A–14 of this section) and C would have been able to require X to keep the list by complying with the two requirements of this A–15. In the absence of an agreement, however, A and B, who are sellers described in paragraph (b) of A–6 of this section, would have been required to keep lists of investors with whom they negotiated sales.

* * * * *

A–17: A list must contain the following information:

(1) The name of the tax shelter and the registration number, if any, obtained under section 6111;

* * * * *

A–18: A separate list, identified by the registration number obtained under section 6111 (or if there is no registration number, the name of the tax shelter), must be maintained for each tax shelter.

* * * * *

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

The Treasury decision is issued under the authority contained in sections 6111, 6112 and 7805 of the Internal Revenue Code of 1954 (98 Stat. 678, 98 Stat. 681, 68A Stat. 917; 26 U.S.C. 6111, 6112 and 7805).

(Approved by the Office of Management and Budget under control number 1545–0865)

Dated: October 25, 1984.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved:

Charles E. McLure, Jr.,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–28610 Filed 10–26–84; 10:02 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD–FRL 2676–5]

National Emission Standards for Hazardous Air Pollutants; Amendments to Standard for Benzene Equipment Leaks

Correction

In FR Doc. 84–25172 beginning on page 38946 in the issue of Tuesday, October 2, 1984, make the following correction: In the third column, third line from the bottom "1.74×10⁷" should read "1.74×10⁻⁷".

BILLING CODE 1505–01–M

40 CFR Part 65

[FRL–2698–4]

Delayed Compliance Order for C.B. Henschel Manufacturing Company, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby issues a Delayed Compliance Order to C.B. Henschel Manufacturing Company, Inc. ("Henschel"). The Order requires the company to bring volatile organic compound ("VOC") emissions from its paper coating lines into compliance with Wisconsin Rule NR 154.13(4)(e)(2), contained in the federally-approved Wisconsin State Implementation Plan (SIP). Compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on October 31, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Carey S. Rosemarin, Assistant Regional Counsel, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Phone: (312) 353–2094.

ADDRESSES: The Delayed Compliance Order and supporting material are available for public inspection and copying during normal business hours at: Office of Regional Counsel, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: On July 11, 1984, the Regional Administrator of EPA's Region V Office published in the **Federal Register**, 49 FR 28271, a notice setting out the provisions of a proposed delayed compliance order for Henschel, of New Berlin, Wisconsin. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order.

No comments were received. Therefore, a delayed compliance order effective this date is issued to Henschel by the Administrator of EPA pursuant to the authority of section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The Order places Henschel on a schedule to bring its paper coating lines at New Berlin, Wisconsin into compliance as expeditiously as practicable with NR 154.13(4)(e)(2), a part of the federally-approved Wisconsin State Implementation Plan. If the conditions of the Order are met, it will permit Henschel to delay compliance with the SIP regulations covered by the Order until September 15, 1984. The company is unable to comply immediately with the regulation.

Compliance with the Order by Henschel will preclude federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order during the period the Order is in effect. Citizen suits under section 304 of the Act are similarly precluded. If the Administrator determines that Henschel is in violation of a requirement contained in the Order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice for final rulemaking constitutes final Agency action for the purpose of judicial review under section 307(b) of the Act.

List of Subjects in 40 CFR Part 65

Air pollution control.

EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Henschel on a schedule for compliance with the applicable requirement(s) of the Wisconsin SIP.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: October 22, 1984.

William D. Ruckelshaus,

Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding an entry to the Table in § 65.540 to read as follows:

§ 65.540 Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the Act.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
C.B. Henschel Manufacturing Co., Inc.	New Berlin, WI	EPA-84-CAA-113-V-01.	NR 154.13(4)(e), NR 154.13(12)(b).	7/11/84	9/15/84

* * * * *

[FR Doc. 84-28674 Filed 10-30-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300092A; FRL-2704-2]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Methylnaphthalene Sulfonic Acid-Formaldehyde Condensate, Sodium Salt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts methylnaphthalene sulfonic acid-formaldehyde condensate, sodium salt from the requirement of a tolerance when used as a dispersant in pesticide formulations. This regulation was requested by Diamond Shamrock Chemicals Co.

EFFECTIVE DATE: Effective on October 31, 1984.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 18, 1984 (49 FR 29113), which announced that Diamond Shamrock Chemicals Co. had requested that 40 CFR 180.1001(d) be amended by establishing an exemption from the requirement of a tolerance for methylnaphthalene sulfonic acid-formaldehyde condensate, sodium salt as a dispersant in pesticide formulations applied to growing crops only.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: October 17, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
Methylnaphthalene sulfonic acid-formaldehyde condensate, sodium salt.		Dispersant.
* * * * *		

* * * * *

[FR Doc. 84-28290 Filed 10-30-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F3019/R709; FRL-2707-3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Bromoxynil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide bromoxynil resulting from the application of the phenol, octanoic, or butyric acid esters of bromoxynil in or on the fodder, forage, and grain of corn and sorghum. This regulation was requested by the Union Carbide Company.

EFFECTIVE DATE: Effective on October 31, 1984.

ADDRESS: Written objections, identified by the document control number [PP 4F3019/R709], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm., 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 245, CM#2, 1921

Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of March 21, 1984 (49 FR 10572), which announced that Union Carbide Agricultural Products Company, Inc., PO Box 12014, T.W. Alexander Dr., Research Triangle Park, NC 27709, had filed pesticide petition 4E3019 with the EPA. The petition proposed amending 40 CFR 180.324 to reflect residues of the herbicide bromoxynil resulting from the application of the phenol, octanoic, or butyric acid esters of bromoxynil in or on the fodder, forage, and grain of corn and sorghum. The existing tolerances permit residues of the butyric and octanoic acid esters of bromoxynil in or on these commodities at 0.1 part per million (ppm). No change was proposed for the established tolerance level.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data evaluated for bromoxynil octanoate (technical) include an acute oral study (rat) with a lethal dose (LD_{50}) equal to 270 milligrams (mg)/kilograms (kg); an acute oral study (rabbit) with an LD_{50} equal to 335 mg/kg; an acute oral study (dog) with an LD_{50} greater than 50 and less than 150 mg/kg; a 13-week feeding study (dog) with a no-observed-effect level (NOEL) of 5 mg/kg/day (200 ppm); and a 13-week feeding study (rat) with a NOEL of 312 ppm. The studies evaluated for bromoxynil technical include a teratology study (rats) with a teratogenicity NOEL of greater than 15 mg/kg and a fetal toxicity NOEL equal to 5 mg/kg; a microbial mutagenic assay, nonmutagenic to *S. typhimurium* tester strains, and a three-generation reproduction (rat) study with a NOEL of 300 ppm.

Data currently lacking include additional information on previously submitted oncogenicity and chronic feeding studies on rats and mice. The company has been notified of the deficiencies and has agreed to submit the additional information.

The current provisional acceptable daily intake (PADI) is 0.0025 mg/kg/day based on the 13-week dog feeding study noted and using a 2000-fold safety factor. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.15 mg/day. The theoretical maximum residue contribution from existing tolerances for a 1.5 kg daily diet is calculated to be 0.0352 mg/day. The current action does not increase the PADI. Published tolerances utilize 23.49 percent of the PADI.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography with 63 Ni electron detector, is available for enforcement purposes. Since no detectable residues are expected in corn grain, fodder, forage, or sorghum grain, forage or fodder, no detectable residues would be expected in meat, milk, poultry, and eggs. Even if residues do occur in corn, the established meat tolerances will cover any secondary residues resulting from this use. There are presently no actions pending against the continued registration of the pesticide.

The pesticide is considered useful for the purpose for which the tolerances are sought. Based on the information cited above, the Agency has determined that the establishment of the tolerances will protect the public health and are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: October 19, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.324 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 180.324 Bromoxynil; tolerances for residues.

* * * * *

(b) Tolerances are established for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its phenol, octanoic, or bytyric acid esters in or on the following raw agricultural commodities:

Commodities	Parts per million
Corn, fodder	0.1
Corn, forage	0.1
Corn, grain	0.1
Sorghum, fodder	0.1
Sorghum, forage	0.1
Sorghum, grain	0.1

[FR Doc. 84–28671 Filed 10–30–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 721

[OPTS–50510A; FRL–2625–1]

Significant New Uses of Chemical Substances; Substituted Polyglycidyl Benzeneamine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance which was the subject of premanufacture notice PMN P–83–394 and a TSCA section 5(e) consent order issued by EPA. The agency believes that the uses described in this rule could allow significant exposure to P–83–394.

DATES: This rule shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on November 14, 1984. This rule shall become effective January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington, D.C.: (554–

1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070–0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5(b) and (d)(1), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5(e) and (f). If EPA does not take regulatory action under section 5, 6, or 7 to control activities on which it has received a SNUR notice, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Substances covered by proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appears at 40 CFR Part 707. Substances subject to final SNURs are subject to TSCA section 13 import certification requirements at 19 CFR 12.118 through 12.127, and 127.28, published in the **Federal Register** of August 1, 1983 (48 FR 34734). The EPA policy in support of these requirements appear at 40 CFR Part 707 published in the **Federal Register** of December 13, 1983 (48 FR 55462).

II. Applicability of General Provisions

EPA has promulgated general provisions under 40 CFR Part 721, Subpart A which are applicable to SNURs and were published in the **Federal Register** of September 5, 1984 (49 FR 35011). These general provisions will apply to this SNUR without change except as discussed in this preamble and as provided in the rule. Interested persons should refer to the above-cited document for a detailed discussion of the general provisions.

The general provisions governing SNUR reporting were promulgated subsequent to the proposal of this rule in the **Federal Register**. Therefore, this final rule is structurally different from its proposal format because the non-substantive and procedural matters are now contain in Subpart A to Part 721.

III. Summary of This Rule

The chemical substance subject to this rule is identified generically as substituted polyglycidyl benzeneamine. It was the subject of PMN P–83–394. EPA is designating the following as significant new uses of the substance:

A. Use in spray applications.

B. Manufacture or processing of the substance without establishing and enforcing a program whereby: (1) persons employed by or under the control of the manufacturer or processor who may be exposed to the substance wear (a) gloves which cover the arm up to the elbow and which have been determined to be impervious to the substance under conditions of exposure (gloves may be determined to be impervious to the substance through standard testing methods or by relying on the manufacturer's specifications for the gloves selected), (b) a face shield of at least eight inches in length, and (c) clothing covering any other exposed part of the arms, legs, and torso; (2) all persons required to wear protective equipment are informed of the health concerns which may be presented by the substance; and (3) packages containing the substance or formulations containing the substance are labeled according to the terms specified in the rule.

One comment stated that manufacturers or processors should only be expected to require their own employees or persons whom they control to wear the protective equipment identified in § 721.180. The Agency agrees with this comment and has adjusted the rule language accordingly by adding the phrase "persons employed by or under control of the manufacturer or processor."

IV. Background

The chemical substance subject to this rule was the subject of a PMN designated P–83–394. The notice submitter claimed the following as confidential business information (CBI): the specific chemical identity, intended use, and proposed production volume. For purposes of clarity, the substance is referred to in this preamble and § 721.180 by its generic chemical name and PMN number.

The Agency proposed a SNUR for this substance which was published in the **Federal Register** of December 29, 1983 (48 FR 57440) as § 721.40 (now § 721.180). The background of the PMN and the reasons for proposing the SNUR are set forth in the preamble to the proposed rule.

EPA has considered and responded to all comments received during the public comment period for this SNUR. After the close of the comment period, EPA received comments from the Chemical Manufacturers' Association (CMA) which addressed this SNUR and several others recently proposed by EPA. These comments raised a number of issues about these SNURs and made general suggestions for changes. For example, CMA proposed that EPA's SNURs (1) address hazard communication issues by referencing regulations which were recently promulgated by the Occupational Safety and Health Administration (OSHA), (2) provide an expedited procedure for the review of alternative types of protective measures rather than the submission of a full SNUR notice with a 90-day review period, and (3) simplify SNUR recordkeeping requirements.

EPA is considering these late comments and may propose amendments to this SNUR in the future to implement some or all of these suggestions. However, because the chemical substance which is identified in this SNUR has been on the Inventory for some time, EPA is concerned that the significant new uses of this substance could be commenced without EPA review. Accordingly, the Agency has decided to proceed with promulgation of this SNUR now. If EPA determines that changes to this rule are necessary in response to CMA's comments, amendments to this rule will be made.

V. Designation of Significant New Uses

To determine what would constitute a significant new use of this chemical substance, EPA considered relevant information about the toxicity of the substance and likely exposures associated with possible uses (for example those uses not allowed under the section 5(e) order), including the four factors listed in section 5(a)(2) of TSCA. In particular, EPA considered the extent to which potential uses may change or increase the exposure to humans. Based on these considerations, EPA is defining the significant new uses of P–83–394 as they appear in Unit III of this preamble and § 721.180.

Based on data on structurally similar chemicals, and data submitted in the PMN, the Agency believes significant exposure to P–83–394 would present a health risk to workers. EPA is concerned that the substance may cause carcinogenicity, skin and eye irritation, skin sensitization, reproductive effects, and liver and kidney effects.

The Agency believes that the data described in this preamble and in the preamble to the proposed rule are sufficient to substantiate the contention that the significant new uses of P–83–394 present a potentially significant increase in the magnitude and type of exposure. Section 5(a)(2) of TSCA does not require the Agency to make either a "may present" or a "will present" risk finding with regard to satisfying the requirements for a significant new use. The statute imposes the requirement that the Agency provide for a "consideration of all relevant factors." The Agency believes that a reasonable qualitative assessment of these factors was incorporated in the preamble of the proposed rule published in the **Federal Register** of December 29, 1983 (48 FR 57440). EPA received no comments on its assessment of the potential health effects of P–83–394.

A comment suggested that the SNUR be structured to require reporting by manufacturers and processors who fail to require (1) the use of the equipment specified in the proposal or (2) equipment which has been determined to provide the same level of protection. Pending EPA's complete consideration of CMA's comments, the Agency has decided not to allow the potential manufacturer or processor to make a determination of the adequacy of the level of protection provided by an alternative means of controlling exposure. While EPA has determined that the equipment called for the SNUR will reduce the concerns below a level about which EPA would have sufficient concern to justify regulation, the Agency has made no such determination about potential alternative choices of equipment. The Agency believes it is appropriate to make such an evaluation on a case-by-case basis in light of the information which would be contained in a SNUR notice submission.

One comment suggested that OSHA hazard communication regulations at 29 CFR 1910.1200 would include and apply to substances which present the concerns which this substance does, making this rule redundant. EPA's regulations under this SNUR provide a unique requirement for a substance about which it has a particular concern. Pending EPA's complete consideration of CMA's comments, the Agency believes a chemical-specific regulation is appropriate in this situation rather than the broader regulations promulgated by OSHA. Further, the OSHA regulations are not yet in effect. Therefore, EPA has determined that this regulation will complement the OSHA regulations in question.

VI. Alternatives

In the proposed SNUR, EPA considered other possible approaches. These alternatives included the promulgation of a section 8(a) reporting rule, and/or regulation under section 6. One comment supported the idea of extending the restrictions of the section 5(e) order to other persons who may manufacture or process the substance, but favored the use of sections 6 or 8 of TSCA. While there may be instances where sections 6 or 8 are more appropriate authorities for following up section 5(e) orders, in situations such as this where (1) there are inadequate data to support a section 6 rule, and (2) the Agency wishes to be able to review SNUR notices and perhaps take action under section 5(e) in response to those notices, EPA prefers the alternative of promulgating a SNUR.

VII. Recordkeeping

To ensure compliance with this rule, and to assist enforcement efforts, EPA is requiring under its authority in sections 5 and 8(a) of TSCA that, in addition to the requirements in § 721.17, the following records be maintained for five years after the date of their creation, by persons who manufacture, import, or process P–83–394:

(1) The names of persons required to wear protective equipment in accordance with paragraph (a) of this rule, the date(s) on which they were informed, and the means by which they were informed.

(2) The name and address of each person to whom the substance is sold or transferred and the date(s) of any such sale or transfer.

(3) The method used for determining that the gloves prescribed by paragraph (a) of this rule are impervious to P–83–394, the date(s) such determination was made, and the results of that determination.

As suggested in one comment, the Agency wishes to make clear that these records will be kept by persons who employ the protective equipment identified in § 721.180(a)(2)(ii). Because those persons will not be commencing that significant new use, a SNUR notice is not required of those persons for that use.

The Agency considered omitting recordkeeping requirements, but believes compliance monitoring for this SNUR would be made more difficult without them. As stated earlier, in response to CMA's late comments, EPA is considering modifying this rule, including its recordkeeping requirements, to make it more closely resemble those contained in OSHA's hazard notification regulations. Should amendments to this rule be necessary, EPA will announce them in the **Federal Register.**

VIII. Exemptions to Reporting Requirements

The Agency has promulgated exemptions to SNUR reporting requirements under § 721.19. In the case of P–83–394, the terms of § 721.19 apply without change.

EPA issued its final premanufacture notification rules under 40 CFR Part 720 which were published in the **Federal Register** of May 13, 1983 (48 FR 21722) including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substance, EPA lacks the authority under section 12(a) of TSCA to require reporting of such manufacture or processing for a significant new use. EPA does not yet have sufficient information to make the "will present an unreasonable risk" finding necessary to regulate a substance manufactured or processed solely for export. However, persons must notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notifications will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus persons would be exempt from reporting under this SNUR if they manufacture (the term manufacture

includes import) or process the substance solely for export from the U.S. under the following restrictions: (1) there is no use of the substance in the U.S.; (2) processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and for use in the U.S.

IX. Applicability to Uses Which May Have Occurred Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substance in question had just undergone premanufacture review. The Agency received no information that the significant new uses are ongoing. Therefore, at this time, the Agency has concluded that these uses are significant new uses.

As indicated in the proposal, EPA has found that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, even if the substance was imported, manufactured, or processed for the significant new use between proposal and promulgation of this rule, such activities may not continue after the effective date of this rule. Any such person must cease such activity until it has complied with all SNUR notice requirements.

X. Determining When a Substance Is Subject to This Rule

EPA has promulgated procedures at § 721.6 under which any person who intends to manufacture, import, or process a chemical substance within the generic chemical name in paragraph (a)(1) of this rule may ask EPA whether or not their chemical substance is subject to this SNUR.

One comment stated that processors should be excluded from the *bona fide* provisions for inquiring as to whether a substance is subject to a SNUR. Instead, the commenter suggested, manufacturers and importers should be required to explicitly tell their processors of the existence of a SNUR. The Agency has decided to follow the provisions of § 721.6 and § 721.5. These provisions are intended to allow the greatest flexibility while ensuring compliance with SNURs. Section 721.5(a)(2) of the general SNUR provisions should encourage most manufacturers, importers, and processors of a substance (who do not themselves commence a significant new use) to inform their customers who process a substance of the existence of a SNUR rather than submitting a SNUR notice themselves. This should minimize the need for processors to inquire whether a substance is covered by a SNUR. However, since some processors may not obtain chemical substances directly from a manufacturer, importer, or processor, EPA wishes to provide them with a means of conclusively determining whether the substances they may purchase are subject to SNURs.

XI. Test Data and Other Information

EPA recognizes that under TSCA section 5, a person is not required to develop any particular test data before submitting a notice. Rather, a person is required only to submit test data in that person's possession on control and to describe any other data known to or reasonably ascertainable by that person. However, in view of the potential health risk that may be posed by a significant new use of P–83–394, EPA encourages possible SNUR notice submitters to test the substance's potential for carcinogenic effects, reproductive effects, and kidney and liver effects. These data might be generated by a two-year bioassay, a two-generation reproductive study in the rat, a three-week patch test in guinea pigs, and a subchronic toxicity (90-day feeding) study, respectively. However, these studies may not be the only means of addressing the potential risks. If a SNUR notice is submitted for a use involving significant exposure without adequate test data, EPA is likely to take action under section 5(e). As an alternative to testing the substance, potential notice submitters may want to consider the use of engineering controls and/or personal protective equipment to reduce exposure to the substance.

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this prenotice consultation, EPA will discuss the test data it believes necessary to evaluate significant new uses of the substance. Data should be developed and submitted in accordance with the TSCA good laboratory practices regulations at 40 CFR Part 792 published in the **Federal Register** of November 29, 1983 (48 FR 53922).

EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new uses. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by potential substitutes.

XII. Economic Analysis

The Agency have evaluated the potential costs of establishing significant new use reporting requirements for P–83–394. This evaluation is summarized in the proposed rule (48 FR 57440). A more complete economic analysis of this SNUR is included in the rulemaking record and is available for public review.

XIII. Judicial Review

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

XIV. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50510A). A public version of this record from which CBI has been deleted is available to the public from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in the OTS Reading Room, Rm. E–107, 401 M St. SW., Washington, D.C.

The record includes basic information considered by the Agency in developing this rule. The record now includes the following:

1. The PMN for the substance.
2. The **Federal Register** notice of receipt of the PMN.
3. The proposed SNUR.
4. A copy of the section 5(e) consent order.
5. The economic analysis of this SNUR.
6. The economic assessment prepared for the section 5(e) consent order.

7. The health hazard assessment prepared for the section 5(e) consent order.

8. The environmental fate and environmental and consumer exposure analysis prepared for the PMN review.

9. Public comments.

XV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it does not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes that the cost will be low. In addition, because of the nature of the rule and the substance subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the suggested testing and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage an innovation which has high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial even if all the potential new uses were developed by small companies. EPA expects to receive few SNUR notices for the substance.

C. Paperwork Reduction Act

Information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0012.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: October 16, 1984.

Alvin L. Alm,

Acting Administrator.

PART 721—[AMENDED]

Therefore, part 721 of Chapter I of Title 40 is amended as follows:

1. By adding the following definition to § 721.3 in alphabetical sequence:

§ 721.3 Definitions.

* * * * *

"Spray application" means any method of projecting a jet of vapor of finely divided liquid onto a surface to be coated; whether by compressed air, hydraulic pressure, electrostatic forces, or other methods of generating a spray.

* * * * *

2. By adding § 721.180 to Subpart B to read as follows:

§ 721.180 Substituted Polyglycidyl Benzeneamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance, referred to by premanufacture notice number and its generic chemical name, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: Substituted polyglycidyl benzeneamine, P-83-394.

(2) The significant new uses are:

(i) Use in spray applications.

(ii) Manufacture or processing without establishing a program whereby:

(A) During all stages of manufacture and processing of the substance, and during response to emergencies and spills involving the substance, any person employed by or under the control of the manufacturer or processor who may potentially be dermally exposed to the substance wears:

(*1*) Gloves which cover the arm up to the elbow and which have been determined to be impervious to the substance under conditions of exposure (gloves may be determined to be impervious by standard testing methods or by reliance on the manufacturer's specifications for those gloves selected);

(*2*) A face shield of at least 8 inches in length; and

(*3*) Clothing which covers any other exposed areas of the arms, legs, and torso.

(B) All workers described in paragraph (a)(ii)(A) of this section are informed in writing, or by presenting the information as part of a training program in a safety meeting where attendance is recorded, of the following: to avoid all contact with this substance; that structurally similar chemicals have been found to cause cancer, reproductive effects, kidney and liver effects in laboratory animals, and allergic reactions in humans; that this substance is a severe skin and eye irritant; and that the use of impervious gloves, face shields and other clothing to cover exposed areas of the arms, the legs, and the torso is required.

(C) A label is affixed to each container of the substance or of a formulation containing the substance which (in a print size no smaller than ten point type) contains, at a minimum, the following information:

WARNING: CONTACT WITH SKIN AND EYES IS HARMFUL

—Severe skin and eye irritant.

—Similar chemicals cause cancer, reproductive effects, and kidney and liver changes in laboratory animals. They have also caused allergic reactions in humans.

—Prevent all contact with skin, eyes, and clothing.

—Wear impervious gloves, face shield, and protective clothing. Promptly remove and wash contaminated non-impervious clothing before re-use.

—Wash thoroughly after handling and before eating, drinking, or smoking.

STORAGE INSTRUCTIONS:

—Keep closure tight and upright to prevent leakage.

—Keep container closed during shipment and when not in use.

—In case of spillage absorb with sand or vermiculite and flush with plenty of water.

FIRST AID:

—In case of eye contact, immediately flush with plenty of water and get immediate medical attention.

—In case of skin contact, immediately wash with soap and water and get immediate medical attention.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors of the chemical substance identified in paragraph (a)(1) of this section must maintain the following records for five years from their creation:

(i) The names of persons informed, the date they are informed, and the means by which they are informed in accordance with paragraph (a)(2)(ii)(B) of this section.

(ii) The names of any transferee and the dates of any transfers of containers which are labeled in accordance with paragraph (a)(2)(ii)(C) of this section.

(iii) The method used to determine that the protective gloves are impervious to the substance and date and the results of that determination.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070-0012)

(Secs. 5, 8, Pub. L. 94-469, 90 Stat. 2012 (15 U.S.C. 2604, 2607))

[FR Doc. 84-28436 Filed 10-30-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 441

Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule modifies present regulations to conform to legislative changes enacted by section 2181 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981. That section eliminates the penalty which reduces by one percent Federal funds for a State's Title IV-A program, Aid to Families with Dependent Children (AFDC), for any quarter during which a State fails to: (1) Inform all AFDC families of the availability of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services; (2) provide or arrange for requested screening services; and (3) arrange for corrective treatment of health problems found as a result of screening. In addition, even though the penalty has been eliminated, section 2181 mandates that States incorporate these three requirements into their Medicaid State plan with respect to all EPSDT eligibles.

Further, this rule modifies current regulations to reflect Congressional intent that while States should continue to develop fully effective EPSDT programs, the Federal government should work to reduce current reporting requirements which entail a large volume of paperwork.

DATE: These regulations are effective January 29, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Hoyer, (301) 594-9446.

SUPPLEMENTARY INFORMATION:

I. Legislative Background

In 1967, section 1905(a)(4)(B) of Title XIX was added to the Social Security Act (Act) by Pub. L. 90-248, Social Security Amendments of 1967, to provide early and periodic screening, diagnosis and treatment, (EPSDT) for eligibles under 21. The amendment became effective July 1, 1969 and required States to ascertain these children's "physical or mental defects", and to provide "health care, treatment, and other measures to correct or ameliorate any defects and chronic conditions discovered . . .".

In 1972, section 403(g) was added to the Act by Pub. L. 92-603, Social Security Amendments of 1972. This section provided for a penalty that would reduce by one percent Federal funds for a State's Title IV-A program, Aid to Families with Dependent Children (AFDC), for any quarter during which a State failed to—

- Inform all AFDC families of EPSDT availability;
- Provide or arrrange for requested screening services; and
- Arrange for corrective treatment of health problems found.

Section 2181 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981 (OBRA), eliminated section 403(g) of the Act which contained the EPSDT penalty. This legislation also amended section 1902(a) of the Act by adding a new paragraph (44) (renumbered as paragraph (43) in Pub. L. 98-369) that requires State plans to provide for the following activities—

- Informing all Medicaid recipients under 21, who are eligible for EPSDT under the plan, or EPSDT availability;
- Providing or arranging for requested screening services; and
- Arranging for corrective treatment of health problems found as a result of screening.

In addition, section 131 of Pub. L. 97-248, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), exempts from Medicaid copayment requirements services provided to children under 18 (or up to 21 at State option), except for any enrollment fee, premium, or similar charge that may be imposed on medically needy recipients.

II. Proposed Rule

On August 22, 1983, we publish in the **Federal Register** a proposed rule (48 FR 38011) on the EPSDT program. The major provisions of that proposal were as follows:

A. Informing

The Medicaid agency would be required to inform effectively, through a combination of written and oral methods, all EPSDT eligibles (including the blind or deaf, or those who cannot read or understand English) of the following: (1) The benefits of preventive health care; (2) that the EPSDT services are available without cost, and where and how to obtain them; and (3) that necessary transportation and scheduling assistance is available upon request. We also proposed that the agency must assure that processes are in place to inform effectively all EPSDT eligibles, generally within 60 days of initial Medicaid eligibility, and in the case of families that have not utilized EPSDT services, annually thereafter.

B. Screening

We proposed to require that States provide, to eligible recipients who request it, a screening package that, at a minimum, includes: (1) A comprehensive health and developmental history; (2) comprehensive unclothed physical examination; (3) appropriate vision, hearing and laboratory tests; and (4) dental screening services furnished by direct referral to a dentist beginning at age 3 (or at an appropriate age which reflects reasonable standards of dental practice determined by the agency after consultation with recognized dental organizations involved in child health care, within an outer limit of age 5).

C. Diagnosis and Treatment

Under the proposal, we would require that States provide vision, hearing, and dental services found necessary by the screening to EPSDT eligible children even if those services are not otherwise included in the State plan. We would also require appropriate immunizations, even if this service were not otherwise included in the plan.

D. Timeliness

Under our proposed rule, States would be required to set standards for the timely provision of EPSDT services which meet reasonable standards of medical and dental practice determined after consultation with recognized medical and dental organizations involved in child health care. The agency also must demonstrate that processes are in place to ensure service delivery, generally within an outer limit of 6 months from the request for services.

E. Periodicity Schedule

A State would be required to implement a periodicity schedule which—

(1) Meets reasonable standards of medical and dental practice determined by the agency after consultation with recognized medical and dental organizations involved in child health care.

(2) Specifies the screening services applicable at each stage of a recipient's life, beginning with a neonatal examination and extending to the age at which an individual is no longer eligible.

(3) At the agency's option, provides for needed screening services in addition to otherwise applicable screening services.

F. Requests for Screening Services

We proposed a provision clarifying that an agency must provide screening services upon the recipient's initial request following initial eligibility, but need not provide such services to an EPSDT eligible if written verification exists that the most recent age-appropriate screenings due under the agency's periodicity schedule have already been provided to the recipient.

G. Accountability

States would be required to maintain (as currently required under 42 CFR 431.17 and 431.18) records and program manuals, a description of their screening packages, and copies of rules and policies used to assure that the informing requirement is met.

H. Coordination With Programs and Utilization of Providers

We proposed a requirement that agencies make available a variety of individual and group providers qualified and willing to provide EPSDT services, and we proposed that agencies coordinate with existing health services and programs where possible to assure an effective child health program. We would also require that an agency provide referral assistance to individuals who need treatment not covered under the State plan.

I. Continuing Care Providers

Under the proposed rule there was a provision that would provide States with the enhanced flexibility to achieve their desired child health program goals through the optional use of continuing care providers. We would deem an agency to meet all EPSDT requirements with respect to those recipients furnished care by a continuing care provider if certain requirements are met.

J. Transportation and Scheduling

We would require that the agency offer necessary assistance with transportation and scheduling.

K. Penalty Regulations

Current regulations §§ 441.70–441.90, regarding the application of the penalty under section 403(g) of the Act, would be deleted except for certain concepts (e.g. informing) that would be retained as State plan requirements.

III. Public Comments

We received 60 comments on the proposed rule from State and local agencies, national and State health professional organizations, advocacy groups and others. The main comments and our responses to those comments are as follows:

A. General

Comment—Several commenters expressed concern that the effectiveness of the program would be minimized because the regulation is often too general, giving excessive latitude to States. They are concerned that the EPSDT program might be weakened by States misusing the flexibility provided by the regulation and suggested that the regulation should be more proscriptive and detailed.

Response—While the Medicaid statute as a whole establishes certain Federal requirements, it also provides States with considerable discretion in determining how best to administer their separate State Medicaid programs. Therefore, to be consistent with the statute, our regulations allow for some flexibility so that States can most effectively and efficiently utilize their available resources to meet the needs of their recipients. With respect to the EPSDT program, this latitude provides States the opportunity to be innovative in the techniques and approaches used to administer the program in their respective localities. Additionally, Congress, when repealing the EPSDT penalty provision, expressly stated its intent to "streamline" EPSDT reporting requirements. However, while States are afforded some flexibility and the paperwork burden has been reduced, our regulations clearly set forth the requirements and standards that States must meet to have comprehensive and effective programs and to comply with the intent of the EPSDT legislation that States should continue to develop fully effective EPSDT programs. In this regard, we are charged with the responsibility to ensure that States appropriately use the flexibility permitted while fully meeting the requirements of these regulations.

Comment—Two commenters asked what type of quarterly EPSDT reports will be required of the States.

Response—We have developed a revised EPSDT report, HCFA–420, to replace the HCFA–156 which was formerly used for EPSDT reporting. The new report requests the following: (1) The number of children eligible for EPSDT in each State; (2) the number of these eligible children enrolled in "continuing care" arrangements, with a breakdown according to whether or not the continuing care provider routinely reports to the Medicaid agency services provided; (3) the number of initial and periodic examinations during the quarter; and (4) the number of examinations that indicated that at least one health problem was discovered as a result of the screen. The information is to be arranged into two groupings according to the ages of the children (0 to 5, and age 6 and over).

The report is to be prepared quarterly by each State agency and submitted to the HCFA Bureau of Data Management and Strategy (BDMS) within 30 days following the end of the quarter covered by the report. Instructions for completing the new format have been included in the State Medicaid Manual, Part 2—State Organization, section 2700.4, Transmittal 18, November 1983. For data elements, 1, 3 and 4, the first reports will be due April 30, 1984. States will be notified of a separate effective date for beginning to include element 2 in the quarterly reports.

For those States which implement the sample data tape option for Medicaid statistical data reporting, HHS will not require submission on the HCFA Form 420 of those data elements that can be reproduced from the data tapes.

Comment—One commenter suggested that the regulations "should specify that a certain percentage of previous year's expenditures will be spent nationally in the subsequent year for research and evaluation activities". The commenter believes that these funds should be available on a competitive grant basis.

Response—Annually in the **Federal Register**, we announce subject areas for research and demonstration grants for the purpose of resolving major health policy and program issues or developing innovative methods for Medicare and Medicaid administration. The amount of funds to be used for these grants depends on the budget available and is not, therefore, related to expenditures under Title XIX.

Comment—One commenter asked if any portion of these regulations is penalty related.

Response—As stated earlier, section 2181 of OBRA repealed the specific EPSDT penalty contained in section 403(g) of the Act. Therefore, as a result of the repeal, our regulations no longer set forth specific requirements that must be met to avoid the imposition of the penalty under section 403(g) of the Act. However, OBRA also amended section 1902(a) of the Act by adding a new paragraph (44) (renumbered as

paragraph (43) in Pub. L. 98-369) that requires State plans to provide for certain activities in connection with EPSDT services for those eligible. As with other State plan requirements, States under the EPSDT program will be subject under section 1904 of the Act to the withholding of Federal funds, if it is determined, after reasonable notice and opportunity for hearing, that the program is not being administered in compliance with Federal requirements. Periodic Federal audits and reviews will be used to ensure that State plans are being administered according to Federal requirements.

Comment—Several commenters questioned whether the proposed rules provided for a reduction in paperwork.

Response–All of § 441.90, Documentation, and the penalty related documentation requirements it contained were deleted in the proposed regulation. This deletion significantly reduces the administrative burden placed on States.

Comment—One commenter recommended that the regulation include a specific acknowledgment that those administering the program cannot force its benefits on children over the objections of their parents.

Response—We believe the suggested addition is unnecessary because at various points the regulation underscores the fact that participation in EPSDT is voluntary. Screening, other health services, and transportation and scheduling assistance are provided only after the recipient, or recipient's family, requests the services.

B. Informing

Comment—One commenter believes recipients should be informed that EPSDT treatment will be made available only if it is covered by the State plan. Recipients should have this information because they may not want to be screened for fear of finding problems they cannot afford to treat.

Response—We do not agree with this comment for several reasons. First, not receiving a screening for fear of finding a problem a person may not be able to afford to treat may very well result in more serious problems and the need for more expensive treatment. Moreover, under § 441.56(c), a State must provide to EPSDT recipients certain Medicaid services, even if not included in the State plan. In addition, under § 441.57, a State may provide certain other medical or remedial care even if the agency does not provide these services or provides them in a lesser amount, duration, or scope. Further, in the event that services found to be needed as a result of screening and diagnosis cannot be provided as EPSDT services, States, under § 441.61(a), are required to provide referral assistance and to advise recipients of those providers who have indicated a willingness to furnish those services at little or no cost. Therefore, we are making no change to the regulations.

Comment—One commenter recommended that the requirement that agencies annually inform, about EPSDT, families who have not used the program, should specify that this requirement is applicable only if the family is still eligible.

Response—Section 441.56(a)(1) of the regulation indicates that the requirement to inform individuals about the program only pertains to those individuals (or their families) who are eligible; therefore, no change is necessary.

Comment—Nine commenters objected to the proposed reduction of the current informing requirement from 13 to only 4 items of information that must be provided to recipients. One commenter, concerned with the reduction in the number of specific items, asked whether the proposed regulations left the content of the explanation of the information strictly up to the States' discretion.

Response—While current regulations list 13 specific items, the proposed regulation includes four general statements describing the information about the EPSDT program that must be provided to individuals. However, it is important to note that the four general statements encompass the same information required under current regulations. Even though the information that must be provided to recipients has been described in more simplified language, we expect States to continue to provide recipients with all the essential information they need in order to utilize fully the services to which they are entitled.

Comment—One commenter asked if there was a requirement to inform an eligible recipient after a period of ineligibility.

Response—Section 441.56(a)(3) of the proposed regulation (§ 441.56(a)(4) of this final rule) requires agencies to inform eligible individuals about the program after their initial Medicaid eligibility determination and, in the case of families that have not utilized EPSDT services, annually thereafter. We expect States to reinform about the program, those individuals who are determined to be EPSDT eligible after a period of ineligibility, if they have not used the services for at least a year and are due for a screening.

Comment—Seven commenters recommended that the regulation should continue to require that EPSDT informing be in clear and nontechnical language.

Response—We agree that this is an important element in ensuring effective informing. We have added to § 441.56(a) the requirement that agencies use clear and nontechnical language in providing to recipients the required information under this section.

Comment—One commenter believes it would be helpful for HCFA to provide in regulations additional guidance concerning the requirement to "effectively inform". The commenter also thinks the regulation should require agencies to ensure that individuals are informed about the program in their native language or other mode of communication. If the native language or other mode of communication of the individual is not a written language then the agency should be required to utilize other methods such as oral translation.

Reponse—In the preamble to the proposed rule we stated that it was our intent to simplify and provide for State flexibility in the informing requirement while still requiring that States effectively inform eligibles about EPSDT. To this end, we believe that any further detail or specificity beyond that contained in the proposed regulation, along with the change described above to § 441.56 in this final rule, is inappropriate.

Effective informing requires States to use methods of communication that recipients can clearly and easily understand to ensure that they have the information they need to utilize fully the services to which they are entitled. The proposed regulations require agencies to provide for a combination of written and oral methods designed to effectively inform all EPSDT eligible individuals (or their families) about the program. As a result of the change to § 441.56 just discussed, States, to effectively inform individuals about EPSDT, must now provide them with certain required information described in § 441.56(a)(2) of the final regulation using clear and nontechnical language. Further, States are also required to effectively inform individuals who are blind or deaf, or who cannot read or understand the English language. To effectively inform these individuals about the program, communication methods that meet their needs must be used.

Comment—One commenter recommended that States be required to develop, for public comment, oral informing plans that identify the methods they will use, the content of the message, and the population at which the oral information will be aimed.

Reponse—We do not think requiring States to develop oral informing plans for public comment is necessary to ensure that recipients are effectively informed about EPSDT. Also, imposing such an additional administrative burden on the States would not be appropriate since it is the intent of Congress that the volume of paperwork required of the States be reduced.

Comment—One commenter recommended that States be required to ensure that eligible adolescents are informed about the program.

Reponse—We do not believe that the regulation should require special efforts for encouraging older children to use the program. The OBRA amendments do not mention specific groups of recipients but rather require States to effectively inform all EPSDT eligible about the program. To be consistent with the statute, we do not think the regulation should place special emphasis on informing any particular group of recipients. Further, we think the need for such efforts will vary and should be a matter for State discretion.

Comment—One commenter stated that requiring agencies to inform all EPSDT eligibles that the services provided under the EPSDT program are without cost to the individual is not consistent with section 131 of Pub. L. 97-248, the Tax Equity and Fiscal Responsibility Act of 1982 that adds a new section to Title XIX of the Social Security Act regarding cost sharing by Medicaid recipients.

Response—We agree that the statutory change necessities a revision to the proposed regulation. We are revising the language at § 441.56(a)(1)(iii) (now § 441.56(a)(2)(iii) to indicate that services provided under the EPSDT program to the EPSDT eligible individual are without cost to eligible categorically needy recipients "under 18 years of age, and if the agency chooses, to those 18 older, up to age 21". Additionally, these services are without cost to eligible medically needy recipients under 18, or if the agency chooses, to those 18 up to age 21, (except for any enrollment fee, premium, or similar charge provided for by the State agency.)

Comment—One commenter recommended that the regulation specify what percent of the population must consist of individuals who do not understand English before States are required to use translated materials.

Response—As stated earlier, it is our intent to simplify and provide for State flexibility in the informing requirement while still requiring that States effectively inform eligibles about EPSDT; therefore, we do not believe it appropriate to include such detail in the regulations. States are in the best position to determine the needs of recipients in their localities. However, States may wish to consider the guideline generally used by the Office for Civil Rights (OCR), DHHS. According to OCR guidelines if there are at least 100 potential users of a DHHS program in a specific geographic area, who do not read or understand English and share the same non-English language, special measures should be taken to inform them about the availability of the program. One method of informing such individuals would be the use of translated materials. Generally, since EPSDT is a state-wide program, States will have to use their discretion in defining what consitutes a specific geographic area.

Comment—Fifteen commenters objected to allowing States to use a combination of writtern and oral methods to inform eligible individuals about the program, rather than requiring them to use face-to-face informing for all eligibles.

Response—We recognize the value of oral informing and agree that States should not rely completely on written methods to inform recipient about the EPSDT program. However, we believe that written methods can be used to effectively provide information about the program.

Moreover, all recipients do not need oral informing to be effectively informed about the program. Therefore, we continue to require in the final regulation that a State "effectively inform" eligibles using a combination of oral and written methods, without imposing additional requirements as to which situations require the use of which methods. We would, of course, expect States to use oral informing for those individuals whose circumstances indicate that they would most benefit from it. For example, States might consider such methods for first time mothers, those not using the program for over two years, or first time eligibles.

Comment—One commenter thinks it would be useful to the States and to advocates to specify, in the regulation, minimum participation rates in the EPSDT program that must be met in order for a State to qualify as having an effective informing system.

Response—We do not believe such a requirement is appropriate since use of EPSDT services is entirely voluntary. However, we will address the commenter's concern that effective informing actually take place, through our monitoring and assessement programs. As part of our assessement program for ensuring that State plans are in compliance, we will periodically review the States' conformance with the EPSDT regulation, including the requirement to effectively inform recipients about the program. Additionally we will be monitoring the rate of recipient participation in the EPSDT program through federally required monitoring reports which States must submit quarterly as an indicator of the effective implementation of EPSDT requirements.

Comment—One commenter suggested that the 60-day time requirement for informing new participants of EPSDT seems excessively long. However, fourteen others recommended that the current 60 day requirement be retained, but stated that having "processes" to ensure general timeliness, as contemplated under proposed 42 CFR 441.56(a)(3), is not acceptable since there is no explicit requirement that the State implement the process.

Response—We do not agree that the language of § 441.56(a)(3), redesignated in this final rule as § 441.56(a)(4), which requires States to have processes in place for effectively informing recipients about EPSDT, should be amended. To comply with this section we expect States to effectively inform recipients about the program. Also, this section will enable us to monitor effectively the States' activities in informing recipients and it will reduce, as mandated by Congress, the amount of paperwork required to ensure that recipients are being effectively informed.

The provisions of the proposed regulations pertaining to informing require States to employ processes which effectively inform recipients about the program generally within 60 days of their Medicaid eligibility determination. It is important to note that, even though the word "generally" has been added to the proposed regulation with regard to the 60-day time frame, this does not relax the requirement for States to promptly inform recipients about the program. The addition of the word "generally" is only for the purpose of accommodating legitimate and unavoidable problems that cause delays in informing recipients about EPSDT; e.g., States may not be promptly notified of SSI eligibility determinations that result in individuals becoming Medicaid eligible. The standard is still for States to inform individuals within 60 days.

Comment—One commenter objected to any requirement that recipients be notified of the next scheduled examination due under the periodicity schedule.

Response—Periodic screening is required under sections 1902(a)(43) and 1905(a)(4)(B) of the Act and § 441.58 of the proposed regulations requires States to implement periodicity schedules that identify the screening services that are applicable at each stage of a recipient's life up to the age at which he or she is no longer eligible for EPSDT. We expect States to notify recipients of the appropriate time to receive services. For recipients enrolled with a continuing care provider, the provider should furnish this notification.

C. Screening

Comment—Two commenters suggested that the requirement for States to provide appropriate vision testing and appropriate hearing testing is too vague and might allow doctors to slip into old habits, such as whispering behind children's backs to test their hearing.

Response—Section 441.56(b)(2) of the regulation states that screening services must be provided in accordance with reasonable standards of medical and dental practice determined by the agency after consultation with recognized medical and dental organizations involved in child health care. Therefore, we do not think the word "appropriate", as it is used in § 441.56(b)(1), needs further clarification.

Comment—One commenter suggested the preamble should mention that the State agency is charged with the responsibility to determine what periodicity schedules and screening processes will be used.

Response—We believe this is implied in the regulation. The regulation requires the agency to implement a periodicity schedule that meets reasonable standards of medical and dental practice determined by the agency after consultation with recognized medical and dental organizations.

Comment—One commenter suggested that the regulation and preamble should make specific reference to health education and counseling and that these services should be added to the list of required services.

Response—The preamble to the proposed regulation, in discussing screenings or periodic child health assessments, included the following statement: "Assessment visits also generally include . . . nutritional and anticipatory guidance (i.e., help or assistance to families in understanding what to expect in terms of a child's development) and information about health-related topics such as disease and accident prevention. We recognize that health education efforts by parents and a sound practitioner/patient relationship can have significant positive impacts on the child's health status and that these efforts should be begun at an early age." We think this statement from the preamble indicates the importance we place on health education and counseling. The health assessment provides States with the context in which to provide health education and counseling. However, the regulation does not specifically mention these services because we believe they would be delivered as part of the services specified in the regulation.

Comment—One commenter asked that the regulation require that developmental evaluations be provided in accordance with reasonable standards of medical practice.

Response—The regulation requires that EPSDT screening services be provided in accordance with reasonable standards of medical and dental practice. As indicated in the preamble and § 441.56(b)(1) of the regulation, a developmental assessment is an integral part of the screening service. Therefore, such assessments must also be furnished in accordance with reasonable standards of medical practice.

Comment—One commenter recommended that we require, at the very least, that a dietitian or nutritionist be part of the consultation process pertaining to nutritional assessments.

Response—We do not think it is appropriate for the regulation to require that certain methods and procedures be followed in providing screening services. Instead, the regulation requires that screening services, which include nutritional assessments, must be provided in accordance with reasonable standards of medical and dental practice determined by the State after consultation with recognized medical and dental organizations involved in child health care. States, after consultation with these organizations, determine what specific protocols or procedures will be followed in providing screening services and we accept those determinations, as long as they meet reasonable medical and dental standards.

Comment—One commenter suggested that the regulation or preamble should recommend some of the professional associations from whom consultation should be sought, while another recommended that consultation with representatives of recognized optometric and other health professional groups should be required. Similar recommendations were made by three other commenters with respect to consultation with groups regarding developing the periodicity schedule. One commenter also believed regulations should specify how conflicts should be resolved.

Response—We expect States to consult with recognized organizations that are knowledgeable about the general physical and mental health, growth, development and nutritional status of infants, children and youth, including those orgainzations with expertise pertaining to vision, hearing and dental evaluations. These consultations are important in ensuring that each component of the EPSDT screening and the establishment of a periodicity schedule meet reasonable standards of medical and dental practice. However, we believe the decision regarding which particular organizations or sources to consult should be made by the States. Therefore, we have not compiled a list of organizations that States should consult in determing the standards.

With respect to resolving any conflicts within the consultation process, we believe decisions to give more weight to recommendations of one group over another or to otherwise resolve or deal with defferences of professional opinion can best be made by each State.

Comment—Five commenters opposed categorizing immunization as a treatment service. Some stated that by categorizing it as a treatment rather than as a screening service we will increase provider paperwork and the cost of the program in those States where immunizations are included as part of the screening package. Also, some believed that since some State medical practice laws prohibit nurses or clinicians from performing diagnoses and treatment, many health department professionals might be banned from providing immunizations at the time of screening, which effectively may interfere with children being immunized. Some commenters objected to the change, believing that needed immunizations could no longer be provided as part of the screening process and that children would have to be referred to a doctor's office for this service.

One commenter also believed that these situations would result in a reduction in the number of screenings because immunizations are an inducement to have children screened.

Response—Although immunizations have been recategorized as a treatment service, the regulation emphasizes that States are still required to provide immunizations at the time of screening if it is medically necessary and appropriate to provide them at that time. To emphasize this, reference is made to

immunizations under the sections of the regulations on diagnosis and treatment and on screening. It may be that the language contained in the proposed §441.56(c)(3), which states that only immunizations that are "medically necessary" are to be provided at the time of screening, has been misinterpreted by some commenters to mean that immunizations generally should not be provided as part of a screening. To emphasize and clarify our intent in this regard, we are replacing the words "medically necessary" with the word "needed". As in the past, when a clinic determines at the time of screening that an immunization is needed, rather than refer the child to a doctor's office, it can provide the service as part of the screening package. Clinics are still encouraged to provide necessary and appropriate immunizations during the screening process in order to facilitate the provision of these preventive health care services and to promote cost effectiveness. Also, it is State medical practice laws, and not how immunizations are categorized in the regulations, that will determine the types of health care professionals and technicians that may provide this service. Therefore, we do not believe there is anything in the final regulations to warrant concern that health department professionals might be barred, due to State medical practice laws, from providing immunizations because they have technically been categorized as a treatment service.

Further, States need not refer children to doctors' offices for immunizations and since States are still required to provide immunizations at screening if needed and appropriate, we would expect the inducements to have children screened would still exist.

When immunizations are provided during the screening process, they can be billed as part of the screening package. A spearate billing procedure is not required. Also, States can continue to negotiate flat rates with providers for screening packages that include needed immunizations.

Comment—Nine commenters expressed concern because developmental and nutritional assessments are not specifically mentioned as screening services in the proposed regulation. The commenters believe that many children will not receive these assessments, unless the regulation specifically mentions them as screening services.

Response—To be consistent with medical terminology, and at the suggestion of the pediatric community, we have not listed developmental and nutritional assessments as separate screening items. However, a comprehensive health and developmental history and a comprehensive physical examination have been listed separately and these items, by definition, include an assessment of a child's development and nutritional status. This would be understood by any qualified provider. To further emphasize this, the regulation defines EPSDT screenings as ". . . (periodic comprehensive child health assessments); that is, regularly scheduled examinations and evaluations of the general health, growth, development, and nutritional status of infants, children, and youth". As indicated by this definition, an EPSDT screening includes an examination and evaluation of the developmental and nutritional status of the recipient. Therefore, we do not believe it is necessary to specify developmental and nutritional assessments as separate elements of the screening. However, we have added the words "physical and mental", which also appear in § 441.50, to more clearly reflect the language of the statute which relates to both the physical and mental health of recipients.

Comment—One commenter expressed concern about the quality of care as it pertains to the procedures used in providing screenings and the personnel conducting the screenings. Another commenter believes that it is absolutely essential that a physician do the visual screening of infants and young children. The commenter also stated that referrals for visual treatment of infants and young children, as well as for non-refractive errors in older children, should be to an ophthalmologist.

Response—To address properly questions concerning the acceptability of various standards or methods of providing screening services, the proposed rule included a requirement that screening services, be provided in accordance with reasonable standards of medical and dental practice, determined by the agency after consultation with recognized medical and dental organizations involved in child health. We think this adequately addresses the need to ensure that EPSDT screenings will meet professional standards. Generally, the decision concerning who can provide EPSDT services is made by the States according to their medical practice laws. We accept these decisions as adequate as long as they meet specific Medicaid requirements (for example, 42 CFR 440.50(b)) that certain services be provided under the direction of a physician and services be delivered according to reasonable standards of medical and dental practice.

Comment—One commenter recommends that the EPSDT regulations preferably use the term dental (or oral) examination, rather than dental screening, and provide some explanation of its content/use.

Response—The regulation requires States to provide screening to eligible EPSDT recipients who request it. Screening is defined in the regulation as periodic comprehensive child health assessments; that is, regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth. As required by the regulation, these screenings must include dental screening services furnished by direct referral to a dentist. The terminology "dental screening services", as used in the regulation, means a comprehensive and thorough dental examination, provided in accordance with reasonable dental standards, to identify any oral or dental defects. However, to be consistent with the language used in the EPSDT legislation, the required dental examinations are referred to, in the regulation, as screenings.

Comment—One commenter suggested that instead of specifying in the regulation the age requirement for dental referrals, we should leave it to the State agencies in consultation with recognized dental organizations. Twenty-seven other commenters objected to the proposed regulation because it allows States to defer initial dental referrals of EPSDT children until the age of 4 or 5 under certain circumstances.

Response—Because the lack of proper dental care for children can cause associated health problems and result in the need for more serious and costly dental treatment in adolescence and adulthood, we believe it is appropriate to set some minimal Federal requirements regarding the age at which EPSDT children must be referred to a dentist. With regard to the specific age set, the provision in the proposed regulation was intended to permit States to defer dental referrals in a limited number of situations, in recognition of the fact that there may be legitimate and unavoidable difficulties that require exceptions to the requirement that referrals begin at age 3. For example, some States have reported that they do not have an adequate number of dentists participating as Medicaid providers to meet the age 3 requirement.

Because of the comments we have received and the concerns expressed by

the States we have revised the language contained in the proposed rule. The regulation, as revised, requires that dental screening services be furnished by direct referral to a dentist for children beginning at 3 years of age. However, Medicaid State agencies may request from HCFA an exception from this age requirement (within an outer limit of age 5) for a two year period and may request additional two year exceptions. If an agency requests an exception, it must satisfactorily demonstrate to HCFA that there is a shortage of dentists that prevents the agency from meeting the age 3 requirement. Also, the request must explain the policy and program efforts the State has made to meet the age 3 direct referral requirement using its current dental resources. The State will remain responsible for required treatment for dental problems identified by other EPSDT screening. If a State requests exceptions beyond the initial 2 year period, it must describe the steps it has taken to achieve maximum participation of dentists in the State and improvements that have taken place. In evaluating the State's request for an exception, HCFA also will consider any objective evidence submitted by knowledgeable professionals and members of the public. An exception will be granted only when there is persuasive evidence that a shortage of dentists prevents the agency from providing dental screenings through direct referral to a dentist for eligible children beginning at 3 years of age. We believe that this approach will address the real problems some States face in providing dental services under EPSDT, while ensuring that decisions allowing exceptions to the usual referral age are made appropriately.

Comment—One commenter suggested that subparagraph (b) of § 441.56 has a weakness in that recipients have to request EPSDT services. The commenter believes it is contrary to the intent of Congress to require that EPSDT services be requested. Also, one commenter believes that all children determined eligible for EPSDT services should be required to participate in the EPSDT program as a condition of the family's eligibility for Titles XIX and IV-A.

Response—The purpose of the EPSDT program is not to compel individuals to participate, but to make available early and periodic screening, diagnostic and treatment services to those determined eligible and to assist eligible individuals in receiving these services (section 1902(a)(43) of the Act). The EPSDT statutory language states that State plans are to provide for "screening services in all cases where they are requested." The proposed regulation is consistent with this language. We think that forcing individuals to participate in the EPSDT program is not feasible and would be contrary to the intent of the statute. However, it is important to note that States are required to effectively inform all EPSDT recipients about the availability of EPSDT services, regardless of whether this information is requested or not.

D. Diagnosis and Treatment

Comment—Five commenters recommended that in order to avoid unnecessary screenings as a prerequisite to needed diagnostic and treatment care, we should permit the provision of interperiodic diagnostic and treatment care to children who are up-to-date in their screenings.

Response—Section 1902(a)(10) of the Act in conjunction with sections 1905(a)(4)(B) to 1902(a)(43) requires States to provide early and periodic screenings of eligible persons and to arrange for corrective treatment if a need is disclosed by such health screening services. The statutory language indicates that the diagnostic and treatment services, authorized by the EPSDT legislation, for the purpose of correcting and ameliorating problems discovered by EPSDT screenings. Thus, it is necessary for diagnoses and treatments to be linked to screening to be considered part of EPSDT. However, § 441.58(c) of the regulations does allow States to provide needed screening services in addition to screenings specified in their periodicity schedules. This provision gives the States additional flexibility to meet the needs of children who may require screening, diagnostic and treatment services in between regularly scheduled screenings.

Comment—Two commenters recommended that, in addition to vision, hearing, and dental care, any diagnostic or treatment services should be provided and paid for, if an EPSDT screening indicates these services are needed. One other commenter recommended that States be required to provide for the testing and diagnosis and treatment of speech and language disorders.

Response—With respect to providing screening for speech and language disorders, § 441.56(b) in general requires that EPSDT screening services be provided in accordance with reasonable standards of medical and dental practice and include examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children and youth. In developing acceptable standards and protocols for these comprehensive child health assessments, especially as they pertain to required developmental evaluations, we would expect States to include examinations which would enable detection of speech and language disorders.

We have retained existing requirements with respect to the services which are required because they address the principal health problems found as a result of EPSDT screenings and because in repealing the EPSDT penalty and adding new EPSDT process requirements to the State plan, Congress did not indicate any intent to change these requirements.

E. Timeliness

Comment—One commenter suggested that States, in setting timeliness standards, should be required to consult with parents, consumers and other State health agencies in determining reasonable standards for timeliness and in establishing periodicity schedules as well.

Response—We believe that periodicity and timeliness requirements should be set based on professional judgment since that best reflects what is required in order for proper medical treatment to be provided. The regulations reflect that approach.

Comment—Three commenters referred to the current requirement that States provide timely delivery of EPSDT services and objected to our substituting the requirement that States demonstrate that processes are in place for such delivery.

Response—We have clarified this requirement (§ 441.56(e)), and a similar requirement for monitoring continuing care providers (§ 441.60(c)), to make clear that States must employ methods to ensure timely delivery and assure providers' compliance with their agreements.

Comment—Seven commenters objected to allowing an outer limit of generally within 6 months for the provision of EPSDT services, asserting that such a lapse between screening and treatment was unreasonable and without medical or other foundation. Another commenter found the time period to be unduly long, but recognized that it might be necessary in some environments. One commenter suggested a 2 months cycle, and another 4 months.

Response—We are amending § 441.56(e) to make clear that the 6 month limit does not begin on the date the screening is provided but rather on the date on which the screening is

requested, and ends with the initiation of necessary treatment. Thus, within 6 months of the request for service, the screeening, problem identification, and initiation of treatment should occur. We have retained the 6 month outer limit that is also in the current regulations to ensure a minimum national standard. Further, we believe that requiring States to establish time standards which meet reasonable standards of medical and dental practice will ensure that States adopt the shortest possible time-span for each step of the EPSDT cycle compatible with efficient administration of the Medicaid program.

F. Periodicity Schedule

Comment—Two commenters questioned whether input from recognized medical and dental organizations must be incorporated in state programs or is to be viewed as consultative. One other commenter questioned whether States would have to undergo the consultation process once again considering the new requirement that periodicity schedules must now meet "reasonable standards of medical and dental practice . . . ".

Response—The additional requirement that periodicity schedules meet reasonable standards of medical and dental practice, determined by the agency after consultation with recognized medical and dental organizations, affirms that: (1) Consultation with the stated organizations is mandatory; (2) the responsibility for determining the standards rests with the State agency; and (3) the standards must reflect reasonable standards of medical and dental practice.

If the standards a State has in place were adopted after such consultation, and reflect reasonable standards of practice, additional consultation is not required. It is expected that States will want to maintain a dialogue with organizations in order to ensure their periodicity schedules reasonably reflect current professional judgment.

Comment—Three commenters supported the requirement that schedules specify the services applicable at each stage of a recipient's life. Three other commenters recommended continuing the current requirement that schedules specify months and years between examinations, or that "reasonable" in the phrase "reasonable standards of medical and dental practice" be defined.

Response—We have retained the phrase, "reasonable standards of medical and dental practice", because it provides States the flexibility to weigh different factors and yet precludes use of inappropriate standards. Defining such a phrase would be impossible without emphasizing one factor or factors over others which may inhibit best serving the needs of recipients in particular States. Further, we believe that specifying screening services applicable at each stage of a recipient's life is sufficient to ensure that States develop schedules and procedures which delineate when services are due.

Comment—One commenter objected to provisions that make optional the coverage of recipients 18 through 20 years of age.

Response—The regulation implements statutory changes in section 1905(a)(i) of the Act, enacted by Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981; therefore, no changes can be made in that provision.

G. Requests for Screening Services

Comment—Four commenters supported the requirement that the agency provide screening services upon the recipient's request. One commenter stated that the language was confusing, by referring to both initial request and initial eligibility determintion. One commenter questioned what the State's responsibility was to an individual who declines EPSDT services after initially being determined Medicaid eligible and later requests services when, according to the periodicity schedule, no screening is required.

Response—We have amended the language at § 441.59(a) to clarify that agencies must provide EPSDT services upon the eligible recipient's request, even when the recipient had previously declined services. The only time an agency need not provide requested screening services to an EPSDT-eligible individual occurs when written verification exists that the most recent age-appropriate screening services, due according to the agency's periodicity schedule, have been provided to that individual. We agree that unless a child is up to date on screening, screening should be available when requested, and not delayed until the next age level noted in the periodicity schedule.

Comment—Two commenters agreed with the provision that States may deny requested screening services when written verification exists that the most recent age-specific screening services have been provided. One of the commenters recommended additional provisions that would permit denial only when optional screening is not provided and schedules meet reasonable standards, and that a child must be covered for diagnosis and treatment services for conditions found by screening during a prior period of eligibility.

Response—We do not believe that the recommended additions are necessary because the regulation's provisions for screening services, discretionary services, and options for screening services in addition to regularly scheduled examinations provide a sufficient framework to control potential isolated instances of inappropriate barriers to EPSDT services.

H. Accountability

Comment—Six commenters objected to the absence of child-specific documentation requirements for services, including transportation and scheduling assistance, provided recipients. One commenter recommended specific documentation requirements for some of these areas. These commenters believed HCFA would be without the means of monitoring performance and enforcing compliance if the documentation required under current regulations were not maintained. One of the commenters also believed the regulation exceeded Congressional directives to streamline paperwork.

Response—Program experience indicates that the detailed documentation previously required proved to be counter-productive in that the unintended result was an emphasis on recordkeeping at the expense of providing services. We believe Congressional directives to streamline paperwork while requiring fully effective EPSDT programs have been met by the requirements established in this regulation which are supplemented by general Medicaid program regulations at §§ 431.17 and 431.18 concerning maintenance of agency records and availability of agency program manuals. Together with our program requirements, these provide a framework for States to develop records, manuals, descriptions of the screening package, and methods of assuring informing, that both support effective administration and enable HCFA to monitor the adequacy and functioning of State program management.

Comment—Three commenters asked what reporting would be required. One of them asked whether HCFA will develop its own reportable elements.

Response—We distinguish between documentation requirements, which enable verification of the receipt of required and optional services, and reporting of program data to HCFA. Under these regulations, to meet documentation requirements, States

establish systems to provide the data and information that is needed to substantiate the provision of EPSDT services. Reporting requirements are described in the Quarterly EPSDT Report, Form HCFA–420, which was discussed earlier in this preamble.

Comment—One commenter requested clarification of the records agencies must maintain.

Response—In these regulations, we have sought to establish auditable requirements which do not create a heavy paperwork burden. The section on accountability requires agencies to maintain records and manuals as required by § 431.17 and § 431.18 of the Medicaid regulations, which are necessary for the proper and efficient operation of the plan. This would include records needed by the State, to establish that it has fulfilled the requirements specified in the regulation. These represent the minimum amount of recordkeeping that would be required normally by effective management practices. They are not as detailed and burdensome as those documentation requirements that were included in regulations associated with the EPSDT penalty.

Comment—One commenter suggested that the final regulation emphasize the mandatory nature of EPSDT and the consequences of being out of compliance and subverting the intent of the program.

Response—We believe the mandatory nature of the program is highlighted at the outset of the regulation, where it is noted that the State Plan must meet program requirements, and these are specified in the sections of the regulation that follow. Further, we believe that the new requirements for States to use effective informing methods, develop screening packages, and establish timeliness standards and periodicity schedules which meet accepted reasonable medical and dental practice standards will result in full realization of program intent.

I. Coordination With Programs and Utilization of Providers

Comment—Three commenters objected to the requirement under § 441.61 that the agency make available a "variety of individual and group providers", stating that the current regulation requires States to make maximum use of existing providers, and that the proposed rule seemed to conflict with "freedom of choice" requirements.

Response—Current regulations require States to make maximum use of existing services provided by *public and voluntary agencies*, not of providers per se. The proposed regulation will encourage States to broaden the provider base to include, for example, physicians in individual and group practices and primary health care centers, as well as previously listed "well-baby clinics, neighborhood health centers, rural health clinics". Hence, we believe that the reference to "a variety of individual and group providers" enhances recipients' choice of providers. This is in keeping with section 1902(a)(23) of the Act, which provides that recipients may obtain services from any qualified Medicaid provider and that States may set reasonable standards relating to providers' qualifications.

Comment—One commenter suggested that the regulations mention that physicians may need training to adequately fulfill their EPSDT responsibilities.

Response—Many States do provide a planned orientation program for newly certified providers. Therefore, we do not believe it is necessary to make this function a specific requirement in regulations, since State certification and program management processes normally address such issues.

Comment—One commenter requested further clarification of the phrase "individual and group providers", querying whether other health professionals, such as nurses, dietitians or social workers, were included if they were qualified and willing to provide the services.

Response—Qualifications to provide EPSDT services will be judged by the State Medicaid agency recognizing applicable State laws and regulations relating to scope of practice and reasonable standards of medical and dental practice. Thus, States may utilize qualified professionals (for example, in the fields noted by the commenter) who meet the applicable requirements.

Comment—Eleven commenters objected to the apparent elimination of manadatory coordination provisions when we combined elements contained in current § 441.59 and § 441.60 into a new section. They cited sections 1902(a)(11) and 1902(a)(22)(C) of the Act, requiring Medicaid agencies to coordinate services with Title V programs, and enter into cooperative arrangements with State agencies responsible for administering health services and vocational rehabilitation services and with Title V grantees (Maternal and Child Health/Crippled Children's Services).

One commenter suggested that the rule provide for coordination with State education agencies responsible for administering Pub. L. 94–142, The Education For All Handicapped Children Act of 1975, another suggested that State agencies be required to refer eligibles to the Special Supplemental Food Program for Women, Infants and Children (WIC), and a third recommended that the regulation describe mechanisms for facilitating coordination.

Response—We agree that the coordination provisions should be further clarified, and have amended the regulation: (1) To require program coordination with State health agencies, State vocational rehabilitation agencies, and Title V grantees (Maternal and Child Health/Crippled Children's Services; and (2) to identify other related programs which have come into being subsequent to the Act's provisions, with which program coordination should be made.

However, we have not made specific mention in the coordination section with regard to developing cooperative relationships and implementing interagency agreements since we believe § 431.615 provides an ample description of mechanisms to facilitate such coordination.

Comment—Two commenters supported retaining the current rule requiring States to refer children needing services not covered in the plan to providers willing to provide them at little or no cost. However, one commenter believed that the requirement to provide names, addresses and telephone numbers of such providers was not realistic.

Response—States are required to advise recipients of providers who have indicated a willingness to furnish needed but uncovered services at little or no expense to the recipient. We believe it is realistic to expect the States to have knowledge of providers willing to provide such services. Referral sources might include crippled children's services, voluntary and public agency programs offering services free or on a sliding fee scale. Cooperative interagency working relationships and networks are a useful source of information on the availability of such resources.

J. Continuing Care Providers

Comment—Eight commenters specifically endorsed the continuing care concept. Benefits cited included: (1) It brings the regulation up to date with current health delivery initiatives; (2) preventive, acute and episodic care from the same provider will bring profound long term benefit to the health of children from low income families; and (3) the need for recipients to go from provider to provider is eliminated, and

the State's administrative role is lessened.

Response—We agree that the continuing care option provides States enhanced flexibility to achieve child health goals while easing administrative burdens.

Comment—Four commenters queried whether continuing care arrangements were mandatory. Two stated that the concept should not be emphasized to the exclusion of other means of providing EPSDT services. One commenter believed that the concept could dilute service agency programs and increase costs.

Response—We believe that the regulation makes clear that continuing care is an optional method in administering the EPSDT program. State plans may provide for agreements with continuing care providers; and if States elect to pursue that option, they must employ methods for monitoring providers' compliance with their agreements.

We understand that not all States will wish to implement the continuing care option at this time, or be able to implement it universally within a particular State. However, we do encourage continuing care where feasible as an effective way to build ongoing provider, child and family relationships that provide for a regular source of health care. Rather than diluting the program and increasing costs, this option should result in a more consistent and coordinated delivery of services and lessening of total health care costs for EPSDT eligibles.

Comment—One provider contended that the continuing care option negated "freedom of choice".

Response—We disagree. The recipient or family chooses to enroll with a continuing care provider. Indeed, we believe that the option expands the range of choice open to recipients in those States electing to develop continuing care arrangements. Also, the regulation does not prohibit recipients from terminating their enrollment and changing providers.

Comment—Four commenters expressed concern with the term "formally enrolled" with a continuing care provider. Three believed the term was limited to prepaid health plans. One commenter believed the term applied to recipients enrolled in specific health programs, such as family planning or well child clinics.

Response—By formal enrollment, we mean that a recipient, or recipient's family, has agreed to use one continuing care provider to be the regular source of the described set of EPSDT services for a stated period of time, and that the recipient and the provider have both signed statements which specify their obligations under the continuing care arrangements. We have added clarifying language to the regulation at § 441.60(d) which describes enrollment requirements.

While it is true that the term enrollment is commonly used regarding prepaid health plans and family health centers, it is also often used in relation to individual and group practices. However, mere enrollment under capitation arrangements or prepaid health plans does not constitute a continuing care arrangement nor does enrollment in specific categorical health clinics. The State agency must determine that a provider is capable and qualified to provide the complete set of described continuing care services, have an agreement with that provider, and employ monitoring methods to assure compliance with that agreement.

Comment—Four commenters were unclear about who might qualify to be continuing care providers, and their need to provide all the stated EPSDT services. Some believed that the option was limited to health maintenance organizations. Others recommended that agencies providing only screening services should be included.

Response—Individual, group and institutional providers are potential continuing care providers, provided they are found capable and qualified, and have an agreement with the State agency to provide reports as required under § 441.60(b) and at least the set of described continuing care services under § 441.60(a). The continuing care provider could, of course, make referrals for specialty services which go beyond the practice of, for example, a pediatrician or family practitioner. Providers who furnish only screening services however, would not qualify as continuing care providers.

The set of services lists only two services to be provided at the provider's option: Dental services and transportation and scheduling assistance. The agreement must specify to what degree the provider will furnish those two. If the provider elects not to provide them, then the provider must so state in the agreement and refer recipients to the State agency to obtain those essential services.

Comment—Four commenters noted that the term "physicians' services" was to abstract, and suggested that the regulation make clear that a continuing care provider is responsible for provision of necessary care for acute, episodic, and chronic illnesses and conditions.

Response—We agree with the commenters and have amended the regulation at 42 CFR 441.60 to clarify that continuing care providers are responsible for providing physicians' services as needed by the recipient for acute, episodic and/or chronic illnesses or conditions. However, we recognize that continuing care providers may, in some instances, have to arrange for certain specialty services that are beyond the scope of their practice; e.g., ophthalmological or cardiology services.

Comment—Three commenters questioned how States would monitor continuing care providers. One suggested that States be required to establish periodic review plans for reviewing case files and measuring compliance with each of the terms of the continuing care agreements.

Response—To clarify our expectation that States will not only have, but will use, monitoring methods to assure providers' compliance with their continuing care agreements, we have amended the regulation to require that States "employ methods to assure the providers' compliance with their agreements". We do not wish to specify detailed monitoring protocols or methods, since their design, use, evaluation and redesign are essential elements of State program management. However, we have revised the language at §441.60(c) to require States to described in their State plans the methods they will use to assure that providers comply with their agreements.

Comment—One commenter suggested that the regulation require the continuing care provider agreements to make reference to one other specific health discipline, as it does regarding the provision of dental services; i.e., the service may be furnished by the continuing care provider or by direct referral.

Response—We do not believe the suggested addition would be helpful. The two options for the continuing care provider were derived from the total operational context of the EPSDT program and the usual capabilities of health service providers. How to use other specific health disciplines is a matter for State discretion and reasonable standards of medical and dental practice needed to achieve an effective and efficient child health program.

Comment—Two commenters were unclear how costs of continuing care providers' services would be reimbursed.

Response—The costs for the required set of continuing care services are legitimate Medicaid costs. The specific

reimbursement approach used is a matter determined by the State, within applicable Federal requirements. For example, the State agency may negotiate reimbursement rates for those services described in its agreement with a continuing care provider on a fee-for-service, fee-for-time, or capitation basis.

Comment—One commenter expressed concern that adequate tracking may not occur if case management responsibility is shifted to continuing care providers.

Response—Tracking is inherent in the described set of services which continuing care providers are required to provide. Moreover, as part of their program management, State agencies are required to monitor providers' compliance with their responsibilities. It is expected that case management will, in fact, improve under continuing care arrangements because the regular relationship between provider and recipient will facilitate appropriate delivery of needed health care.

Comment—One commenter expressed doubt that many pediatricians would become continuing care providers if reports are required.

Response—As required by sections 1902(a)(4) and 1902(a)(27) of the Act and § 431.17 of the regulations, all Medicaid providers are required to keep records and provide information pertaining to services furnished recipients. Moveover, specific reports may be needed by the States to monitor or evaluate continuing care arrangements, therefore, we are making no change.

Comment—One commenter was unclear how to divide administrative responsibility for continuing care when two State agencies jointly administer the EPSDT program.

Response—The Medicaid agency, as the single State agency, has final administrative responsibility; however, coordinated interagency agreements for EPSDT services are common among State health and social service agencies; and exercising the continuing care option should be viewed in that context. Interagency agreements should specify the expectations for the services each agency will provide.

K. Transportation and Scheduling

Comment—One commenter endorsed the transportation and scheduling provisions. Five commenters were unclear about the proposed use of the term "neceessary" which was not included in the current EPSDT transportation requirement.

Response—Even though the term "necessary" was not included, it was the intent of the current regulations to require States to provide only that transportation and scheduling assistance that is necessary for ensuring that recipients obtain needed Medicaid services. While the word "necessary" was not included in the current EPSDT regulation, it is included in the new regulation for purposes of emphasis and clarity.

The general requirement for "necessary transportation for recipients" is currently a basic State plan requirement. (See 42 CFR 431.53.) The determination of whether transportation or scheduling assistance is necessary must be decided on a case-by-case basis. This determination will depend on each individual's particular circumstances, including for example, whether the individual's family can furnish transportation, public transportation factors, the individual's physical abilities, geographic location, type of service required and available sources of medical care.

IV. Changes to the Regulations

Based on the comments received and other considerations, we are making the following changes to the proposed rule.

A. Informing

We are amending regulations located at § 441.56 to:

—Require that agencies, in the informing activity, use clear and nontechnical language in providing the specified information to recipients; and

—Conform to the TEFRA provision that those 18 or older, up to age 21, are exempt from copayment requirements only at State option and that medically needy recipients may be subject to premium, enrollment or similar charges.

B. Screening

We are amending regulations located at § 441.56(b) to:

—More clearly reflect the language of the statute which relates to both the physical and mental health of recipients; and

—Require that dental screening services be furnished by direct referral to a dentist for children beginning at 3 years of age with exceptions permitted (within an outer limit of age 5) only if the agency can demonstrate to HCFA's satisfaction that there is a shortage of dentists that prevents the agency from meeting the age 3 requirement. Agencies may request from HCFA exceptions for a two year period and may request additional two year exceptions.

C. Diagnosis and Treatment

We are amending regulations located at § 441.56(c) to:

—Emphasize that immunizations, if needed and appropriate to provide at the time of screening, can and must be provided at that time.

D. Timeliness

We are amending regulations located at § 441.56(e) to:

—Clarify that agencies are required to *employ* processes to ensure screening and initiation of treatment rather than simply demonstrate that processes are in place to do so; and

—Clarify that the 6 months limit begins with a request for screening and ends with initiation of treatment.

E. Requests for Screening Services

We are amending regulations located at § 441.59 to:

—Clarify the requirement that agencies must provide needed EPSDT services upon an eligible recipient's request, even when services were previously declined. (The only exception to this, unchanged from our proposed rule, would be when written verification exists that the most recent age-appropriate screening services due under the periodicity schedule have been provided to the individual.)

F. Coordination With Programs and Utilization of Providers

We are amending regulations located at § 441.61(b) to:

—Require program coordination with State health agencies, State vocational rehabilitation agencies and Title V grantees; and

—Identify other related programs with which coordination should continue to be a focus for interagency child health initiatives.

G. Continuing Care

We are amending regulations located at § 441.60 to:

—Clarify the meaning of formal enrollment with the continuing care provider;

—Clarify that continuing care providers are responsible for providing or arranging for, as needed by the recipient, necessary physicians' services for acute, episodic or chronic illnesses or conditions; and

—Clarify and emphasize that, in the State monitoring requirement, States must employ, rather than simply "have", methods to assure continuing care provider compliance with State agreements. States must also describe in their State plans the methods they will use to assure that providers comply with their agreements.

H. Amending Regulations

We are amending regulations located at § 441.50 to reflect a change made by Pub. L. 98–369. Section 1902(a)(44) of the Act was renumbered as 1902(a)(43).

In addition to changes made to the proposed rule, we are also making a minor technical change to regulations regarding sterilizations. These regulations are located at 42 CFR Part 441, Subpart F. Part 441 includes an Appendix which contains the consent forms used in connection with Medicaid-funded sterilizations. When the regulations on sterilizations were issued in 1978 (43 FR 52171) the Appendix immediately followed Subpart F. However, when Subpart G, Home and Community Based Services: Weaver Requirements, was issued in 1981 (46 FR 48541), it was inserted between Subpart F and the Appendix. Because this interrupts the continuity of the material on sterilizations, we are redesignating the Appendix to Part 441 as an Appendix immediately following Part 441, Subpart F. The title of the Appendix is also being revised to read "Appendix to Subpart F—Required Consent Form".

V. Impact Analyses

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that order. In addition, the Regulatory Flexibility Act (Pub. L. 96–354) requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. Under both the Executive Order and the Regulatory Flexibility Act (RFA), such analysis must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure the regulations to be cost-effective.

As discussed earlier, the NPRM and these final rules reflect section 2181 of Pub. L. 97–35 which eliminated the prior statutory penalty imposed under section 403(g) of the Act. That penalty reduced by one percent Federal funds for a State's Title IV–A program, AFDC, for any quarter in which a State failed to meet certain requirements. In addition, section 2181 mandated that States incorporate those requirements into their State Medicaid plan with respect to all EPSDT eligibles. Further, these final rules reduce previous reporting requirements (which entailed a large volume of paperwork) while continuing to develop a fully effective EPSDT program.

Changes From NPRM

As noted elsewhere in the preamble, we have made several changes to provisions of the NPRM. These changes are minor, mostly clarifying the language of specific provisions that restates our position as first noted in the NPRM. Therefore, these clarifications in the final rule do not change our assessment of the economic impact of this rule as first presented in the NPRM. To reiterate the major points of that discussion, we note that: (1) There is the potential for a significant economic impact on States that may have incurred a penalty under this section if it were not eliminated, however, any impact would be the result of the statute; (2) we anticipate that some reduction in State administrative costs will result because of reduced documentation burden (although no national figures exist for costs associated with documentation, we have no reason to believe that reductions will approach the criteria for a major rule); and, (3) other provisions of our regulations basically retain requirements contained in current regulations, but allow States more flexibility in designing their EPSDT programs within certain minimum limits.

Therefore, we have determined that this final rule will not result in an annual economic impact that will meet the threshold criteria of section 1(b) of the Executive Order.

B. Regulatory Flexibility Analysis

We note that these regulations primarily affect State Medicaid agencies by reflecting Congressional elimination of the penalty under section 403(g) of the Social Security Act, by reducing State administrative documentation burden, and increasing State flexibility in the i mplementation of their EPSDT programs. However, State Medicaid agencies do not represent small governmental jurisdictions as defined under section 601 of the Regulatory Flexibility Act. (Section 601(b) defines "small entities" as small businesses, not-for-profit enterprises independently owned and operated and not dominant in their fields, and government jurisdcitions serving less than 50,000 persons.) However, small entities that provide EPSDT services to Medicaid recipients may be affected to some degree, depending upon a State's choice to expand or limit their EPSDT programs under these regulations. We do not expect any effect to represent a significant impact on a substantial number of small entities. Therefore, the Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), that this final rule will not result in a significant impact on a substantial number of small entities.

VI. Paperwork Reduction Act of 1980

Sections 441.56(a) (1) and (2) (i) through (iv), 441.56(d), 441.58(b), 441.60(a) (4) and (5), 441.60(c), and 441.61(a), of this rule contain information collection. As required by section 3504h of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), we submitted a copy of this document to the Executive Office of Management and Budget (EOMB) for its review of these information collection requirements.

Those requirements were approved on July 20, 1984 by EOMB. The EOMB approval number is 0938–0354, and the expiration date is July 31, 1987. In accordance with EOMB's regulations for controlling paperwork burdens on the public, 5 CFR Part 1320, we are revising § 400.310 by adding these sections and control number to the list of currently valid control numbers contained in that section.

VII. List of Subjects

42 CFR Part 400

Definitions, OMB Control Numbers, Reporting and recordkeeping requirements.

42 CFR Part 441

Abortions, Aged, Early Periodic Screening Diagnosis and Treatment (EPSDT), Family Planning, Grant-in-Aid program—Health, Health facilities, Infants and children, Institutions for mental diseases (IMD), Kidney diseases, Maternal and child health, Medicaid, Mental health centers, Ophthalmic goods and services, Penalties, Psychiatric facilities, Sterilizations.

42 CFR Chapter IV is amended as set forth below.

PART 400—INTRODUCTION: DEFINITIONS

The authority citation for Part 400 reads as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

§ 400.310 [Amended]

I. Section 400.310 is amended by inserting, in the appropriate columns, immediately preceeding the line "441.302—0938–0268", text to read as follows:

441.56(a)(1), 441.56(a)(2)(i)–441.56(a)(2)(iv), 441.56(d), 441.58(b), 441.60(a)(4)–441.60(a)(5), 441.60(c), 441.61(a)—0938–0354

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

II. 42 CFR Part 441 is amended as set forth below:

1. The authority citation for Part 441 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The authority citation for Subpart B is removed.

3. The Table of Contents is amended by revising Subpart B to read as follows:

Subpart B—Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of Individuals Under Age 21

Sec.
441.50 Basis and purpose.
441.55 State plan requirements.
441.56 Required activities.
441.57 Discretionary services.
441.58 Periodicity schedule.
441.59 Treatment of requests for EPSDT screening services.
441.60 Continuing care.
441.61 Utilization of providers and coordination with related programs.
441.62 Transportation and scheduling assistance.

4. Subpart B is revised to read as follows:

Subpart B—Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of Individuals Under Age 21

§ 441.50 Basis and purpose.

This subpart implements sections 1902(a)(43) and 1905(a)(4)(B) of the Social Security Act, by prescribing State plan requirements for providing early and periodic screening and diagnosis of eligible Medicaid recipients under age 21 to ascertain physical and mental defects, and providing treatment to correct or ameliorate defects and chronic conditions found.

§ 441.55 State plan requirements.

A State plan must provide that the Medicaid agency meets the requirements of §§ 441.56–441.62, with respect to EPSDT services, as defined in § 440.40(b) of this subchapter.

§ 441.56 Required activities.

(a) *Informing.* The agency must—

(1) Provide for a combination of written and oral methods designed to inform effectively all EPSDT eligible individuals (or their families) about the EPSDT program.

(2) Using clear and nontechnical language, provide information about the following—

(i) The benefits of preventive health care;

(ii) The services available under the EPSDT program and where and how to obtain those services;

(iii) That the services provided under the EPSDT program are without cost to eligible individuals under 18 years of age, and if the agency chooses, to those 18 or older, up to age 21, except for any enrollment fee, premium, or similar charge that may be imposed on medically needy recipients; and

(iv) That necessary transportation and scheduling assistance described in § 441.62 of this subpart is available to the EPSDT eligible individual upon request.

(3) Effectively inform those individuals who are blind or deaf, or who cannot read or understand the English language.

(4) Provide assurance to HCFA that processes are in place to effectively inform individuals as required under this paragraph, generally, within 60 days of the individual's initial Medicaid eligibility determination and in the case of families which have not utilized EPSDT services, annually thereafter.

(b) *Screening.* (1) The agency must provide to eligible EPSDT recipients who request it, screening (periodic comprehensive child health assessments); that is, regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth. (See paragraph (c)(3) of this section for requirements relative to provision of immunization at the time of screening.) As a minimum, these screenings must include, but are not limited to:

(i) Comprehensive health and developmental history.

(ii) Comprehensive unclothed physical examination.

(iii) Appropriate vision testing.

(iv) Appropriate hearing testing.

(v) Appropriate laboratory tests.

(vi) Dental screening services furnished by direct referral to a dentist for children beginning at 3 years of age. An agency may request from HCFA an exception from this age requirement (within an outer limit of age 5) for a two year period and may request additional two year exceptions. If an agency requests an exception, it must demonstrate to HCFA's satisfaction that there is a shortage of dentists that prevents the agency from meeting the age 3 requirement.

(2) Screening services in paragraph (b)(1) of this section must be provided in accordance with reasonable standards of medical and dental practice determined by the agency after consultation with recognized medical and dental organizations involved in child health care.

(c) *Diagnosis and treatment.* In addition to any diagnostic and treatment services included in the plan, the agency must provide to eligible EPSDT recipients, the following services, the need for which is indicated by screening, even if the services are not included in the plan—

(1) Diagnosis of and treatment for defects in vision and hearing, including eyeglasses and hearing aids;

(2) Dental care, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health; and

(3) Appropriate immunizations. (If it is determined at the time of screening that immunization is needed and appropriate to provide at the time of screening, then immunization treatment must be provided at that time.)

(d) *Accountability.* The agency must maintain as required by §§ 431.17 and 431.18—

(1) Records and program manuals;

(2) A description of its screening package under paragraph (b) of this section; and

(3) Copies of rules and policies describing the methods used to assure that the informing requirement of paragraph (a)(1) of this section is met.

(e) *Timeliness.* With the exception of the informing requirements specified in paragraph (a) of this section, the agency must set standards for the timely provision of EPSDT services which meet reasonable standards of medical and dental practice, as determined by the agency after consultation with recognized medical and dental organizations involved in child health care, and must employ processes to ensure timely initiation of treatment, if required, generally within an outer limit of 6 months after the request for screening services.

§ 441.57 Discretionary services.

Under the EPSDT program, the agency may provide for any other medical or remedial care specified in Part 440 of this subchapter, even if the agency does not otherwise provide for these services to other recipients or provides for them in a lesser amount, duration, or scope.

§ 441.58 Periodicity schedule.

The agency must implement a periodicity schedule for screening services that—

(a) Meets reasonable standards of medical and dental practice determined by the agency after consultation with

recognized medical and dental organizations involved in child health care;

(b) Specifies screening services applicable at each stage of the recipient's life, beginning with a neonatal examination, up to the age at which an individual is no longer eligible for EPSDT services; and

(c) At the agency's option, provides for needed screening services as determined by the agency, in addition to the otherwise applicable screening services specified under paragraph (b) of this section.

§ 441.59 Treatment of requests for EPSDT screening services.

(a) The agency must provide the screening services described in § 441.56(b) upon the request of an eligible recipient.

(b) To avoid duplicate screening services, the agency need not provide requested screening services to an EPSDT eligible if written verification exists that the most recent age-appropriate screening services, due under the agency's periodicity schedule, have already been provided to the eligible.

§ 441.60 Continuing care.

(a) *Continuing care provider.* For purposes of this subpart, a continuing care provider means a provider who has an agreement with the Medicaid agency to provide reports as required under paragraph (b) of this section and to provide at least the following services to eligible EPSDT recipients formally enrolled with the provider:

(1) With the exception of dental services required under § 441.56, screening, diagnosis, treatment, and referral for follow-up services as required under this subpart.

(2) Maintenance of the recipient's consolidated health history, including information received from other providers.

(3) Physicians' services as needed by the recipient for acute, episodic or chronic illnesses or conditions.

(4) At the provider's option, provision of dental services required under § 441.56 or direct referral to a dentist to provide dental services required under § 441.56(b)(1)(vi). The provider must specify in the agreement whether dental services or referral for dental services are provided. If the provider does not choose to provide either service, then the provider must refer recipients to the agency to obtain those dental services required under § 441.56.

(5) At the provider's option, provision of all or part of the transportation and scheduling assistance as required under § 441.62. The provider must specify in the agreement the transportation and scheduling assistance to be furnished. If the provider does not choose to provide some or all of the assistance, then the provider must refer recipients to the agency to obtain the transportation and scheduling assistance required under § 441.62.

(b) *Reports.* A continuing care provider must provide to the agency any reports that the agency may reasonably require.

(c) *State monitoring.* If the State plan provides for agreements with continuing care providers, the agency must employ methods described in the State plan to assure the providers' compliance with their agreements.

(d) *Effect of agreement with continuing care providers.* Subject to the requirements of paragraphs (a), (b), and (c) of this section, HCFA will deem the agency to meet the requirements of this subpart with respect to all EPSDT eligible recipients formally enrolled with the continuing care provider. To be formally enrolled, a recipient or recipient's family agrees to use one continuing care provider to be a regular source of the described set of services for a stated period of time. Both the recipient and the provider must sign statements that reflect their obligations under the continuing care arrangement.

(e) If the agreement in paragraph (a) of this section does not provide for all or part of the transportation and scheduling assistance required under § 441.62, or for dental service under § 441.56, the agency must provide for those services to the extent they are not provided for in the agreement.

§ 441.61 Utilization of providers and coordination with related programs.

(a) The agency must provide referral assistance for treatment not covered by the plan, but found to be needed as a result of conditions disclosed during screening and diagnosis. This referral assistance must include giving the family or recipient the names, addresses, and telephone numbers of providers who have expressed a willingness to furnish uncovered services at little or no expense to the family.

(b) The agency must make available a variety of individual and group providers qualified and willing to provide EPSDT services.

(c) The agency must make appropriate use of State health agencies, State vocational rehabilitation agencies, and Title V grantees (Maternal and Child Health/Crippled Children's Services). Further, the agency should make use of other public health, mental health, and education programs and related programs, such as Head Start, Title XX (Social Services) programs; and the Special Supplemental Food Program for Women, Infants and Children (WIC), to ensure an effective child health program.

§ 441.62 Transportation and scheduling assistance.

The agency must offer to the family or recipient, and provide if the recipient requests—

(a) Necessary assistance with transportation as required under § 431.53 of this chapter; and

(b) Necessary assistance with scheduling appointments for services.

5. The Appendix to Part 441 is redesignated as an Appendix immediately following Part 441 Subpart F. The title of the Appendix is revised to read as follows:

Appendix to Subpart F—Required Consent Form

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 15, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 29, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-28545 Filed 10-25-84; 4:37 pm]

BILLING CODE 4120-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 81-893; FCC 84-483]

Procedures for Implementing Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry)

AGENCY: Federal Communications Commission.

ACTION: Order establishing requirements (Third Report and Order).

SUMMARY: This Order establishes rules and requirements regarding the removal from regulated service of embedded customer premises equipment (CPE) owned by Independent telephone companies and tariffed at the state level. The Order is necessary because it constitutes a further step taken by the Commission in removing carrier-supplied CPE from tariff regulation, consistent with the policies established by the Commission in other proceedings. The intended effect of this Order is to:

(1) Provide a framework for states to detariff CPE owned by Independents in a manner which enables states to address the particular circumstances of Independent telephone companies in their jurisdictions; (2) provide that state commissions must certify to the Commission by September 1, 1985 that they have adopted a plan or have taken other steps to ensure detariffing of CPE owned by Independent telephone companies by December 31, 1987.

FOR FURTHER INFORMATION CONTACT:
Rose M. Crellin (202) 632–9342.

SUPPLEMENTARY INFORMATION:

Third Report and Order

In the matter of procedures for implementing the detariffing of customer premises equipment and enhanced services (Second Computer Inquiry); CC Docket No. 81–893.

Adopted: October 17, 1984.
Released: October 26, 1984.

By the Commission: Commissioner Quello absent.

I. Introduction

1. In this proceeding [1] we shall provide criteria and procedures for the removal of embedded customer premises equipment (CPE) owned by Independent telephone companies and tariffed at the state level [2] from regulated service in a manner consistent with the objectives of the *Second Computer Inquiry*.[3] The framework we adopt here provides maximum flexibility for states to detariff embedded CPE [4] in a manner which addresses the particular circumstances of Independent companies within their jurisdiction. States may develop plans which set, or may approve independents' plans which indicate: conditions and requirements related to valuation, lease rates and sales prices, price predictability, billing services, maintenance and support, the duration of the transition period, and other similar matters which states find appropriate to accomplish detariffing of CPE.

2. The Commission requires the following with respect to state detariffing: (1) By September 1, 1985, states must certify to the Commission that they have adopted a plan or have taken other steps to ensure detariffing by December 31, 1987; [5] (2) state plans must satisfy the ratepayer vs. investor balancing test established in *Democratic Central Committee* [6] as construed by the Commission in the *Order;* and (3) accounting and tax procedures specified in this Order must be followed. State plans, or those developed by Independents and approved by states, must include mechanisms which provide the opportunity for investors to achieve full capital recovery "above the line" before December 31, 1987, the detariffing deadline. Accounting procedures to be used by Independents for the sale of new CPE or CPE transferred out of regulation will be specified in a separate action in this docket.

II. Background

A. Second Computer Inquiry

3. In the *Second Computer Inquiry* we concluded that "CPE" is a severable commodity from the provision of transmission services and that regulation of CPE under Title II [of the Communications Act of 1934] is not required and is no longer warranted." *Final Decision*, 77 FCC 2d at 388. We stated in *Second Computer Inquiry* that "the terminal equipment market is subject to an increasing amount of competition as new and innovative types of CPE are currently introduced into the market place by equipment vendors." Id. at 439. We also noted that consumers have been able to derive substantial benefits from these competitive forces in the CPE marketplace. *Id.* at 441.

4. We concluded in subsequent rulings in *Second Computer Inquiry* that "continued provision of CPE by common carriers under regulation impedes the evolution of a truly competitive CPE marketplace." *Reconsideration Order*, 84 FCC 2d at 65 (citing *Final Decision*, 77 FCC 2d at 440–46). With regard to detariffing CPE, the Commission decided to deregulate new and embedded CPE separately. *Reconsideration Order*, 84 FCC 2d at 66. The Commission found, as reasonable, an approach which allowed for a bifurcated transition plan that would enable regulators to address separately equipment which is embedded in the separations process and tariffed by the states. New CPE was detariffed on January 1, 1983. Embedded CPE was to be detariffed after the completion of a separate "implementation proceeding" which "will address issues of capital recovery and asset valuation, alternative mechanisms by which transition to an unregulated CPE environment may be achieved, and the appropriate time period for removal of embedded CPE investment from

---

[1] This proceeding was initiated through the release of a Notice of Inquiry on April 13, 1982, 89 FCC 2d 694 (1982) (hereinafter *Notice of Inquiry*). On June 21, 1983, we released a Notice of Proposed Rulemaking, 94 FCC 2d 76 (hereinafter *Notice*). The Report and Order detariffing AT&T's embedded CPE was released on December 15, 1983, 95 FCC 2d 1276 (1983), *reconsideration petitions pending*, Public Notice No. 1445, 49 FR 5672 (released Feb. 6, 1984) (hereinafter *Order*). On June 29, 1984, a Second Report and Order was released which detariffed embedded customer premises equipment used in mobile telephone service, FCC 84–269 (hereinafter *Second Order*). A Second Further Notice of Proposed Rulemaking, FCC 84–238, was released on June 20, 1984. (hereinafter *Second Further Notice*). The *Second Further Notice:* (1) Suggests several options for a framework under which certain federal agencies may obtain CPE needed for national security and emergency preparedness functions; and (2) proposes and seeks comment on a structure for the detariffing of embedded CPE which is owned by Independent telephone companies and is tariffed at the federal level.

[2] For a discussion of the types of CPE covered by this proceeding, see *Order*, 95 FCC 2d at 4 n.2. This Order disposes of issues relating to the embedded CPE base owned by Independent telephone companies and tariffed by states. For purposes of this proceeding, Cincinnati Bell Telephone Company (CPT) and Southern New England Telephone Company (SNET) are included among the independent telephone companies.

[3] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384 *(Final Decision), reconsideration*, 84 FCC 2d 50 (1980) *(Reconsideration Order), further reconsideration*, 88 FCC 2d 512 (1981) *(Further Reconsideration Order), aff'd sub nom. Computer & Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982) (hereinafter *CCIA v. FCC), cert. denied sub nom. Louisiana Pub. Serv. Comm'n v. FCC*, 103 S.Ct. 2109 (1983).

[4] For purposes of this proceeding, "embedded" CPE includes "all CPE owned by a carrier, including inventory, which is tariffed or subject to the separations process as of the bifurcation date [January 1, 1983]." *Further Reconsideration Order*, 88 FCC 2d at 513. We have defined "New" CPE as "[a]ny other CPE which is acquired by a carrier or manufactured by an affiliated entity after [the bifurcation date]." *Id.* at 528.

[5] This is the date on which the interstate revenue rquirements associated with embedded CPE will be reduced to zero. *See Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80–286, Decision and Order, 89 FCC 2d 1 (1982), *appeal docketed sub nom. MCI Telecommunications Corp. v. FCC*, Nos. 82–1237 & 82–1456 (D.C. Cir. Mar. 4, 1982). In CC Docket No. 80–286, the Commission adopted the Popenoe Plan—phasing CPE–related costs out of separations gradually over a five-year period. This was done by freezing CPE investment, maintenance, and depreciation at 1982 levels and reducing this amount to zero in 60 equal steps. As a result, an individual company's interstate CPE—related revenue requirement, as defined by that plan, would remain unchanged by that company's schedule for removing its embedded CPE from its rate base.

[6] The principal rules regarding the treatment of any gains or losses in connection with the removal of utility assets from regulated service are expressed in *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 786 (D.C. Cir. 1973), *cert. denied sub nom. D.C. Transit Sys. v. Democratic Cent. Comm.*, 415 U.S. 935 (1974) (hereinafter, together with companion cases, referrd to as *Democratic Central Committee*). For a listing of companion cases, see *Order*, 95 FCC 2d at 41 n. 48.

separations and a carrier's rate base." *Reconsideration Order*, 84 FCC 2d at 69.

5. In the *Second Computer Inquiry* decisions, we indicated that states might independently remove embedded CPE from tariffed service. We stated further that "[w]e continue to believe that the sale of embedded CPE, under state auspices, to subscribers now using such equipment, is an appropriate means of reducing the amount of CPE subject to tariffing and will be helpful in easing the transition." *Notice of Inquiry*, 89 FCC 2d at 696.

B. Notice of Inquiry

6. In the *Notice of Inquiry*, we proposed four possible options which might be used individually or in tandem for detariffing embedded CPE:

(1) The sale of CPE to the subscriber using it;

(2) The transfer of CPE to the carrier's untariffed service or, in the case of AT&T, its sale to a separate subsidiary;

(3) The sale of CPE to a third party;

(4) Allowing the equipment to remain in tariffed service until it is fully retired.

Id. The *Notice of Inquiry* also addressed the issue of procedures for valuation of CPE to be sold or transferred to untariffed service, and discussed accounting issues such as the need to develop accounting procedures for allocating costs between the tariffed activities and activities related to the detariffed embedded CPE. *Notice of Inquiry*, 89 FCC 2d at 697–702.

C. Notice of Proposed Rulemaking

7. The *Notice* provided specific proposals for CPE owned by the American Telephone and Telegraph Company (AT&T), but did not propose an embedded CPE detariffing plan for Independents. In the *Notice* we affirmed our tentative view "that the most effective detariffing plan would combine the sale of embedded CPE in place with the transfer of embedded CPE to the carrier's unregulated service . . . ." *Notice*, 94 FCC 2d at 85. In selecting this option for AT&T, however, we recognized that the plan developed for Independent companies "should be sufficiently flexible to accommodate their special circumstances." *Id.* It was our tentative conclusion that Independent companies need not be subject to the same timeframe as AT&T,[7] but that all embedded CPE provided by the Independents should be detariffed not later than December 31, 1987, the date on which the interstate revenue requirement associated with that plant will be reduced to zero.

8. In affirming our view that continued state sales programs combined with a sale option as part of a transfer plan is the preferred approach, we indicated several advantages. First, it increases the choice for consumers. Second, it meets the requirements of *Democratic Central Committee*. Third, it advances our deregulatory goals of promoting a more competitive marketplace. We did, however, indicate that plans developed for Independents would need to be flexible. Thus, the preferred approach described in the *Notice* may not be the preferred approach in some cases. *Notice*, 94 FCC 2d at 86.

9. We tentatively concluded that investors must receive their net investment when CPE is removed from regulated service. Any gains or losses from the sale or transfer would accrue to the ratepayer, since the risk of loss has been borne by the ratepayer. We also tentatively concluded that for AT&T, in valuing the embedded CPE base, net book value would be used as a substitute for economic value. It was our further tentative view that if embedded CPE is offered for sale to in-place customers at net book plus reasonable transactions costs, this would meet the requirement of *Democratic Central Committee*.

10. Two proposals were presented in the *Notice* for detariffing of Independents' embedded CPE. One option would provide states with the flexibility to deregulate CPE on a schedule which responds to the particular circumstances of the Independents within their jurisdiction, as long as CPE was deregulated by December 31, 1987. It was tentatively concluded that this was the preferable option. The second, and less preferred option, would be for the Commission to establish a detailed plan for detariffing. It was our view that such an action would not be necessary, since states have the means to establish plans consistent with the *Second Computer Inquiry* objectives. We also proposed, however, that if states do not have plans in effect by July 1, 1985, to ensure detariffing by December 31, 1987, "this Commission would exercise its preemptive powers and issue guidelines under which all embedded CPE not covered by a state detariffing plan is deregulated." *Id.* at 110.

11. With respect to accounting issues, we indicated that we were establishing procedures for Independent companies similar to those proposed for record carriers in a separate proceeding. *Id.* at 106. A separate subsidiary for unregulated activities was not required by *Second Computer Inquiry* for Independent telephone carriers. If a company does not have a separate subsidiary, however, it must use separate books of account for its unregulated activities.

12. We concluded in the *Notice* with a statement that with respect to Independents our main concerns were that detariffing be completed by December 31, 1987, and that "the independents, working with state commissions, have sufficient latitude to establish detariffing plans which enable them to recover their investment in embedded CPE with minimum consumer dislocation." *Id.* at 113.

D. First Report and Order

13. In the *Order*, we provided criteria and procedures for the removal from tariff of embedded customer premises equipment owned by AT&T. In that proceeding we indicated that we had to detariff embedded CPE owned by AT&T quickly because of divestiture, but since that did not apply to Independents, decisions on detariffing of Independent-owned CPE would be taken in a future rulemaking. *Order*, 95 FCC 2d at 1377. The *Order* discussed detariffing requirements for valuation, a sale and lease program for residence, single-line and multi-line CPE, billing and support, maintenance, deferred tax reserves and unamortized tax credits, land and building valuation and transfer, accounting rules, and intrasystem wiring. We concluded that a sale plan for embedded CPE together with transfer to unregulated service is the best means to achieve a competitive CPE marketplace. Further, we concluded that this plan meets the requirements of *Democratic Central Committee* since it balances the interests of ratepayers and investors. The *Order* indicated that intrasystem wiring owned by Independent companies will not be detariffed and removed from regulated service.

E. Second Report and Order

14. In the *Second Order*, which deals with embedded CPE used in mobile telephone service, we gave states the flexibility to fashion detariffing mechanisms for Independent companies within very general parameters set by the Commission, except that we would require detariffing to occur as of January

[7] In *United States v. AT&T*, the Modification of Final Judgment required that the divested BOCs transfer all their embedded CPE to AT&T not later than February 24, 1984. *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States.*, 103 S. Ct. 1240 (1983). Divestiture actually took place January 1, 1984, and wireline embedded CPE transferred by the BOCs to AT&T was detariffed on that date.

1, 1985. After that date, Independent companies will not be subject to any price predictability or sale requirements with regard to their embedded mobile CPE. In that proceeding, we allowed states the flexibility to establish valuation standards for removal of the CPE from regulated service, as long as they are consistent with the requirements of *Democratic Central Committee.*

III. Procedures for Detariffing

A. Regulatory Role of the States

1. Comments

15. Most of the respondents to this proceeding provide comments on state detariffing of embedded CPE owned by Independents.[8] The *Notice* indicated that our preferred option for detariffing of embedded CPE owned by Independents is an approach which enables state responsibility and flexibility in establishing state plans. Many of the Independents and states support this approach.[9] NARUC, for example.

> [A]pplauds the FCC's acknowledgement in its NPR of the traditional role played by state utility commissions in the regulation of customer premises equipment. . . and its tentative determination to allow the states the flexibility to tailor detariffing plans relative to the independent telephone companies so as to minimize any potential negative effects to customers.

NARUC Reply Comments at 1. North Dakota, although supporting the general concept, argues that states should not have to develop statewide plans by July 1, 1985, but rather should be able to certify to the Commission that Independents in their jurisdiction would detariff by December 31, 1987. North Dakota indicates that statewide plans may not be appropriate for each company. North Dakota Direct Comments at 8–9. California agreeing with USITA, argues that "state commissions must be permitted sufficient latitude and flexibility to deal with the unique circumstances of the independent carriers. To promulgate inflexible nationwide regulations without considering local circumstances would create customer dislocations and put an unnecessary burden on the state commissions." California Reply Comments at 9–10. Idaho also argues for flexibility:

> We urge the Commission that any sales plan that it might adopt keep intact the sales plans already implemented by state commissions. There may be various concerns of a local nature to be addressed by each individual state commission and the IPUC believes that each should be free to consider its unique circumstances in designing a sales program for its telephone customers.

Idaho Direct Comments at 2. Wisconsin and Washington both indicate they currently lack the legal authority to implement some of the options identified in the *Notice* for detariffing.[10]

16. Several Independent telephone companies support state detariffing with substantial flexibility for the state.[11] USITA, their trade association, commends the Commission "for its recognition in the *Notice*, that the Independents must be treated differently than AT&T and its subsidiaries." USITA Direct Comments at 2. USITA argues that, unlike AT&T, the individual Independent telephone companies do not provide nationwide service. USITA further indicates that since most of the Independents serve only one state and are subject to regulatory practices of only one state, "it would be inappropriate for the FCC to impose a single nationwide detariffing plan for the 1459 different Independent telephone companies." *Id.* at 3. Rather, USITA indicates, the Commission must allow flexibility. "This flexibility must extend to the timing and options for sale, transfer or retirement of embedded CPE, to the valuation of the Independent's embedded CPE, and to the accounting procedures used by individual companies." *Id.*

17. Some Independents, however, have concerns about the proposal. RTC suggests that we should make it clear that it is not necessary that states establish statewide rules which will apply uniformly to all Independent telephone companies located within the state, where carriers voluntarily adopt plans which conform with state and federal requirements. RTC Direct Comments at 2–3; *See* ATU Reply Comments at 2. A major concern expressed by Independents is that states should be required to ensure full capital recovery for embedded CPE.[12] USITA and GTE argue that states should not have the authority to impose detariffing plans. Rather, they argue that Independents should participate voluntarily in the process and have a veto over state plan requirements as applied to their companies.[13] GTE proposed a "deregulatory framework" for the Commission to adopt which would provide guidelines within which states and independents could work together on a voluntary basis. GTE Reply Comments at 4. CBT proposes that the Commission retain jurisdiction rather than allow the states to detariff. CBT states that since it operates in a multi-state jurisdiction, it is possible that it would be required to operate under several different rules which would produce confusion and increased costs. CBT also argues, however, that it should be allowed to detariff in a manner that responds to its specific environment. CBT Direct Comments at 2.

18. Rochester suggests that the Commission should permit an option for all Independent telephone companies serving highly competitive urban markets to detariff embedded CPE according to a policy and schedule similar to that established for AT&T,

---

[8] The following parties filed comments regarding detariffing CPE owned by Independents: Municipality of Anchorage d/b/a Anchorage Telephone Utility (ATU), Arthur Andersen & Co. (Andersen), California Public Utilities Commission (California), Central Telephone Company (Centel); Cincinnati Bell Telephone Company (CBT), Colorado Public Utilities Commission (Colorado), Continental Telcom Inc. (Contel), Federal Executive Agencies (FEA), GTE Telephone Companies (GTE), Idaho Public Utilities Commission (Idaho), Illinois Commerce Commission (Illinois), Independent Data Communications Manufacturers Association Inc. (IDCMA), Kansas Corporation Commission (Kansas), Kentucky Public Service Commission (Kentucky), State of Maine and Maine Public Utilities Commission (Maine), State of Michigan Public Service Commission (Michigan), New Jersey Department of the Public Advocate (New Jersey), New York State Department of Public Service (New York), North American Telephone Association (NATA) (since renamed the North American Telecommunications Association); North Dakota Public Service Commission (North Dakota), Public Utility Commission of Oregon (Oregon), Rochester Telephone Company (Rochester), Rural Telephone Coalition (RTC), Southern New England Telephone Company (SNET), Tennessee Public Service Commission (Tennessee), United States Independent Telephone Association (USITA) (since renamed the United States Telephone Association), United Telephone System, Inc. (UTS), Virginia State Corporation Commission (Virginia), Washington Utilities and Transportation Commission (Washington), and Public Service Commission of Wisconsin (Wisconsin). Reply comments filed regarding detariffing Independents' CPE were received from: ATU, California, Public Service Commission of the District of Columbia (District of Columbia), Contel, FEA, GTE, IDCMA, Michigan, Minnesota Public Utility Commission (Minnesota), National Association of Regulatory Utility Commissions (NARUC), NATA, Rochester, and SNET. Supplementary comments were filed by GTE in a letter dated August 6, 1984 and SNET. Summaries of these comments as well as those on detariffing AT&T's embedded CPE are included in the docket in this proceeding.

[9] *See* California Direct Comments at 33; SNET Direct Comments at 3–4; USITA Direct Comments at 3; UTS Direct Comments at 18; Centel Direct Comments at 3; Contel Direct Comments at 1–2; GTE Direct Comments at 8; Kansas Direct Comments at 4; Michigan Direct Comments at 7; Virginia Direct Comments at 9; Wisconsin Direct Comments at 8; RTC Direct Comments at 2; ATU Reply Comments a 2–3; California Reply Comments at 9–10; Michigan Reply Comments at 4.

[10] Wisconsin Direct Comments at 3; Washington Direct Comments at 1.

[11] *See* para. 15 n. 9, *supra.*

[12] USITA Direct Comments at 6; GTE Direct Comments at 4.

[13] *See* GTE Direct Comments at 15; GTE Reply Comments at 8; USITA Direct Comments at 4–5.

although Rochester would request some modifications to that AT&T plan. Rochester argues that unless it can detariff in a similar time frame as AT&T, it would be placed at a competitive disadvantage. Rochester also indicates that the Commission cannot give the state commissions the responsibility for achieving national objectives. Rochester foresees administrative appeals regarding inconsistencies between state and national policy. Rochester Direct Comments at 3–10.

19. USITA, on the other hand, argues that a national set of guidelines would be too restrictive and would not allow for the flexibility needed because of the variations in state embedded CPE tariffing procedures. USITA Direct Comments at 3. USITA indicates that it "would oppose preemption of the states in these areas, since uniform valuation and accounting would interfere with established ratemaking principles and historical practices in the various states." *Id.*

20. FEA opposes state establishment of sales prices for embedded CPE. FEA argues that "[i]n a period of numerous changes and uncertainty, their proposals merely increase the magnitude of the problem faced by a nationwide user of telecommunications services. It also introduces additional delays and thus prolongs the uncertainty of what alternatives are available." FEA Reply Comments at 7. Thus, FEA urges the Commission to set a uniform nationwide sales price.

2. Discussion

21. Embedded CPE owned by AT&T was detariffed on January 1, 1984, coincident with divestiture of the Bell System. The detariffing process was centralized rather than delegated to the states because of the extensive holdings of embedded CPE owned by AT&T, the potential national impact on the marketplace and customers, and short time frame for detariffing brought about by divestiture. We had recognized in *Second Computer Inquiry*, that this Commission must be directly involved in the detariffing of AT&T's embedded base. We noted that "[w]e could not authorize such a large transfer to the separate subsidiary without first examining the timing, extent and terms of the transfer and its effect on competition in the equipment marketplace." *Further Reconsideration Order*, 88 FCC 2d at 524. If the Commission had not allowed AT&T to detariff embedded CPE on January 1, 1984, AT&T would have had to establish separate regulated entities to handle the embedded CPE. These separate regulated entities would have been required in each state and states would have had to review and act on the tariffs, thereby placing potentially enormous additional costs on consumers. *Order*, 95 FCC 2d at 1305. Furthermore, we concluded "if each state were to have a role in establishing sale prices for equipment transferred to ATTIS, their attempts to do so would introduce further uncertainty and delay." *Id.* at 1309.

22. Many of the conditions facing the Commission in developing rules and procedures for detariffing embedded CPE owned by AT&T are not applicable in developing a detariffing framework for Independents: (1) Independents are not required to establish a separate subsidiary for detariffed embedded CPE; (2) the time pressure produced by divestiture does not exist; and (3) although collectively Independents have a national impact, they serve smaller markets, many in only one state, and thus national guidelines may not be necessary or beneficial. There is substantial support expressed by the commenters for Option 1, state detariffing, and very little support expressed for development of specific national guidelines established by the Commission, Option 2. *Notice*, 94 FCC 2d at 109–10. State detariffing enables state commissions to take into account the diverse circumstances of carriers within their jurisdiction, including size, structure, and operations. States can deal with the effect of detariffing on diverse Independent telephone companies and take action to provide a workable transition process. Thus, we reaffirm our tentative conclusion that "states should have the flexibility to deregulate embedded CPE of the independents within the time frame we are proposing." *Notice*, 94 FCC 2d at 109. We also conclude that in the specific circumstance of detariffing embedded CPE tariffed at the state level, it is in the public interest that states be given a substantial role in developing procedures for detariffing, acknowledging states' traditional role in the regulation of CPE.[14] This conclusion is consistent with a recent decision of the Commission in the *Second Order* which provided procedures for detariffing embedded mobile CPE. States were given the role of establishing valuation requirements for the removal of embedded mobile CPE assets from regulated service. In the *Second Order*, at para. 33, we indicated that:

> [T]he transition to a fully deregulated mobile CPE market can be made more workable through cooperation between the Commission and the states, and it is a primary goal of this Order to foster that cooperation by enabling the states to assume primary responsibility for the establishment of asset valuation requirements and rules.

23. Some of the commenters argue that the states should not have to develop state plans but should be given the flexibility to approve CPE detariffing plans developed by Independent companies. It is our conclusion that this approach would be consistent with the objective of state flexibility as long as the plans developed by the Independents and approved by the states meet the requirements for state CPE detariffing set forth in this Order.

24. Regarding Independents operating in more than one jurisdiction, it is clear that these Independents already deal with a variety of tariff processes. Contel indicates that it already has experience working with several states and that it is "prepared to work with individual state commissions to develop acceptable programs." Contel Direct Comments at 2. The existence of companies which operate in more than one jurisdiction does not present sufficient reason to require a national plan to detariff embedded CPE. These companies, like Contel, have traditionally been subject to tariff regulation in many different states, and deregulation of embedded CPE falls within typical state tariff procedures.

25. It is suggested by some Independents that states should not be given the authority to require state plans, but rather that plans should be developed voluntarily by Independents, in concert with the state. While we hope and expect these undertakings to be cooperative, we will not limit the states' flexibility to accept a carrier's plan, to prescribe a plan, or to negotiate a plan with the carrier. In the final analysis, the state, not the carrier, must balance the interests of carriers and ratepayers. As argued by Michigan:

> USITA fails to recognize that telephone utilities are monopolies within their market area. It is not their job to strike a balance between protection of the investor and the ratepayer. Rather, state public utility

[14] Our finding in this Order, that states may implement federal policy with respect to detariffing of embedded CPE owned by Independents and tariffed at the state level, does not prejudice or conflict with our decision in other areas where implementation at the national level is required. *See Order*, 95 FCC 2d at 1305; *Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies*, Memorandum Opinion and Order, 92 FCC 2d 864, 876 (1982), *aff'd sub nom. Virginia v. FCC*, Civ. No. 83–1136 (June 18, 1984), *petitions for rehearing denied* (October 3, 1984).

commissions were formed for this purpose and it is their responsibility to insure that the rights of both the investor and the ratepayer are protected. If the concurrence of carriers is required, it could slow the process of determining a scheme by the State Commission or even prevent the State entirely from having a scheme in place by June of 1985.

Michigan Reply Comments at 3. The level of coordination between the states and Independents within their jurisdiction in developing, approving, and implementing plans may vary due to diverse circumstances within each state. The flexibility afforded by state detariffing will provide a mechanism for Independents to argue their special circumstances before their state commission, which should be aware of special needs and requirements of the Independents and state laws.

26. Rochester proposes that larger Independents should be allowed to detariff through a modified AT&T plan filed with this Commission rather than through the state, at the discretion of the Independent. This would create uncertainty about who has the authority for approval of detariffing, since large Independents could request approval from either the state or this Commission, or from both authorities. It would also enable large Independents to circumvent the detariffing requirements set by the states. One of the objectives of allowing states to perform detariffing is to accommodate the special circumstances of Independents within their jurisdiction. The structure we are adopting in this Order does not preclude the rapid detariffing favored by Rochester, since states which have Independents who request immediate detariffing may choose to detariff using a modified AT&T plan.

27. With regard to FEA's opposition to state-by-state sale of embedded CPE, we find that in order to provide states with the flexibility to deal with circumstances of customers and Independents in their jurisdiction some large users may be inconvenienced in having to deal with several state commissions. However, that is not sufficient reason to preclude this opportunity for state flexibility. In the case of embedded CPE provided by Independents for national security and emergency preparedness (NSEP) functions, we have proposed several alternatives in the *Second Further Notice*. Our action in this Order does not affect embedded CPE used for NSEP communications systems.

B. State Plan Requirements

28. In the *Order*, we set out detailed requirements for detariffing embedded CPE owned by AT&T, including requirements for valuation, sale and lease programs for residence, single-line, and multi-line CPE, billing and support maintenance, deferred tax reserves and unamortized tax credits, land and building valuation and transfer, accounting rules, and intrasystem wiring. Although the AT&T plan may provide a model for states in any one or all of these areas, we have concluded that states should have flexibility on how most of these issues are handled for Independents within their jurisidiction.[15]

29. In the *Notice of Inquiry*, we proposed four options for deregulating embedded CPE [16] which might be used separately or in tandem. The list presented was not meant to be exhaustive. After careful review we concluded that a sale option to in-place customers coupled with a transfer plan to unregulated service of unsold embedded CPE had several advantages, since it: (1) Increases the options for consumers; (2) meets the requirement of *Democratic Central Committee* for balancing the interests of ratepayers and investors; (3) meets the deregulatory goals of *Second Computer Inquiry* by promoting competition in the CPE marketplace and removing rate regulation; and (4) provides for expeditious transfer of embedded CPE out of the rate base, which limits the potential risks brought about by competitors to ratepayers of having to recoup carriers' investment in CPE removed from service before it is fully depreciated. *Notice*, 94 FCC 2d at 86. Although this option was selected for AT&T, it is our intention to provide flexibility for states to select an option which meets the requirements of Independents and consumers within their jurisdiction.

30. States must comply with the following requirements, however, in developing and implementing detariffing of embedded CPE:

(1) Implementation timetable.
(2) Valuation guidelines.
(3) State certification.
(4) Accounting and tax requirements.
(5) Other detariffing rules.

1. Implementation Timetable

31. (a) *Comments.* Most of the commenters agree that December 31, 1987, is an acceptable date before which all embedded CPE owned by Independent telephone companies must be detariffed.[17] Rochester argues that detariffing should be done as soon as possible because of anticipated competition by unregulated sources, and the possibility that Rochester would be at a competitive disadvantage if its embedded CPE remained under regulation. Rochester Direct Comments at 3. Several telephone companies stress the need to ensure full capital recovery during the transition period.[18] If the transition period is too short, some commenters indicate the telephone companies may experience "extreme depreciation disparity." ATU Direct Comments at 10. Several telephone companies argue that they should be given the flexibility to detariff at a time which responds to competitive situations and at the most appropriate time for their operating conditions.[19] There is general support for the July 1985 progress report date. Many Independents support the proposal in the *Notice* that if states do not have plans developed or steps taken toward detariffing by July 1985 the Commission should take preemptive action and establish federal guidelines.[20]

32. (b) *Discussion.* On February 24, 1982, we adopted a plan recommended by a Joint Board convened in CC Docket 80–286 for phasing CPE out of the jurisdictional separations process. The phase-out will occur over a five-year period commencing with the effective date of the *Second Computer Inquiry* decision, January 1, 1984. *See* para. 2 n. 5, *supra*.

33. Accordingly, we make final our proposal to complete detariffing by December 31, 1987, when interstate revenue requirements for embedded CPE are reduced to zero. In those states which have had sale plans for a long period of time, so that customers have had an opportunity to purchase their equipment and where Independents are facing significant competition, it may be advantageous to detariff as soon as possible. States where there have not been sales programs or where those programs have not led to significant sales may find it more advantageous to

[15] The *Order* did indicate that intrasystem wiring owned by Independents was to remain under regulated service. *Order*, 95 FCC 2d at 1371.

[16] *See* para. 6, *supra*.

[17] *See* Kansas Direct Comments at 4; RTC Direct Comments at 2; SNET Direct Comments at 3; USITA Direct Comments at 4; Michigan Direct Comments at 7; RTC Direct Comments at 2. California Direct Comments at 33.

[18] *See* Central Direct Comments at 3; ATU Direct Comments at 10–11; Contel Direct Comments at 3; GTE Direct Comments at 15; SNET Reply Comments at 3.

[19] CBT Direct Comments at 2; ATU Direct Comments at 10; Rochester Direct Comments at 10.

[20] *See* GTE Direct Comments at 21; GTE Reply Comments at 11; UTS Direct Comments at 18; USITA Direct Comments at 6. *See also* NARUC Reply Comments at 3.

wait until December 31, 1987, to detariff.[21] The December 31, 1987, deadline balances several objectives: (1) Detariff as quickly as possible to promote a competitive CPE marketplace through the elimination of tariff regulation; (2) provide states with sufficient time to establish plans for detariffing which meet the specific circumstances of the Independents in their jurisdictions; (3) provide customers with an opportunity to analyze the options available to them with respect to CPE; and (4) provide a period for Independents to obtain capital recovery on embedded CPE.

34. In order to ensure that full capital recovery is possible, where a state requests an extension for a specific Independent telephone company, the Commission will consider extending the deadline for detariffing on a case-by-case basis until not later than December 31, 1990. This responds to the comments by some of the Independents regarding their concern that there should be sufficient time to attain full capital recovery.

2. Asset Valuation and Capital Recovery

35. (a) *Comments.* Commenters vary considerably in their preference for a valuation mechanism. ATU supports the use of net book value, the valuation mechanism utilized in AT&T detariffing,[22] while others argue that it would depress sales and leave investors with stranded investment.[23] Others support the use of fair market value.[24] Several commenters, argue for flexibility.[25] For instance, USITA indicates that "individual Independent companies, in cooperation with their state commissions, should be permitted to adopt a valuation method based upon (1) the detariffing method chosen by the carrier, (2) the state commissions' historical rulemaking practices, and (3) the conditions that exist for detariffed CPE within the particular market." USITA Direct Comments at 7.

36. A major concern expressed by Independents, and linked with determining the valuation mechanism, is the need for full capital recovery.[26] Contel indicates that capital recovery is the overriding issue in detariffing. "The program must allow telephone carriers to recover all capital prudently invested in CPE under regulation and assure them an opportunity to earn a reasonable rate of return on their investment in regulated telephone plant and equipment during the transition period required to complete detariffing." [27] Contel argues that Independents would be unable to absorb the losses without a diminution of capital if there is a failure to provide for full capital recovery. Contel Reply Comments at 5. USITA argues that *Democratic Central Committee* requires that investors receive full capital recovery. USITA Direct Comments at 6.

37. (b) *Discussion.* In order to sell or transfer embedded CPE, it is necessary to develop procedures for valuation. In the *Order* economic value was determined to be the proper valuation standard. *Order,* 95 FCC 2d at 1306. In the *Notice of Inquiry* economic value was defined as the price a carrier would be willing to pay for its COPE if, instead of owning it, the carrier had the opportunity to purchase it. *Notice of Inquiry,* 89 FCC 2d at 697. Four alternative methods for measuring or developing a surrogate for economic value were presented:

(1) Imitating the process a firm would pursue in its capital budgeting process to estimate the economic value.

(2) Using net book value as a proxy for economic value.

(3) Relying on asset appraisal by independent appraisers.

(4) Conducting auctions.

Id. at 698–99.

38. For AT&T, we found that net book value provided the best proxy for economic value since it "has the advantage of extreme simplicity, and it may be the most prudent approach in some cases given the practical difficulties of implementing other alternatives." *Id.* at 698, *cited in Order,* 95 FCC 2d at 1310. We further concluded, regarding AT&T detariffing, that a sale plan for embedded CPE coupled with a plan for transferring the remaining CPE to unregulated service was consistent with the equitable principles of *Democratic Central Committee,* since it properly accommodates the interests of both ratepayers and investors.

39. Whatever valuation method is selected for detariffing Independents' embedded CPE, it must comply with the principles of *Democratic Central Committee, i.e.,* "gains or losses on transfer or sale of assets must go to the entity, carriers, investors or ratepayers, which bore the risk of loss of capital value over the regulated life of the asset." *Democratic Central Committee,* 485 F.2d at 806.[28] In the *Second Order,* at para. 38, we concluded with respect to *Democratic Central Committee* that:

> [T]he case does not require the use of any particular valuation method but instead stands for the proposition that those who bore the risk of capital loss during the period in which assets are in regulated service are entitled to gains (and must bear the losses) upon the removal of those assets from regulated service.

40. Because of the variety of state laws, market conditions, and operating procedures of the Independent companies across the nation, we conclude that we should allow states to set a measurement for valuation for

[21] GTE Supplementary Comments at 1. In the *Second Order* embedded mobile equipment was detariffed on January 1, 1985, because mobile equipment has been for sale to customers for an extended period of time, because there is very little embedded mobile equipment in place, and because of the high level of competition in the mobile equipment marketplace. In the *Second Order* we stated that "[o]ur conclusion here is without prejudice to any action we might take with respect to embedded wireline CPE owned by the Independents." *Second Order* at para. 32.

[22] ATU Direct Comments at 2.

[23] GTE Direct Comments at 22; SNET Supplemental Comments at 3; UTS Direct Comments at 7; SNET Reply Comments at 4; Rochester Direct Comments at 6–7. RTC Direct Comments at 3.

[24] SNET Direct Comments at 7–8; UTS Direct Comments at 7; GTE Direct Comments at 22; UTS Direct Comments at 8.

[25] Contel Direct Comments at 5; CBT Direct Comments at 4; UTS Direct Comments at 7–8; USITA Direct Comments at 7.

[26] GTE Reply Comments at 1. *See also* Contel Direct Comments at 4; USITA Direct Comments at 6; ATU Reply Comments at 3; Contel Direct Comments at 3; SNET Reply Comments at 3. UTS Direct Comments at 1.

[27] Contel Reply Comments at 1. *See also* UTS Direct Comments at 1, 5–6; GET Direct Comments at 4; Contel Direct Comments at 3; USITA Direct Comments at 2, 6; GTE Reply Comments at 1.

[28] In the *Democratic Central Committee* decision the court concluded that the right to gains follows the risk of loss. If ratepayers have borne the risk of capital loss on assets in regulated service, then ratepayers are entitled to any gains in the value of the assets upon their removal from regulated service. *Democratic Central Committee,* 485 F. 2d at 807, *cited in Order,* 95 FCC 2d at 1309. The court also concluded that economic benefits must follow economic burdens. An economic burden is borne by ratepayers, reasoned the court, as a result of the fact that "utility investors are entitled to recoup from customers the full amount of their investment in depreciable assets devoted to public service." *Id* at 806.

This equity and balancing rule is further enunicated in *Democratic Central Committee*:

> The investor's interest lies in the integrity of his investment and a fair opportunity for a reasonable return thereon. The consumer's interest lies in governmental protection against unreasonable charges for the monopolistic service to which he subscribes. In terms of property value appreciations, the balance is best struck at the point at which the interests of both groups receive maximum accommodation.

Democratic Central Committee, 485 F.2d at 806, *cited in Order,* 95 FCC 2d at 1316. We have concluded that:

> The rule announced in that case [*Democratic Central Committee*] is that neither the investors nor the ratepayers have a vested right to the gains from the sale of appreciated utility property. Rather, our task in this matter is properly to balance the investor and ratepayer interests so as to apportion gains and losses in the most equitable manner.

American Telephone and Telegraph Co. Charges for Interstate Telephone Service, Docket No. 19129, Phase II, Final Decision, 64 FCC 2d 1, 66 (1977) *cited in Order, 95 FCC 2d at 1314.*

embedded CPE owned by Independents. For us to determine the appropriate measure for economic value for each state, given the variations in regulatory history and market conditions, would be difficult and might not provide an equitable balance for investors and ratepayers. Thus, we conclude that state commissions should establish the valuation standard for embedded CPE owned by Independents, consistent with the principles of *Democratic Central Committee*. In setting valuation, states should, to the extent appropriate to the circumstances in their state, use economic value as a valuation standard since it offers a mechanism for balancing the interests of *Democratic Central Committee*. In developing valuation standards for sale or transfer of embedded CPE, state commissions will have the flexibility to use adjusted net book appraisals, or any other valuation standard. As we indicated in the *Second Order*, "our goal is to maximize the flexibility of the states in dealing with the valuation issues." *Id.* at para 41. The valuation standard selected by each state must meet the requirements of *Democratic Central Committee* and follow this Commission's prescribed accounting which was reiterated in the *Order*.

3. State Certification

41. We originally proposed to require states to provide certifications [29] to the Commission by July 1, 1985. We will extend the date for three months to September 1, 1985 to allow sufficient time for all states to act. The certification must provide information on: (1) Detariffing procedures developed by the state; (2) how the state will ensure that embedded CPE owned by Independents will be deregulated by December 31, 1987; (3) how the valuation mechanisms established will meet the requirements of *Democratic Central Committee*; and (4) accounting and tax procedures established as required by this Order. No specific format has been established for the certification; however, state plan certifications must discuss the timetable for detariffing. They must also discuss the method of valuation, lease, sale, and transfer of the embedded CPE.

42. Independents operating in those states which do not submit certifications by September 1, 1985, must follow the requirements of the AT&T Plan, as specified in the *Order*, for detariffing embedded CPE, effective January 1, 1986.

4. Accounting and Tax Requirements

43. Independent telephone carriers were not required to create a separate subsidiary to provide CPE and enhanced services by our *Second Computer Inquiry* decision. In order to provide CPE, however, they must maintain separate books of account. In the *Notice*, we indicated that even though we had not yet established specific accounting requirements, an Independent company could provide CPE and enhanced services, but these activities must be accounted for in non-ratemaking accounts. For CPE sold under regulation, existing accounting procedures reiterated for AT&T in the *Order* must be used by Independent telephone companies. *Order*, 95 FCC 2d at 136.8.[30]

44. For new CPE or CPE transferred out of regulation we are considering, in a separate proceeding in this docket, the establishment of accounting procedures for Independents similar to those established for record carriers in CC Docket No. 82-678.[31] We requested comments with respect to the application of these accounting procedures to Independent companies in the *Notice*. These accounting procedures will be established in a subsequent action in this docket.

45. In the *Order* transferring embedded CPE to AT&T Information Systems we required the transfer of both the deferred tax reserves and unamortized investment tax credits with the associated embedded CPE. *Id.* at 1359-65 & Appendix A. We concluded that "such a transfer would be consistent with the intent of Congress in providing for the tax benefits of accelerated depreciation and investment credits for regulated utilities and with underlying accounting standards." *Id.* at 1360. Several of the commenters [32] support similar action with respect to the transfer of embedded CPE owned by Independent. Because of the national perspective of these tax policies,[33] we conclude that the same procedures are required for unamortized investment tax credits and deferred tax reserves associated with embedded CPE owned by Independents. We recognize, in making this decision, that adjustments may be needed for those Independent telephone companies which have used "flow-through" accounting. States may provide an adjustment in the tax treatment for these companies in state ratemaking proceedings or other means deemed appropriate by the states. For example, the state may provide an imputed normalized value, to be borne by ratepayers, for the tranferred embedded CPE, to account for deferred taxes that have not been accumulated to pay future tax liabilities.[34]

5. Other Detariffing Rules

46. The *Order*, in deregulating embedded CPE owned by AT&T discussed requirements for valuation, a sale and lease program for residence, single-line, and multi-line CPE, billing and support, maintenance, deferred tax reserves and unamortized tax credits, land and building valuation, and transfer.

47. Comments were received from Independents and states on many of these issues. In order to maintain flexibility, we are not deciding all these issues, but rather, providing the states with the opportunity to determine the most appropriate actions consistent with the laws of each state and the circumstances of the Independents within their jurisdiction.[35] However, we reiterate that these decisions must be made within the timetable required by this Order and consistent with the requirements of *Democratic Central Committee* and our prescribed accounting.

---

[29] States which have already detariffed embedded CPE owned by Independents in their jurisdiction prior to the effective date of this Order, must file state certifications which indicate compliance with the requirements of this Order.

[30] This does not preclude states from requiring supplemental records to satisfy state ratemaking purposes.

[31] *Amendment of Part 34 and Part 35*, CC Docket No. 82-678, Report and Order FCC 83-398, 48 FR 45708 (released Sept. 21, 1983). *See also* note 30.

[32] SNET Reply Comments at 6; Rochester Direct Comments at 10-12; Andersen Direct Comments at 1-4; GTE Direct Comments at 35-38; USITA Direct Comments at 11-12; Central Direct Comments at 7-9.

[33] It has been noted that "[m]any . . . tax expenditures were expressly adopted to induce action which the Congress considered in the national interest. For example, the investment credit was intended to encourage the purchase of machinery and equipment . . . ." Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 Harv. L. Rev. 705, 711 (1970). Surrey defines tax expenditures as "those special provisions of the federal income tax system which represent government expenditures made through that system to achieve various social and economic objectives." *Id.* at 706.

[34] See Rochester Direct Comments at 11; GTE Reply Comments at 17-18. For a discussion of normalized and "flow-through" tax issues *see Order*, 95 FCC 2d Appendix A at 1395-1401.

[35] With regard to CPE needed by the disabled, states may decide whether or not to detariff the specialized terminal equipment needed by persons whose hearing, speech, vision or mobility is impaired, consistent with: Telecommunications for the Disabled Act of 1982, Pub. L. No. 97-410, 47 U.S.C. 610 (1982); *Access to Telecommunications Equipment by the Hearing Impaired and other Disabled Persons*, CC Docket No. 83-427, Memorandum Opinion and Order, 95 FCC 2d 1421 (released November 25, 1983), Report and order, FCC No. 83-565, (released December 23, 1983).

C. Commission Monitoring of State Deregulation of Embedded CPE

1. Comments

48. As indicated earlier, there has been significant support for state detariffing of embedded CPE owned by Independents. Several of the commenters, however, indicate an interest in having the Commission maintain a monitoring role. The major concerns for Commission monitoring are to ensure state compliance with a timetable which would enable detariffing by December 31, 1987, and to enforce the requirements of *Democratic Central Committee* for full capital recovery. *See, e.g.,* USITA Direct Comments at 5, 13. GTE argues that the Commission should establish a monitoring plan to ensure state compliance because some states may not be cooperative and recommends that a procedure be developed for Independents to meet with the Commission to discuss progress by the states. GTE Direct Comments at 5, 17. Rochester argues that the Commission should retain jurisdiction to preempt state plans that may be inconsistent with Commission policy, and provide a forum for appeals by Independents regarding state implementation. Rochester Direct Comments at 7. Contel argues that the Commission may need to evaluate from time to time state implementation of detariffing plans, but suggests that such procedures could be developed later. Contel Direct Comments at 4. UTS urges the Commission to review sales plans already developed by states as well as maintaining preemptive powers over future state plans. UTS Direct Comments at 18; *see* USITA Direct Comments at 13–14. CBT and Rochester argue that the Commission should reserve authority to make sure that national competitive CPE policies are achieved. CBT Direct Comments at 2; Rochester Direct Comments at 7. Illinois requests that should the Commission have to take preemptive action in the case of a state which has not taken action, the preemptive action be used to increase the state's power to detariff when needed. Illinois Direct Comments at 7.

2. Discussion

49. It is our conclusion that it is in the public interest that states be allowed the maximum flexibility in detariffing embedded CPE owned by Independent telephone companies. As we have concluded previously, "we are anxious for the state commissions to take an active part in establishing detariffing mechanisms which are tailored to the particular circumstances of the various state jurisdictions." *Second Order,* at para. 30. As we have also concluded previously, "reasonable means are available to state regulators to effectuate the detariffing of CPE consistent with our *Second Computer Inquiry." Notice,* 94 FCC 2d at 110. In order to maximize state flexibility in tailoring detariffing plans, we will maintain a minimum level of monitoring, limited essentially to assuring that states develop state plans or take similar steps by September 1, 1985, for detariffing by December 31, 1987, and that the detariffing actions are consistent with *Democratic Central Committee* and follow accounting procedures developed by the Commission.

50. Our objective in monitoring state progress in detariffing is to ensure that states carry out our objectives of the *Second Computer Inquiry* decisions in a timely manner and in a manner which will balance the concerns of ratepayers and investors. It is also our objective, however, to give states considerable flexibility in developing detariffing plans. Thus, we have not set a comprehensive set of guidelines similar to those set for AT&T. Nor do we plan to diminish the role of the states by continuously monitoring their progress or questioning their actions. It will be the states' responsibility to implement the plans and evaluate progress. Problems identified during the detariffing process should be resolved between the state and the Independents. We do not foresee our involvement in this process. We do not, however, foreclose the possibility of federal preemptive action,[36] if states do not proceed to detariff within the required timeframe, or if states do not comply with the principles of *Democratic Central Committee.*

51. State certification, due September 1, 1985, will be deemed approved, if the Commission does not notify states otherwise within 90 days after receipt by the Commission. Subsequent to the September 1, 1985, deadline, if we determine that any of the states has failed to establish a statewide plan or take other action necessary to achieve detariffing by December 31, 1987, consistent with *Democratic Central Committee,* we intend to require Independents within those states to follow the AT&T plan for detariffing embedded CPE, effective January 1, 1986. We will also expect those states to monitor the detariffing of embedded CPE owned by Independents within their jurisdiction according to the requirements of the AT&T plan and this Order.

52. We encourage states and Independents to work closely in developing detariffing plans. The detariffing framework presented in this Order provides an opportunity for state commissions to balance the needs of Independents and their customers.

IV. Regulatory Flexibility Certification

53. We invited interested parties in the *Notice* to comment upon our initial regulatory flexibility analysis. *Notice,* 94 FCC 2d at 113–14. Our analysis stated our legal authority for taking action in this proceeding, concluded that our proposed rules would not duplicate, overlap, or conflict with any existing federal rules, and stated the tentative view that this proceeding does not apply to small businesses, as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612 *Id.* None of the parties filing comments regarding the *Notice* addressed any of these issues.

54. We hereby certify that the Regulatory Flexibility Act is not applicable to the action we are taking in this proceeding. This Order affects the offering of CPE by Independents. As we indicated in the *Notice,* although some of the Independents are small, we found in a prior proceeding that they are outside the narrow definition in that Act. *See MTS and WATS Market Structure,* CC Docket No. 78–72, Phase I, 93 FCC 2d 241, 338 (1982) *aff'd in part, National Association of Regulatory Utility Commissioners v. FCC,* No. 83–1225 (D.C. Cir. June 12, 1984) (Local exchange carriers are excluded from the definition of "small entity" because they are dominant monopolies in their fields of operation). We find no reason to alter the tentative view we expressed in the *Notice* that none of these companies is a small business for purposes of the

[36] In the *Order* we conclude that: [R]emoving the embedded CPE base from rate regulation in no way diminishes our responsibilities under the Act to provide for an efficient national telecommunications network. In fashioning a detariffing and transfer plan, and transitional procedures to prevent dislocations, we have been cognizant of the broad array of interests which must be balanced, and we are exercising our authority in this proceeding in an equitable manner which achieves the maximum accommodation of these interests. *Order,* 95 FCC 2d at 1318.

Regulatory Flexibility Act. As we have recently noted in another proceeding, the Act "was apparently designed for the protection of small businesses that are directly subject to administrative rules rather than businesses that are indirectly affected by the results that any rules will produce." Although small businesses may be indirectly affected by the results of our actions in this Order no small businesses are directly subject to our action. By providing a flexible framework for detariffing the embedded CPE owned by Independent companies, this Order enables an easier transition which may provide more specific relief for the circumstances facing particular Independents. The Order provides the framework for the removal of tariffs and the enhancement of a more competitive environment.

V. Ordering Clauses

55. Accordingly, it is ordered that, pursuant to Sections 4(i), 4(j), 201–205, 213, 218, 220, and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 213, 218, 220, and 403, the policies, rules, and requirements set forth in this Report and Order are adopted.

56. It is further ordered, that the supplemental comments filed by the Southern New England Telephone Company are accepted, as requested.

57. It is further ordered, that the Secretary of the Commission shall cause a copy of this Report and Order to be provided to each state regulatory commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-28716 Filed 10-30-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 21227-260]

Foreign Fishing; Technical Amendment

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

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule implementing technical amendments clarifying the boundary between the United States and Canada in the Gulf of Maine. On October 12, 1984, a Chamber of the International Court of Justice (ICJ) in the Hague, the Netherlands, announced its decision in area boundary dispute between the United States and Canada. The intended effect of this rule is to present the new boundary in the Gulf of Maine separating the United States and Canada.

EFFECTIVE DATE: 2400 hours (midnight) October 26, 1984.

ADDRESS: Copies of the amendments to the Preliminary Management Plans (PMPs) are available from Donald J. Leedy, Plan Review Division, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: David S. Crestin, 617–281–3600.

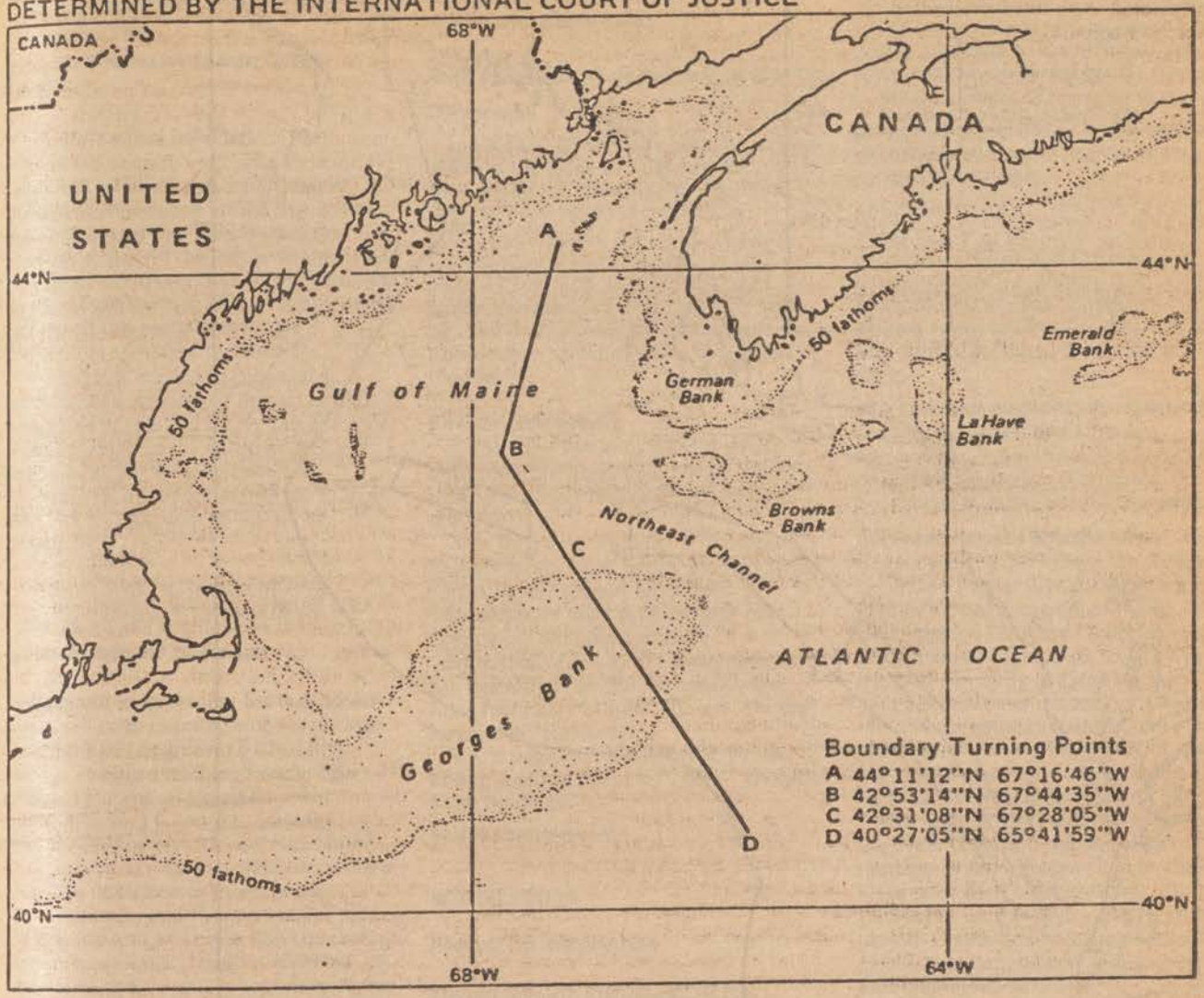
SUPPLEMENTARY INFORMATION: NOAA published a final rule on January 13, 1983 (48 FR 1505) to implement an amendment to close a portion of the fishery conservation zone (FCZ) over the eastern part of Georges Bank to all foreign fishing. Fishery jurisdiction over this area was in dispute between the United States and Canada. By closing this area to third party vessels, incidents that may have complicated adjudication of the dispute before the ICJ would be avoided.

On October 12, 1984, a Chamber of the ICJ in the Hague, the Netherlands, announced its decision in the Gulf of Maine area boundary dispute between the United States and Canada. The case was brought before the Court pursuant to a boundary settlement treaty between the United States and Canada. Under the Statute of Court, and in accordance with the Treaty, the Parties are bound to accept the boundary line established by the Court.

The Court found that neither side's boundary position was justified. It established a line that crosses Georges Bank essentially mid-way between the claims of the United States and Canada. The two governments agreed to a 14-day grace period to allow the fishermen of both countries to return to their respective sides of the new boundary. During the grace period, the same enforcement regime that has applied during the pendency of the dispute will be in effect. At midnight, October 26, 1984, both sides will begin enforcing the new boundary.

The boundary turning points for the United States-Canada maritime boundary determined by the ICJ begins at the shoreward intersection of the present U.S.-Canada FCZ at point A (44°11'12" N. latitude, 67°16'46" W. longitude), proceeding SSW to point B (42°53'14" N. latitude, 67°44'35" W. longitude), proceeding from point B SSE to point C (42°31'08" N. latitude, 67°28'05" W. longitude) and intersecting the outer boundary of the FCZ at point D (40°27'05" N. latitude, 65°41'59" W. longitude).

UNITED STATES - CANADA MARITIME BOUNDARY
DETERMINED BY THE INTERNATIONAL COURT OF JUSTICE



The U.S.-Canada maritime boundary north of the boundary determined by the ICJ is still an area of overlapping claims. That area remains closed to foreign fishing to avoid incidents that may complicate negotiations. These amendments are intended only to avoid incidents while the matter is under negotiation, and do not signify that there is any basis in international law for the boundary as proposed by Canada.

The Administrator, NOAA, has approved technical amendments to the Atlantic billfishes and sharks preliminary fishery management plan (PMP) and to the Atlantic hakes PMP, to redefine areas of the fishery conservation zone in which foreign fishing is allowed. The Atlantic hakes PMP is amended by replacing Figure 10 with a revised chart of the trawling area of the Northwest Atlantic Ocean. The PMP for the Foreign Trawl Fisheries of the Northwestern Atlantic incorporates this change by reference to the Atlantic hakes PMP. The PMP for Atlantic billfishes and sharks is also amended by replacing figure 2 with a revised chart of the longlining areas, and by replacing the description of area II on page 26. Copies of the amended pages of the PMPs are available at the above address.

This rule involves a foreign affairs function and, as such, (1) is exempt from usual rulemaking procedures under section 533(a)(1) of the Administrative Procedure Act, and (2) is not subject to the requirements of E.O. 12291 or the Regulatory Flexibility Act.

This action does not change the conclusions of environmental impact statements filed on February 4, 1977.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: October 26, 1984.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 611 is amended as follows:

1. The authority citation for 50 CFR Part 611 is as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

§ 611.9 [Amended]

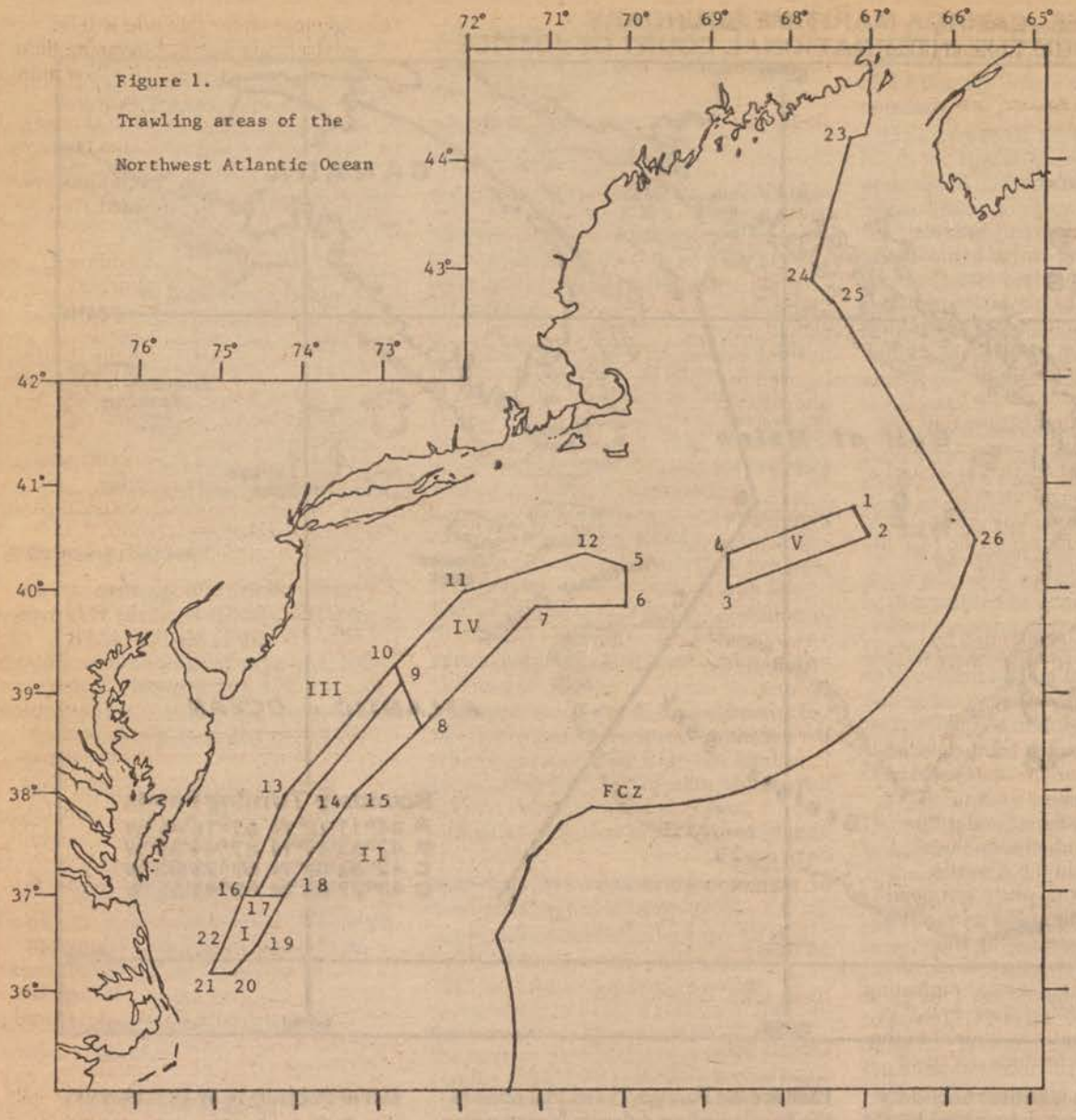
2. Revise § 611.9, Appendix II, Figure 1 to read as follows:

BILLING CODE 3510-22-M

Figure 1.

Trawling areas of the

Northwest Atlantic Ocean



1.	40°47'N, 67°11'W	13.	38°00'N, 74°10'W
2.	40°30'N, 67°00'W	14.	38°00'N, 73°53'W
3.	40°01'N, 68°45'W	15.	38°00'N, 73°20'W
4.	40°20'N, 68°45'W	16.	37°00'N, 74°40'W
5.	40°13'N, 70°00'W	17.	37°00'N, 74°30'W
6.	39°50'N, 70°00'W	18.	37°00'N, 74°10'W
7.	39°50'N, 71°05'W	19.	35°30'N, 74°30'W
8.	38°40'N, 72°30'W	20.	35°13'N, 74°50'W
9.	39°07'N, 72°44'W	21.	35°13'N, 75°06'W
10.	39°16'N, 72°50'W	22.	35°30'N, 74°55'W
11.	39°56'N, 72°00'W	23.	44°11'12"N, 67°16'46"W
12.	40°20'N, 70°30'W	24.	42°53'14"N, 67°44'35"W
		25.	42°31'08"N, 67°28'05"W
		26.	40°27'05"N, 65°41'59"W

BILLING CODE 3510-22-C

3. Section 611.50 is amended by revising paragraphs (b)(2)(i) and (ii) to read as follows:

§ 611.50 Northwest Atlantic Ocean Fishery.

* * * * *

(b) *Authorized fishery.* * * *

* * * * *

(2) *Activities allowed.* (i) Vessels subject to this action which fish with trawl gear may fish only during the seasons and with the methods specified in Table I of this section. Vessels subject to this section which fish with any other gear need not comply with the limitations specified in Table I.

(ii) Fishing, including processing, scouting and support of foreign or U.S. vessels is prohibited north and east of a line beginning at the shore at 44°22′ N. latitude, 67°52′ W. longitude and intersecting the boundary of the FCZ at 44°11′12″ N. latitude, 67°16′46″ W. longitude.

* * * * *

4. Section 611.60 is amended by revising paragraph (d) as follows:

§ 611.60 General provisions.

* * * * *

(d) *Open area.* Except for the closed areas set forth in paragraph (e) of this section, § 611.61(b) and § 611.62(b), foreign fishing authorized under this subpart may be conducted in that portion of the FCZ in the Atlantic Ocean, Gulf of Mexico and Caribbean Sea beyond 12 nautical miles from the baseline used to measure the U.S. territorial sea, and that portion of the FCZ south and west of a line connecting the shore at 44°22′ N. latitude, 67°52′ W. longitude and the outer boundary of the FCZ at 44°11′12″ N. latitude, 67°16′46″ W. longitude.

* * * * *

5. Section 611.61 is amended by revising the coordinates in the paragraph (b)(2) table as follows:

§ 611.61 Atlantic billfishes and sharks fishery.

* * * * *

(b) * * *

(2) * * *

Coordinate	Latitude	Longitude
	Shore at	
1	44°22′00″ N	67°52′00″ W.
2	44°11′12″ N	67°16′46″ W.
3	42°53′14″ N	67°44′35″ W.
4	42°31′08″ N	67°28′05″ W.
5	40°55′00″ N	66°09′00″ W.
6	40°25′00″ N	66°57′00″ W.
7	40°00′00″ N	67°39′30″ W.
8	39°32′00″ N	70°52′30″ W.
9	37°54′00″ N	73°05′00″ W.
10	34°50′00″ N	73°34′00″ W.
11	34°50′00″ N	shore.

[FR Doc. 84-28712 Filed 10-26-84; 4:19 pm]

BILLING CODE 3510-22

50 CFR Part 641

[Docket No. 40800-4100]

Reef Fish Fishery of the Gulf of Mexico

Correction

In FR Doc. 84-26494 beginning on page 39548 in the issue of Tuesday, October 9, 1984, make the following corrections:

1. On page 39549, third column, second paragraph, the last six lines of the paragraph were inaccurate and should have read as follows: "have become available recently which may be used in exploring other management alternatives to achieve the objectives of the FMP."

§ 641.2 [Corrected]

2. On page 39554, in § 641.2, in the definition for "Reef fish", third column, thirteenth line, "Nassua" should have read "Nassau".

3. In the same column, in the same definition, six lines below paragraph (b), "Amerjacks" should have read "Amberjacks" and in the eighth line, "*capriscu*" should have read "*capriscus*". Also in the same column, in the definition for "Roller trawl", six lines from the bottom, "spaces" should have read "spacers".

4. On page 39558, in "Table 1", line 7, under "Latitude (North)", "24 °" should have read "25 °".

BILLING CODE 1505-01-M

50 CFR Part 661

[Docket No. 40899-4135]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Final rule.

SUMMARY: This document announces final regulations implementing the framework amendment to the fishery management plan (FMP) for the commercial and recreational salmon fisheries off the coast of Washington, Oregon, and California. The framework amendment is a multi-year management plan that describes the processes by which the ocean salmon fishery will be managed, including when, how, and within what limits regulatory changes will be made and the estimated ranges of the resulting impacts. The framework amendment provides the mechanism for making preseason and inseason adjustments in the regulations without annual amendments to the FMP. Management under this rule will be administratively less cumbersome than under current rules and will allow more timely response to the needs of the ocean salmon fisheries and to changes in the conditions of the salmon resource.

EFFECTIVE DATE: These regulations are effective 0001 Pacific Standard Time, November 25, 1984.

ADDRESS: Copies of the amendment, combined with the environmental impact statement and the regulatory impact review/regulatory flexibility analysis, are available from the Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201, 502-221-6352.

FOR FURTHER INFORMATION CONTACT: Dr. T.E. Kruse (Acting Director, Northwest Region, NMFS) 206-526-6150; or Mr. E.C. Fullerton (Director, Southwest Region, NMFS) 213-548-2575.

SUPPLEMENTARY INFORMATION: Regulations to implement the FMP were published on April 14, 1978 (43 FR 15629), as emergency regulations. From 1979 through 1983, the Pacific Fishery Management Council (Council) amended the FMP annually to establish each year's regulations according to salmon abundance estimates and social and economic factors affecting the fisheries. The 1984 regulations were implemented on May 3 by emergency action (49 FR 18853, May 3, 1984) without amending the FMP. Proposed regulations to implement the framework amendment were published on August 14, 1984 (49 FR 32414), with a 45-day public comment period. Comments received during the public comment period are summarized and responded to below:

Comment 1: Several commentors commented that specific changes should be made in the regulations to improve their conformity with existing State and tribal regulations.

Response: The following sections of the regulations were changed to be consistent with existing State and tribal regulations:

Section 661.2(c), Relation to other laws, was changed to refer to "persons licensed" under the laws of a State as well as "vessels registered" under the laws of a State.

Section 661.4, Reporting requirements, was expanded to include Idaho in the list of states which provide catch and effort data.

Section 661.5(b)(1), General restrictions, was revised to make clear that the prohibition on recreational fishing from a vessel engaged in commercial fishing is not intended to prohibit the use of fishing gear

otherwise permitted under the definitions of troll and recreational fishing gear which are established annually under § 661.20, so long as that gear is legal in the fishery for which it is being used.

Section 661.5(b)(3)(iv), General restrictions, was expanded to add a prohibition on use of gear not authorized under § 661.20(a)(4) for treaty Indian fishing.

Comment 2: The definition of treaty Indian fishing should include fishing for steelhead.

Response: In § 661.3, the definition of treaty Indian fishing has been changed to include fishing for steelhead.

Comment 3: California State regulations prohibit bartering for recreationally-caught salmon, and this prohibition should be added to the regulations.

Response: The general restrictions at § 661.5(b) (15) were changed to include the prohibition of bartering for any salmon taken in the course of recreational salmon fishing.

Comment 4: The definitions of troll and recreational gear are not consistent with California regulations and should be changed.

Response: Under the framework amendment, the Council is to define troll and recreational fishing gear each year during preseason modification of management measures. The definitions have been revised to refer to this annual process.

Comment 5: In many areas throughout the regulations the use of the term "commercial and recreational fishing" should be broadened to include "treaty Indian fishing" as well.

Response: The appendix to the regulations was changed to include the treaty Indian fishery as appropriate.

Comment 6: The regulations should state that the management area will change in cases of Secretarial preemption of State management authority.

Response: In § 661.3, the definition of the fishery management area was revised to state that the inner boundaries of the area are subject to change if the Secretary of Commerce (Secretary) takes responsibility for the regulation of the salmon fishery within State waters under section 306(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Comment 7: The reference in the regulations at § 661.20 to minimum lengths for dressed, head-off salmon caught in the recreational fishery is inappropriate as recreationally-caught salmon cannot be landed this way under current regulations.

Response: The section on annual actions at § 661.20(a)(2) was changed to correct this error by eliminating the reference to minimum lengths for dressed, head-off salmon for recreationally-caught salmon.

Comment 8: A prohibition on undersized dressed, head-off salmon caught in the commercial troll fishery should be included in the general restrictions section.

Response: The general restrictions at § 661.5(b)(1) were changed to clarify that it is unlawful to take and retain or possess aboard a fishing vessel any species of salmon which is less than any applicable minimum total length, including an applicable minimum length for dressed, head-off salmon.

Comment 9: The regulations should clarify the validity of any action taken in the event of a deviation from the procedural schedule set forth in the Appendix.

Response: A statement that a deviation from the procedural schedule will not affect the validity of any action taken was added to § 661.20(b).

Comment 10: The regulations should provide inseason authority to correct computational errors made in preseason calculations of abundance and to reflect those corrections as adjustments in quotas and seasons.

Response: The Council at its September 1984 meeting clarified its original intent that such errors may be corrected and reflected as adjustments in appropriate seasons and quotas if the changes can be made in time to affect the involved fishery without impeding the achievement of plan objectives. Clarifying language therefore has been added to § 661.21 and Appendix III.B.

Comment 11: The regulations should allow reopening of a season if a quota closure occurred based on an inaccurate projection of actual catch and if time remains in the original season for the quota to be attained.

Response: The Council at its September 1984 meeting clarified its original intent that an automatic season closure based on a quota may be rescinded if it is determined that the closure was based on an inaccurate projection of actual catch and if time remains in the season during which the quota might be caught. Clarifying language therefore has been added to § 661.21 and Appendix III.A.

Comment 12: The regulations should clarify the Council's intent that inseason adjustments to seasons and quotas will be made only when scientifically valid procedures have been developed on which inseason action can be based and when such adjustments would not significantly increase the risk of not meeting the Council's management objectives.

Response: Clarifying language has been added in the Appendix, section II.

Comment 13: The proposed regulations include a provision to revise coho abundance estimates during the season based on certain criteria. A provision to revise chinook abundance estimates also should be included in case a scientifically valid method of determining chinook abundance inseason becomes available.

Response: The Council has clarified its intent that this provision should apply to both coho and chinook. Clarifying language has been added in the Appendix, section III.C.3.

Comment 14: The term "research vessel," used in § 661.9, should be defined.

Response: It is not possible to draft an all-purpose definition of "research vessel." Scientific research projects are considered on a case-by-case basis in consultation with the appropriate NMFS research center.

Comment 15: Recent ocean harvest management policies and strategies must be modified if salmon stocks which support important Indian fisheries are to be protected and restored for future utilization.

Response: The Council continues its efforts to manage ocean fisheries so that salmon stocks supporting Indian fisheries are protected and restored for future utilization. Some important factors, such as the lack of a U.S.-Canada interception agreement and the degradation of freshwater spawning and rearing habitat, are beyond the jurisdiction of the Council. Improvement in these areas would further support and protect these stocks. In developing the framework amendment, the Council considered these issues and decided that the ocean harvest management policies and strategies should continue to balance the needs of all resource harvesters, including treaty Indians, with the need to protect and restore the coastwide salmon stocks.

Comment 16: The framework amendment in providing for managing Klamath River fall chinook infers that any increase in Indian harvest on the river will be at the expense of spawning escapement.

Response: This issue was discussed several times during Council meetings when Klamath River chinook escapement goals were under

consideration. Spokesmen for the Klamath River Indian tribes and the California Department of Fish and Game indicated there currently is no agreed-upon basis for determining the magnitude of the Indian entitlement to a subsistence harvest in the river. Therefore, unless a plan is developed and agreed to by the parties, the Council can express Klamath River escapement only in terms of returns of salmon to the river mouth. Only the ultimate goal of 115,000 chinook is expressed in terms of spawning escapement based upon an assumption that an agreed-upon plan for in-river harvest will be in place before 1998. When such an in-river harvest plan is implemented, the rebuilding schedule can be changed so that the Council's goals are expressed in terms of spawning escapement.

Comment 17: Considering the economic inefficiencies associated with the mixed stock ocean fisheries, the millions of pounds of commercial salmon production lost annually through "shaker" (illegal salmon caught which must be returned to the water) mortality and the harvest of immature fish in the ocean, the depressed status of formerly abundant natural stocks, and the unmet needs and lowered expectations of the Indian fishery, the time appears right for the framework amendment to gradually replace designated mixed-stock ocean fisheries with more efficient and biologically-sound, terminally-oriented fisheries.

Response: The Council has a responsibility under the Magnuson Act to ensure that its conservation and management measures are fair and equitable to all fishermen and are carried out in such a manner that no group of fishermen acquires an excessive share of the resource. The comment asks for the elimination or reduction of the harvest share for ocean commercial trollers and recreational fishermen contrary to the terms of the Act. In addition, the Act mandates that the Council consider the socioeconomic impact of its decisions. The adverse socioeconomic impact of eliminating ocean fisheries, both on the fishing industry and on coastal communities, would be tremendous.

Comment 18: If the escapement goal for natural spawning stocks of Oregon coastal coho of 140,000 adults, with an optimum escapement of 200,000 adults to be achieved by 1987, is approved in the framework amendment, it will destroy the public coho salmon fishery in the State of Oregon. The escapement goals are unrealistically high since all of Oregon's coastal streams are saturated with aquaculture strays and there are no genetically wild coho. For instance, a recent report from the Oregon Department of Fish and Wildlife (ODFW) indicates that "acquaculture strays provided up to 90% of the spawning population in the Yaquina River in 1983, a year of poor wild coho runs."

Response: The Council was aware of and took into consideration the straying that sometimes occurs from aquaculture operations when the spawning escapement goals were established for coho salmon in Oregon coastal streams. The straying into the Yaquina River system is significant in some years, but is less significant in other coastal streams. The Yaquina River system is a relatively small system that does not contribute greatly to Oregon coastal coho production. The straying from the single aquaculture operation at Newport may be significant in the Yaquina in some years but is of no consequence on a coastwide basis. The escapement goals contained in the amendment were considered by both ODFW and the Council to be reasonably attainable and appropriate. Both the Director of the NMFS Northwest Region (Regional Director) and the Administrator of NOAA agree.

Comment 19: The barbless hook requirement for sport fisheries should be listed more clearly under the Recreational Fishing section of the framework amendment.

Response: The current requirement for coastwide use of barbless hooks is subject to change during preseason modification of regulations each year. The definition of legal recreational gear will be published annually in the **Federal Register** under § 661.22.

Comment 20: Section 661.4 of the regulations, Reporting Requirements, states that the fishery management plan relies upon records required and collected by the various States. A suggestion is made that completion and submission of reports required of fishermen and receivers of fish by the various States also be a Federal requirement.

Response: It is not possible to address this concern in the final regulations implementing the framework amendment, since it was not part of the amendment. Furthermore, such an action would be subject to the requirements of the Paperwork Reduction Act. However, this may be an issue that the Council will consider in future amendments to the FMP.

Comment 21: The following language should be included in the framework amendment and appendix to the regulations in connection with the sections on ocean seasons and quotas for the treaty Indian fishery:

> The actual seasons and quotas established for treaty troll fisheries and resulting allocation of the treaty Indian share between ocean and inside fisheries shall be consistent with the treaty rights of each of the relevant treaty tribes.

Response: The statement amounts to a proposal that the Council allocate among treaty Indian tribes who fish in the ocean and in coastal rivers. The Council considered this issue during its deliberations on the contents of the framework amendment. There currently is no agreement among the treaty tribes concerning procedures for allocating among themselves, nor is there any court direction on this issue. Therefore, the Council decided not to allocate among treaty Indian tribes, unless the tribes reach agreement. Efforts will be made annually during the preseason process to reach agreement among the tribes on an equitable allocation.

Comment 22: The appendix at Section II.B.10. provides that the Secretary may establish or modify annually for treaty Indian fishing, seasons and fixed or adjustable quotas, size limits, gear restrictions, and/or area restrictions. Section 661.20(a)(4) of the proposed regulations on treaty Indian fishing omits the reference to fixed or adjustable quotas. Section 661.20(a) also fails to make clear that the use of any particular kind of management specification listed for the commercial, recreational and treaty Indian fisheries in any given season is not mandatory.

Response: A reference to fixed or adjustable quotas has been added to § 661.20(a)(4). Section 611.20(a) has been revised to make clear that the Secretary's annual use of all of the particular types of management measures listed is not mandatory.

Members of the public also commented on several typographical errors which appeared in the **Federal Register** printing of the proposed regulations. These errors have been noted and the text is expected to be printed correctly in the final regulations.

Classification

The Regional Director determined that these regulations are necessary for the conservation and management of the ocean commercial and recreational salmon fisheries and that the regulations are consistent with the Magnuson Act and other applicable law. The notice of availability of the amendment was published on July 12, 1984 (49 FR 28422). More detailed summaries of the following classifications appear in the

preamble to the proposed regulations (49 FR 32414, August 14, 1984).

The Council prepared a final supplemental environmental impact statement for the framework amendment and concluded that there will be no significant adverse impact on the human environment as a result of this rule. The environmental impact statement is part of the framework amendment document and is available from the Council at the address given above. A notice of availability of the final supplemental environmental impact statement was published in the **Federal Register** on September 28, 1984 (49 FR 38355).

The Administrator of NOAA has determined that these regulations are not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The Council prepared a regulatory impact review and a regulatory flexibility analysis as part of the framework amendment, which describe the estimated ranges of impacts from implementation of the amendment and the proposed regulations and the effects this rule will have on small businesses. These impacts and effects are summarized in the preamble to the proposed regulations (49 FR 32414, August 14, 1984). Copies are available from the Council (see **ADDRESS**).

These regulations do not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California. The three States were notified of this determination and did not respond to the consistency determination within the statutory time period.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: October 26, 1984.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 661 is revised as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

Subpart A—General Measures

Sec.

661.1 Purpose.
661.2 Relation to other laws.
661.3 Definitions.
661.4 Reporting requirements.
661.5 General restrictions.
661.6 Facilitation of enforcement.
661.7 Penalties.
661.8 Experimental fishing.
661.9 Scientific research.
661.10 Indian treaty fishing.

Subpart B—Management Measures

661.20 Annual actions.
661.21 Inseason actions.
661.22 Annual and inseason notice procedures.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Measures

§ 661.1 Purpose.

The purpose of this part is to provide for the management of the salmon and steelhead fisheries off the coasts of Washington, Oregon, and California in the fishery conservation zone (the FCZ, also known as the 3-to-200-mile zone) over which the United States exercises exclusive fishery managment authority (i.e., the Pacific Fishery Management Council's Salmon Fishery Management Area) under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

§ 661.2 Relation to other laws.

(a) This part does not apply to fishing for pink and sockeye salmon conducted under the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery of the Fraser River System, as amended by the Pink Salmon Protocol, in U.S. Convention Waters between 48°N. latitude and the provisional international boundary between the United States and Canada.

(b) Any person fishing subject to this part who also engages in fishing for groundfish should consult Federal regulations at 50 CFR Part 663 for applicable requirements of that part, including the requirement that vessels engaged in commercial fishing for groundfish (except commerical passenger vessels) have vessel identification in accordance with § 663.6 of that part.

(c) This part recognizes that any State law which pertains to persons licensed or vessels registered under the laws of that State and which is consistent with this part or any applicable Federal fishery management plan or amendment for the commercial and recreational salmon fisheries off the coasts of Washington, Oregon, and California, including any State landing law, will continue to have force and effect in the fishery management area with respect to fishing activities addressed herein.

(d) Any person fishing subject to this part is bound by the international boundaries of the fishery management area described in § 661.3, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

§ 661.3 Definitions.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the Coast Guard;

(b) Any special agent of the National Marine Fisheries Service or other officer authorized by the Secretary;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Magnuson Act; and

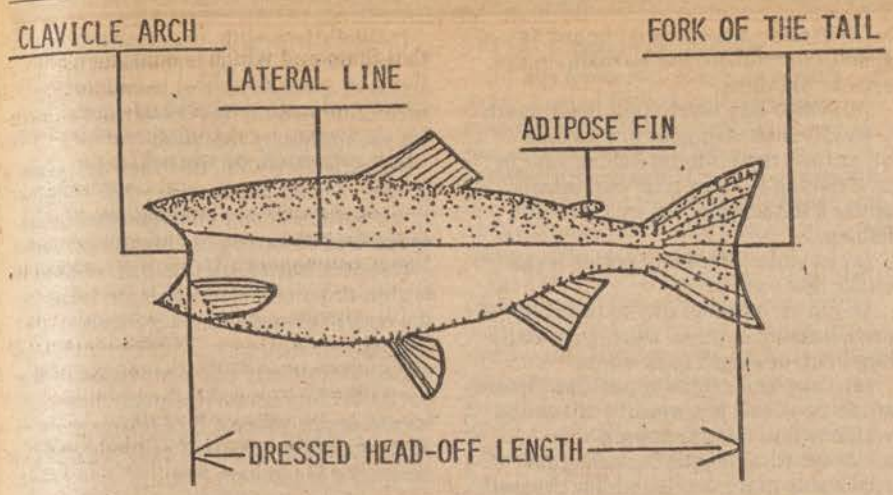
(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Barbless hook means a hook with a single shank and point, with no secondary point or barb curving or projecting in any other direction. Where *barbless hooks* are specified, hooks manufactured with barbs can be made "barbless" by forcing the point of the barb flat against the main part of the point.

Commercial fishing means fishing with troll fishing gear as defined annually under § 661.22, or fishing for the purpose of sale or barter of the catch.

Council means the Pacific Fishery Management Council, 526 SW Mill Street, Portland, OR 97201.

Dressed, head-off length of salmon means the shortest distance between the midpoint of the clavicle arch (see illustration) and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails.



Dressed, head-off salmon means salmon that have been beheaded, gilled, and gutted without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

Fishery management area means the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and California between 3 and 200 miles offshore, bounded on the north by the Provisional International Boundary between the United States and Canada and bounded on the south by the International Boundary between the United States and Mexico. The inner boundary of the FCZ is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit"). The outer boundary of the FCZ is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico. The northeastern, northern, and northwestern boundaries of the fishery management area are as follows:

(a) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, Washington, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the United States and Canada (at 48°29'37" N. latitude, 124°43'33" W. longitude), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(b) Northern and northwestern boundary is a line [1] connecting the following coordinates:

48°29'37.19" N. lat., 124°43'33.19" W. long.;
48°30'11" N. lat., 124°47'13" W. long.;
48°30'22" N. lat., 124°50'21" W. long.;
48°30'14" N. lat., 124°52'52" W. long.;
48°29'57" N. lat., 124°59'14" W. long.;
48°29'44" N. lat., 124°00'06" W. long.;
48°28'09" N. lat., 125°05'47" W. long.;
48°27'10" N. lat., 125°08'25" W. long.;
48°26'47" N. lat., 125°09'12" W. long.;
48°20'16" N. lat., 125°22'48" W. long.;
48°18'22" N. lat., 125°29'58" W. long.;
48°11'05" N. lat., 125°53'48" W. long.;
47°49'15" N. lat., 126°40'57" W. long.;
47°36'47" N. lat., 127°11'58" W. long.;
47°22'00" N. lat., 127°41'23" W. long.;
46°42'05" N. lat., 128°51'56" W. long.;
46°31'47" N. lat., 129°07'39" W. long.

(c) The southern boundary of the fishery management area is the United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35'22" N. lat., 117°27'49" W. long.;
32°37'37" N. lat., 117°49'31" W. long.;
31°07'58" N. lat., 118°36'18" W. long.;
30°32'31" N. lat., 121°51'58" W. long.

(d) The inner boundaries of the fishery management area are subject to change if the Secretary assumes responsibility for the regulation of the salmon fishery within State waters under section 306(b) of the Magnuson Act, defined below.

Fishing means—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a) through (c) of this definition.

Fishing vessel means any boat, ship, or other craft which is used for, equipped to be used for, or of a type that is normally used for fishing.

Freezer trolling vessel means a fishing vessel, equipped with troll fishing gear, which has a present capability for (a) on-board freezing of the catch, *and* (b) storage of the fish in a frozen condition until they are landed.

Land or *landing* means to begin offloading fish, to arrive in port with the intention of offloading fish, or to cause fish to be offloaded.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Plugs means artificial fishing lures made of wood or hard plastic with one or more hooks attached. Lures commonly known as "spoons", "wobblers", "dodgers", and flexible plastic lures are not considered plugs, and may not be used where "plugs only" are specified.

Recreational fishing means fishing with recreational fishing gear as defined annually under § 661.22 and not for the purpose of sale or barter.

Recreational fishing gear will be defined annually under § 661.22.

Regional Director means the Director, Northwest Region, National Marine Fisheries Service (7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115) or his designee. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, *Regional Director* means the Director, Northwest Region, National Marine Fisheries Service, acting in consultation with the Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731

Salmon means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including but not limited to—

Chinook (king) salmon—*Oncorhynchus tshawytscha*
Coho (silver) salmon—*Oncorhynchus kisutch*
Pink (humpback) salmon—*Oncorhynchus gorbuscha*
Chum (dog) salmon—*Ancorhynchus keta*
Sockeye (red) salmon—*Oncorhynchus nerka*

Secretary means the Secretary of Commerce, or a designee.

Steelhead means the anadromous form of the rainbow trout, *Salmo gairdneri*.

Total length of salmon means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

Treaty Indian fishing means fishing for salmon and steelhead in the fishery management area by a person authorized by the Makah Tribe to

[1] The line joining these coordinates is the provisional international boundary of the U.S. FCZ as shown on NOAA/NOS Charts #18480 and #18002.

exercise fishing rights under the Treaty with the Makah, or by the Quileute, Hoh, or Quinault Tribes to exercise fishing rights under the Treaty of Olympia.

Troll fishing gear will be defined annually under § 661.22.

Whole bait means a hook or hooks baited with whole natural bait with no device to attract fish other than a flasher.

§ 661.4 Reporting requirements.

(a) This part recognizes that catch and effort data necessary for implementation of any applicable fishery management plan or amendment is collected by the States and Indian tribes of Washington, Oregon, California, and Idaho under existing data collection provisions. No additional catch reports will be required of fishermen or processors as long as the data collection and reporting systems operated by State agencies and Indian tribes continue to provide the Secretary with statistical information adequate for management.

(b) As appropriate, and to the extent it exists, relevant unaggregated data collected by observers placed aboard fishing vessels or by port samplers will be utilized in making preseason and inseason management adjustments to regulations as authorized by this part.

§ 661.5 General restrictions.

(a) The fishery management area is closed to salmon fishing except as opened by this part or superseding regulations or notices. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified. Except as otherwise provided by or purusant to Federal fishing regulations or permits, the following restrictions apply to all salmon fishing in the fishery management area.

(b) It is unlawful for any person to—

(1) Engage in recreational fishing while aboard a vessel engaged in commercial fishing. This restriction is not intended to prohibit the use of fishing gear otherwise permitted under the definitions of troll and recreational fishing gear which are established annually under § 661.20 so long as that gear is legal in the fishery for which it is being used.

(2) Take and retain or land salmon caught with a net in the fishery management area, except that a hand-held net may be used to bring hooked salmon on board a vessel.

(3) Fish for, or take and retain, any species of salmon:

(i) During closed seasons or in closed areas;

(ii) While possessing on board any species not allowed to be taken in the area at the time;

(iii) Once any catch limit is attained;

(iv) By means of gear or methods other than recreational fishing gear or troll fishing gear, or gear authorized under § 661.20(a)(4) for treaty Indian fishing;

(v) In violation of any notice issued under this part; or

(vi) In violation of any applicable area, season, species, zone, gear, daily bag limit, or length restriction.

(4) Take and retain or possess aboard a fishing vessel any species of salmon which is less than the applicable minimum total length, including the applicable minimum length for dressed, head-off salmon.

(5) Possess aboard a fishing vessel a salmon, for which a minimum total length is extended, or cannot be determined, except that "dressed, head-off salmon" may be possessed aboard a "freezer trolling vessel" (unless the adipose fin of such salmon has been removed—see paragraph (b)(7) of this section).

(6) Fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this part.

(7) Remove the head of any salmon caught in the fishery management area, or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(8) Take and retain, or possess any steelhead *(Salmon gairdneri)* within the fishery management area, unless such take and retention qualifies as treaty Indian fishing as that term is defined in this Subpart A of this Part.

(9) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any species of salmon or salmon part which was taken or retained in violation of the Magnuson Act, this part, or any regulation issued under the Magnuson Act.

(10) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation issued under the Magnuson Act.

(11) Forcibly assult, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (b)(10) of this section;

(12) Resist a lawful arrest for any act prohibited by this part; or

(13) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part.

(14) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act.

(15) Sell, barter, offer to sell, offer to barter, or purchase any salmon taken in the course of recreational salmon fishing.

(16) Violate any other provision of this part, the Magnuson Act, any notice issued under subpart B of this part, or any regulation or permit promulgated under the Magnuson Act.

§ 661.6 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal

to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF–FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1] [2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY–CY" (.-. -.-- -.-. -.--) means "You should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "You should stop or heave to; I am going to board you."

(4) "L" (.-..) means "You should stop your vessel instantly."

§ 661.7 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act and implementing regulations.

[1] Period (.) means a short flash of light.

§ 661.8 Experimental fishing.

(a) The Secretary may allow such experimental fishing in the fishery management area as may be recommended by the Council, the Federal government, State government, or treaty Indian tribes having usual and accustomed fishing grounds in the fishery management area.

(b) The Secretary will not allow any experimental fishery recommended by the Council unless he determines that the purpose, design, and administration of the experimental fishery are consistent with the goals and objectives of the Council's fishery management plan, the national standards (section 301(a) of the Magnuson Act), and other applicable law.

(c) Each vessel participating in any experimental fishery recommended by the Council and allowed by the Secretary is subject to all provisions of this part, except those portions which relate to the purpose and nature of the experimental fishery. These exceptions will be specified in a letter issued by the Regional Director to each vessel participating in the experimental fishery and that letter must be carried aboard each participating vessel.

§ 661.9 Scientific research.

Nothing in this part is intended to inhibit or prevent any scientific or oceanographic research in the fishery management area by a scientific *research vessel.* The Regional Director will acknowledge any notification he might receive of any bona fide scientific or oceanographic research with respect to salmon being conducted by a scientific research vessel, by issuing to the operator or master of that vessel a letter or acknowledgment, containing information on the purpose, locations, and schedules of the activities. The Regional Director will transmit copies of this letter to the Council, and to State and Federal administrative and enforcement agencies, to ensure that all concerned parties are aware of the research activities.

§ 661.10 Treaty Indian fishing.

Except as otherwise provided in this part, treaty Indian fishing in any part of the fishery management area is subject to the provisions of this part, the Magnuson Act, and any other regulations issued under the Magnuson Act.

Subpart B—Management Measures

§ 661.20 Annual actions.

(a) The Secretary will annually establish or, as necessary, adjust management specifications for the commercial, recreational, and treaty Indian fisheries by publishing a notice in the **Federal Register** under § 661.22. Management specifications may include allowable ocean harvest levels (including quotas), allocations, management boundaries and zones, minimum size limits, gear definitions, seasons, selective fisheries, and optional inseason management provisions for each fishery and may be specified as follows:

(1) *Commercial fishing.*

(i) Area, seasons, species, zone, and gear restrictions.

(ii) Length restrictions (minimum total lengths, in inches, and minimum lengths for dressed, head-off, in inches).

(2) *Recreational fishing.*

(i) Area, season, species, zone, daily bag limits, and gear restrictions.

(ii) Length restrictions (minimum total lengths, in inches).

(3) *Quotas.* Commercial and recreational, by species (including fish caught 0–3 nautical miles seaward of Washington, Oregon, and California).

(4) *Treaty Indian fishing.*

(i) Area, season, fixed or adjustable quotas, species, zone, and gear restrictions.

(ii) Length restrictions (minimum total length, in inches).

(b) *Schedule and procedures for annual actions.* The schedule and procedures for establishing and adjusting annual management specifications are described in the Appendix to this Part (Section I.; II. A. and B.) The schedule will be followed to the extent possible. In the event that a deviation from the schedule occurs, it will not affect the validity of any action taken.

§ 661.21 Inseason actions.

(a) *Fixed inseason management provisions.* The secretary is authorized to take the following inseason management actions annually as appropriate. They are more specifically described in the appendix to this Part, section III., together with the procedures for their implementation.

(1) *Automatic season closures based on quotas.* When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.22, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the

date the quota is projected to be reached.

(2) *Rescission of automatic closure.* If a fishery is closed under a quota before the end of a scheduled season based on an overestimate of actual catch, the Secretary may reopen that fishery for all or part of the remaining original season by publication of a notice in the **Federal Register** under § 661.22 in order to allow the quota to be met, so long as the additional period is no less than 24 hours.

(3) *Adjustment for error in preseason estimate.* The Secretary may, by publication of a notice in the **Federal Register** under § 661.22, make appropriate changes in relevant seasons or quotas if a significant computational error or errors made in calculating preseason estimates of salmon abundance are identified.

(b) *Optional inseason management provisions.* The following are optional inseason management provisions. They are more specifically described in the appendix to this part, section III., together with the procedures for their development, selection, and implementation. Whether one or more of these measures will be used during a particular season will be determined annually.

(1) Modification to coho quotas and seasons based on inseason reassessment of private hatchery contributions.

(2) Modifications to commercial coho quotas and seasons based on inseason assessment of coho hooking mortality during all-species seasons.

(3) Modifications to quotas and seasons based on inseason revisions to abundance estimates.

(4) Reduction in quotas and seasons due to unanticipated salmon catches in the territorial sea.

(5) Redistribution of quotas to achieve an overall quota.

(6) Boundary modifications to promote attainment of quotas.

§ 661.22 Annual and inseason notice procedures.

(a) Annual and inseason actions taken under § 661.20 and § 661.21 will be by notice published in the **Federal Register** issued under this section.

(b) The Secretary will publish the notice in the **Federal Register** and invite public comment prior to its effective date, except as provided in paragraph (c) of this section.

(c) If the Secretary determines, for good cause, that a notice must be issued without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

(d) *Effective dates.* (1) Any notice issued under this section is effective on the date specified in the notice or on the date the notice is filed for public inspection with the Office of the Federal Register, whichever is later.

(2) Any notice issued under this section will remain in effect until the expiration date stated in the notice or until rescinded, modified, or superseded. However, no notice of an inseason action has any effect beyond the end of the calendar year in which it is issued.

(e) *Availability of data.* The Regional Director will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, Washington. For actions affecting fisheries occurring primarily or exclusively in the fishery management area seaward of California, information relevent to the action also will be made available for public review during normal office hours at the Southwest Regional Office, National Marine Fisheries, 300 South Ferry Street, Terminal Island, California.

(f) Nothing contained in the part limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act, if the Secretary determines that an emergency involving the salmon fishery exists. Such emergency regulations are effective upon filing for public inspection with the Office of the Federal Register.

APPENDIX

I. Introduction

The regulations implementing the "Proposed Framework Plan for Managing the Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1985" amend the Pacific Council's 1978 FMP to incorporate a flexible framework for setting preseason and inseason management measures without the need for a plan amendment. Under this framework amendment, certain principles and measures are fixed to provide a long-term management system, which cannot be altered without a plan amendment. Other measures are flexible and are determined before or during each season according to procedures specified in this document. The schedule for preseason modification of the regulations is shortened under this framework amendment, requiring approximately 60 days from initiation of a resource status report to implementation of regulatory changes. The framework provisions for annual adjustments, both preseason and inseason, are explained below. More detail concerning this framework mechanism and the rationale for its various components are presented in Chapter 3 of the FMP.

II. Annual Changes to Management Specifications

A. *Schedule for Establishing or Adjusting Annual Management Specifications.* The approximate schedule of events leading to the Secretary's annual management specifications is indicated below.

Approximate Date and Event

First week of March: The Council publishes a notice in the **Federal Register** announcing availability of documents, dates and locations of the two Council meetings to follow, dates and locations of public hearings, and the complete schedule for determining proposed and final management measures.

Second week of March: The Council's Salmon Plan Development Team (Team) distributes a report to the Council, its advisors, and the public recommending specific management measures for the upcoming season.

Third week of March: The Team's report is reviewed at a joint meeting of the Council's Scientific and Statistical Committee, the Team, and the Salmon Advisory Subpanel.

Third week of March: The Council meets to act on proposed management measures.

Last week of March: The Team distributes a report analyzing the impacts of the proposed annual management measures to the Council, its advisors, and the public.

First week of April: Public hearings.

Mid-April: The Council meets to adopt its final annual recommendations and submit them to the Secretary.

First week of May: A notice of Secretary's decision and final annual actions is published in the **Federal Register**.

May 15: Close of public comment period.

B. *Procedures for Establishing and Adjusting Annual Management Measures.* 1. Allowable ocean harvest levels and quotas. The following procedures describe the annual process used by the Salmon Team in estimating the allowable ocean harvest levels based on biological considerations. The Council may modify these estimates based on socioeconomic data and analysis, in accordance with Magnuson Act requirements, to calculate the final allowable ocean harvest levels.

(a) *Coho south of Leadbetter Point (Oregon Production Index Area).* A preseason estimate will be made each year of the coho stock size in the Oregon Production Index Area (OPI) using the OPI abundance predictor (jack index and an independent estimate of the private hatchery catch contribution). The number of three-year-old adult coho in the OPI area for a given year will be predicted by the number of two-year-old jack coho returning to selected facilities the prior year using the most updated relationship of jacks to adults. A separate estimate will be made of fish of private hatchery origin contributing to the ocean catch in the OPI area based on the number of smolts released, the recent average survival rate, and the expected harvest rate (based on a recent observed rate) as follows:

Number of smolts released × estimated survival rate × estimated harvest rate of private hatchery fish associated with the harvest rate appropriate for the other OPI stocks = expected catch of private hatchery coho.

The total coho abundance in the OPI area will be determined by the sum of adults predicted by the OPI jack index and the expected private hatchery catch. The total allowable ocean coho harvest for the OPI area will be determined by subtracting the OPI ocean escapement goal from the total stock size estimate for the OPI area. The total allowable ocean harvest for OPI area then will be partitioned based on recent historical averages (and observed distribution patterns of private hatchery fish) into two areas: from Leadbetter Point to Cape Falcon, Oregon; and from Cape Falcon to the U.S.-Mexico border. The harvest may be partitioned further into specific subareas. The total allowable harvest, as well as the allowable harvest in individual subareas, may be modified to address conservation needs of Oregon coastal and Washington coastal coho.

(b) *Coho north or Cape Falcon.* Preseason abundance forecasts will be made for each stock based upon the best available forecasting techniques and consistent with forecasts made to establish preseason management plans for fisheries inside state waters. The Washinton Department of Fisheries/National Bureau of Standards (WDF/NBS) model will be adjusted to expected abundance levels by stocks. WDF/NBS model fishing rates will be adjusted to reflect anticipated regulations and exploitation rates asssociated with fisheries in Canada, Washington, Oregon, and California. Adult terminal run sizes will be estimated, in the absence of prior interceptions by fishermen subject to treaty Indian allocation requirements for management units with treaty obligations, using the WDF/NBS model. Treaty Indian and non-Indian harvest shares will be computed for each appropriate stock. The non-Indian troll and recreational quotas north or Cape Falcon will be computed with the WDF/NBS model based upon providing sufficient escapement from the ocean to provide for spawning escapement objectives and treaty shares of the weakest stocks. Separate quotas may be established for subareas within the area north of Cape Falcon. The allowable harvest in the area from Cape Falcon to Leadbetter Point will be established to address a blend of OPI and Washington state coho management considerations. Specific provisions for non-Indian fishery needs inside State waters may be built into the quotas. Ocean coho quotas will be defined as either the maximum total allowable harvest of all stocks, which will be be estimated prior to the fishing season using the WDF/NBS model based on the maximum allowable harvest impact on weak stocks, or, if tools to monitor the actual catch of the weak stocks inseason become available, as the maximum allowable ocean harvest of the weak stocks only.

(c) *California chinook.* Chinook abundance will be estimated relative to the previous year or to an average by examining factors including, but not limited to, relative ocean abundance of two-year-old and three-year-old chinook in the previous year, ocean escapements of two- and three-year-olds in key river systems in the previous year, magnitude of brood year escapements and hatchery releases, expected change in survival of hatchery fish due to changes in hatchery practices (e.g., time and location of release), and environmental factors (such as abundance of forage, floods and droughts). When a relative measure of expected chinook abundance is obtained, past management plans and their impact on escapements will be analyzed by simulation modeling to determine the appropriate harvest to meet the desired level of escapement for a four-year ocean management period. The appropriate fishing season dates which would likely produce that harvest then will be estimated after analysis of expected fishing effort. For fall chinook salmon, the end of the season will be set at the time when most maturing fish have left the ocean in order to avoid problems of hooking fish which legally must be released and to increase poundage yield by allowing all immature fish to grow be harvested in the following year.

(d) *Oregon coastal chinook south of Cape Falcon.* A relative measure of stock abundance will be derived based on factors including, but not limited to, brood year escapement levels contributing to the year's fishery, catch levels in prior years, ocean assessment of two- and three-year-old chinook in previous years, relative age composition in prior years, environmental conditions, hatchery production levels, and changes in hatchery practices which might affect production. Information from prior year's fisheries will be reviewed to provide a calibration between past ocean management and resultant escapement. Past seasons will be reviewed in terms of season length, catch, fishing effort, relative stocks, abundance, and escapement level to determine relationships among catch levels, stock abundance, and spawning escapement. Based on established escapement goals and the factors outlined above, an appropriate level of harvest will be determined for each year's fishery. This desired catch level will be translated into a specific season structure based on the pattern of harvest over time, area distribution of catch, age structure of the population by time and area, expected redistribution of catch and effort following season adjustments in any time period or area, and management objectives for other chinook and coho stocks. The maximum season length off the Oregon coast will be May 1 through October 31. Seasons will be adjusted by time and area to maximize the harvest of mature fish of desired stocks while meeting escapement objectives. If additional restrictions are required to reduce mortality of immature chinook salmon, closures may be imposed during the period Septmeber 15 thorugh October 31.

(e) *Chinook north of Cape Falcon.* Preseason abundance forecasts will be made for as many stocks in the unit as possible based upon the best available forecasting techniques and consistent with forecasts made to establish preseason management plans for inside fisheries. Recent years' catch, effort, and escapement levels will be used to estimate the expected harvest. When important viable stocks are known to be depressed, appropriate season and/or quotas may be developed using general indicators of relative abundance. Quotas may be apportioned to fishing periods and subareas in response to differential impacts upon stocks of concern. As acceptable monitoring tools are developed to estimate the actual harvest of specific stocks, a quota will be indentified for specific stocks rather than the total chinook harvest of all stocks. Each fishery will be managed during the season to ensure that the quota is not exceeded.

2. Allocation of ocean harvest levels.

(a) *Coho and chinook from the U.S.-Canada border to Cape Falcon.*

(i) Allocation of coho and chinook salmon north of Cape Falcon, Oregon, will be based on the following schedule:

Allowable annual non-treaty ocean coho harvest (thousands of fish)	Coho harvest percentage [1]		Chinook harvest percentage [1]	
	Commercial	Recreational	Commercial	Recreational
1,500	69	31	54	46
1,400	69	31	54	46
1,300	69	31	54	46
1,200	67	33	54	46
1,100	64	36	54	46
1,000	61	39	54	46
900	58	42	54	46
800	55	45	54	46
700	52	48	54	46
600	49	51	54	46
500	46	54	55.5	44.5
400	43	57	57	43
300	40	60	58.5	41.5
200	37	63	60	40
100	34	66	61.5	38.5
0	31	69	63	37

[1] For allowable coho harvests between the numbers shown, the allocations will be interpolated linearly. Species substitutions made at ocean harvest levels between 0 and 600,000 coho are intended to approximate an exchange ratio of four coho to one chinook, assuming a chinook harvest level of 182,000.

(ii) Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, State fishery needs, and spawning requirements.

(iii) If total allowable non-treaty ocean catch of coho for the area is less than 600,000, species substitution (chinook and coho) may be used to minimize hardship to either troll or recreational fisheries. Chinook equivalency for species substitution will be based upon an exchange ratio of four coho to one chinook. Every effort will be made to establish seasons and gear requirements which provide troll and recreational fleets a reasonable opportunity to catch the available harvest. In no event will species substitution exceed 25 percent of the allocations tabulated above.

(iv) The percentages presented above are averages for the entire area between Cape Falcon and the U.S.-Canada border. These percentages may be varied by major subareas if there is need to do so to protect the weak stocks. These deviations will be avoided where possible, and will be held to the minimum necessary to protect the stocks. In all cases, each major subarea, i.e., north of Leadbetter Point and south of Leadbetter Point, will retain at least 50 percent of the

allocation that would have been established in the absence of transfer.

(b) *Coho south of Cape Falcon.* (i) Allocation of coho salmon south of Cape Falcon, Oregon will be based on the following schedule:

Allowable ocean harvest (thousands of fish)	Commercial		Recreational	
	Number (thousands)	Percentage [1]	Number (thousands)	Percentage [1]
2,500	2,150.0	86.0	350.0	14.0
2,400	2,056.8	85.7	343.2	14.3
2,300	1,964.2	85.4	335.8	14.6
2,200	1,874.4	85.2	325.6	14.8
2,100	1,780.8	84.8	319.2	15.2
2,000	1,690.0	84.5	310.0	15.5
1,900	1,597.9	84.1	302.1	15.9
1,800	1,506.6	83.7	293.4	16.3
1,700	1,416.1	83.3	283.9	16.7
1,600	1,324.8	82.8	275.2	17.2
1,500	1,234.5	82.3	265.5	17.7
1,400	1,145.2	81.8	254.8	18.2
1,300	1,056.0	81.2	244.0	18.8
1,200	966.0	80.5	234.0	19.5
1,100	876.7	79.7	223.3	20.3
1,000	788.0	78.8	212.0	21.2
900	699.3	77.7	200.7	22.3
800	612.0	76.5	188.0	23.5
700	525.7	75.1	174.3	24.9
600	430.0	71.7	170.0	28.3
500	330.0	66.0	170.0	34.0
400	230.0	57.5	170.0	42.5
300	130.0	43.3	170.0	56.7
200	30.0	15.0	170.0	85.0
100	([2])	([2])	100.0	100.0

[1] For allowable coho harvests of 700,000 and above, the allocations will be interpolated linearly between the numbers shown.

[2] Incidental coho allowances associated with a directed chinook fishery would be deducted from the recreational catch. Incidental allowances could be in the form of estimated hooking mortality or actual landing allowances.

(ii) If the total allowable ocean harvest of coho is below 700,000, deviations from the above schedule may be made to minimize hardship to either troll or recreational fisheries by establishing subarea quotas, by establishing directed all-salmon-except-coho fisheries with incidental coho allowances, and by using other modifications in management measures which control relative impacts of troll and recreational gear on specific viable natural stocks.

(iii) Allowable harvest south of Cape Falcon may be divided and portions assigned to subareas based on considerations including, but not limited to, controlling ocean harvest impacts on depressed, viable natural stocks within acceptable maximum allowable levels; stock abundance; allocation considerations; stock specific impacts; relative abundance of the salmon species in the fishery; escapement goals; and maximizing harvest potential.

3. Management boundaries and zones.

Management boundaries and zones will be established or adjusted as necessary to achieve a conservation purpose. A conservation purpose protects a fish stock, simplifies management of a fishery, or promotes wise use of fishery resources by, for example, separating fish stocks, facilitating enforcement, separating conflicting fishing activities, or facilitating harvest opportunities. Management boundaries and zones will be described by geographical references, coordinates (latitude and longitude), LORAN readings, depth contours, distance from shore, or similar criteria.

4. Minimum harvest lengths.

The minimum harvest lengths for commercial, recreational, and treaty Indian fishing may be changed upon demonstration that a useful purpose will be served. For example, an increase in minimum size for commercially-caught salmon may be necessary for conservation or may provide a greater poundage and monetary yield from the fishery while not substantially increasing hooking mortality. The removal of a minimum size for the recreational fishery may prevent wastage of fish and outweight the detrimental impacts of harvesting immature fish.

5. Recreational daily bag limit.

Recreational daily bag limits for each fishing area will be set equal to one, two, or three salmon of same combination of species. The recreational daily bag limit for each fishing area will be set to maximize the length of the fishing season consistent with the allowable level of harvest in the area.

6. Fishing gear restrictions.

Gear restrictions for commercial, recreational, and treaty Indian fishing may be established or changed upon demonstration that a useful purpose will be served. For example, gear restrictions may be imposed or modified to facilitate enforcement, reduce hooking mortality, or reduce gear expenses for fishermen.

7. Seasons.

(a) *In general.* Seasons for commercial, recreational, and treaty Indian fishing will be established or modified taking into account allowable ocean harvest levels (and quotas), allocations between the commercial and recreational fisheries, and the estimated amount of effort required to catch the available fish based on past seasons.

(b) *Inseason adjustment.* Seasons are subject to inseason adjustment according to procedures described herein.

(3) *Commercial seasons.*

(i) No commercial fishery will open prior to May 1.

(ii) No commercial coho fishery north of the Oregon-California border will open prior to July 1.

(iii) No commercial chinook or coho fishery will extend after October 31.

(iv) Commercial seasons will be established or modified taking into account wastage of fish which cannot legally be retained, size and poundage of fish caught, effort shifts between fishing areas, and protection of depressed stocks present in the fishing areas.

(v) All-species seasons will be established to allow the maximum allowable harvest of pink and sockeye salmon without exceeding allowable chinok or coho harvest levels and within conservation and allocation constraints of the pink and sockeye stocks.

(d) *Recreational seasons.* (i) No recreational fishery north of the Oregon-California border will open prior to May 1.

(ii) No recreational fishery for chinook or coho off California will open before the Saturday closest to February 15 nor extend after the Sunday closest to November 15.

(iii) If feasible, recreational seasons will be established or modified to encompass Memorial Day and Labor Day weekends, and to avoid the need for inseason closures.

8. Quotas.

(a) Quotas for commercial, recreational, and treaty Indian fishing may be modified as necessary to ensure that allowable ocean harvests are not exceeded.

(b) Quotas are subject to inseason adjustment according to the procedures herein.

(c) Quotas may be used in conjunction with season established according to the procedures herein.

9. Selective fisheries.

In addition to the all-species seasons and the all-species-except-coho seasons established for the commercial and recreational fisheries, selective coho-only, chinook-only, a pink-only fisheries may be established if harvestable fish of the target species are available; harvest of incidental species will not exceed allowable levels; proven, documented selective gear exists; significant wastage of incidental species will not occur; and the selective fishery will occur in an acceptable time and area where wastage can be minimized and target stocks are primarily available.

10. Treaty Indian fishing.

(a) The Secretary will establish or modify treaty Indian fishing seasons and/or fixed or adjustable quotas, size limits, gear restrictions, and/or area restrictions taking into account recommendations of the Council, proposals from affected tribes, and relevant Federal court proceedings.

(b) The combined treaty Indian fishing seasons will not be longer than necessary to harvest the allowable treaty Indian catch, which is the total treaty harvest that would occur if the tribes chose to take their total entitlement of the weakest stock in the fishery management area, assuming this level of harvest did not create conservation or allocation problems on other stocks.

(c) Any fixed or adjustable quotas established will be consistent with established treaty rights and will not exceed the harvest that would occur if the entire treaty entitlement to the weakest run were taken by treaty Indian fisheries in the fishery management area.

(d) If adjustable quotas are established for treaty Indian fishing, they may be subject to inseason adjustment because of unanticipated coho hooking mortality occurring during the season, catches in treaty Indian fisheries inconsistent with those unanticipated under Federal regulations, or a need to redistribute quotas to ensure attainment of an overall quota.

III. Inseason Changes to Management Measures

A. *Fixed inseason management provisions.* The following inseason management provisions are not optional and will be used annually as appropriate without the need for Council action.

1. *Automatic season closures based on quotas.* When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.22, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to

which the quota applies as of the date the quota is projected to be reached.

2. *Rescission of automatic closure.* If, following the closing of a fishery after a quota is reached, it is discovered that the actual catch was overestimated and the season was closed prematurely, the Secretary is authorized to reopen the fishery if—

(a) The shortfall is sufficient to allow at least one full day's fishing (24 hours) based on the best information available concerning expected catch and effort; and

(b) The unused portion of the quota can be taken before the scheduled season ending.

The Secretary's decision to reopen a fishery will be based upon projections and estimates of catch by the Salmon Plan Development Team, and will be made in consultation with the Council Chairman and Fisheries Directors of the affected States. If the fishery is reopened, its duration will be limited to complete fishing days, (24 hour increments) and coordinated, to the extent possible, with State management agencies to assure that the quota is not exceeded.

3. *Adjustment for error in preseason estimates.* The Secretary may make changes in seasons or quotas if a significant computational error or errors made in calculating preseason estimates of salmon abundance have been identified; provided that such correction to a computational error can be made in a timely fashion to affect the involved fishery without disrupting the capacity to meet the objectives of the management plan. Such correction and adjustments to seasons and quotas will be based on a Council recommendation and Salmon Plan Development Team analysis.

B. *General procedures for optional inseason management provisions.*

1. In the course of its annual determination of whether management specifications should be modified for the season, the Council also will determine which one or more, if any, of the inseason actions enumerated below in Section III. C. should be employed to modify management measures during the season and will recommend same to the Secretary for implementation.

2. For those actions below, which the Council determines will be employed during the season, the following procedures will be followed:

(a) Prior to taking any inseason action the Regional Director will consult with the Chairman of the Council and the appropriate State Directors.

(b) As the actions are taken by the Secretary, the Regional Director will compile in aggregate form all data and other information relevent to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, Washington.

(c) Inseason actions will be published by a notice in the **Federal Register**. In addition, the Regional Director and the Council will publish notice of the inseason action in local and regional news media.

(d) If the Secretary determines, for a good cause, that a notice must be issued without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

C. *Changes to Quotas and/or Fishing Seasons.* The Regional Director will make the following optional inseason adjustments to seasons and quotas only when the Council determines during the preseason regulatory process that (1) scientifically valid procedures can be used during the season to take the inseason action, and (2) such adjustments would not significantly increase the risk of not meeting the Council's management objectives.

1. *Private hatchery contributions.* The estimated contributions of private hatchery coho to coho quotas for the current year will be established during the preseason process of annually adjusting the regulations. During the season the Regional Director will review the estimated contributions of private hatchery coho, taking into account coded-wire tag and/or scale analysis data gathered during the season. If the contribution of private hatchery coho varies from the preseason estimates, the Secretary may modify coho quotas and seasons accordingly by publishing a **Federal Register** notice.

2. *Coho hooking mortality.* Approximately halfway through each regularly scheduled all-species season, the Regional Director will estimate the number of coho salmon that will be hooked and released during the all species seasons, and the Secretary may modify the commercial coho quotas and seasons accordingly by publishing a **Federal Register** notice.

3. *Revised abundance estimates.* During the season the Regional Director will monitor the actual salmon abundance compared to the preseason abundance estimates. If it appears that actual conditions of abundance and distribution of salmon, and of fishing effort and catches, differ from conditions anticipated prior to the all-species season in the pertinent management area, the Secretary may modify the estimate of abundance of any salmon species and any related quotas and seasons accordingly by publishing a **Federal Register** notice. Any inseason modification of salmon abundance estimates and related quotas and seasons will be consistent with ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the framework plan. In determining whether salmon abundance and quotas and/or seasons should be revised the Regional Director will consider:

(a) The number of participants, level and distribution of fishing effort, and salmon catches of the commercial and recreational fisheries compared to data from the same management area for similar time periods in prior years;

(b) Variations between preseason abundance estimates for the same area and abundance estimates as of the same date in prior years;

(c) Data from marked-fish recoveries, including analysis of recoveries of coho salmon with implanted coded-wire tags; and

(d) Any other scientific information relevant to the abundance and distribution of salmon stocks, total fishing effort, and catches that is available.

4. *Catches in the territorial sea.* The Regional Director will monitor salmon catches in the territorial sea (0-3 nautical miles) seaward of Washington, Oregon, and California. If the Regional Director determines that salmon catches have occurred in the territorial sea or a portion thereof which were not accounted for when the Federal quotas and seasons were established and which may cause the Federal quotas or the anticipated catch during the Federal seasons to be exceeded, the Secretary may reduce the Federal quotas or shorten the Federal seasons accordingly by publishing a **Federal Register** notice.

D. *Redistribution of Quotas.* The Secretary may redistribute a portion of one or more of the quotas during the season by publishing a **Federal Register** notice, if the Regional Director determines that—

1. Redistribution between the commercial and recreational fisheries, or between areas in the same fishery, will increase the likelihood that an overall quota for a species will be achieved;

2. Redistribution is consistent with ocean escapement goals, conservation of the salmon resource, and any adjudicated Indian fishing rights; and

3. The redistribution is consistent with the ocean allocation scheme in the framework plan.

E. *Boundary Modifications.* The Secretary may modify one or more of the boundaries establishing fishery management areas during the season by publishing a **Federal Register** notice, if the Regional Director determines that one of the following circumstances exists, and the boundary modification is consistent with ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the framework plan:

1. A quota for one species will be reached before a quota for a different species in the same area, and the likelihood that the two quotas will be reached at or near the same time will be increased by modifying existing boundaries.

2. Attainment of a quota is jeopardized by an unanticipated shift in the location of the stocks or fishery to which it applies.

F. *Recreational Daily Bag Limit.* The Secretary may modify one or more of the daily bag limits during the season by publishing a **Federal Register** notice. Any such modification will be based on

consideration of the following factors and will be consistent with ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the framework plan:

1. Predicted sizes of salmon runs.
2. Apparent actual sizes of salmon runs.
3. Recreational quota for the area.
4. Amount of the recreational, commercial, and treaty Indian catch of each species in the area to date.
5. Amount of the recreational, commercial, and treaty Indian fishing effort in the area to date.
6. Estimated average daily catch per fisherman.
7. Predicted recreational fishing effort for the area to the end of the scheduled season.
8. Other factors as appropriate.

[FR Doc. 84-28714 Filed 10-30-84; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 212
Wednesday, October 31, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

Programs for Specific Positions and Examinations (Miscellaneous)

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on proposed rules by the Office of Personnel Management (OPM) for the implementation of Pub. L. 98–224, signed March 2, 1984. This law amended section 3323(b) of title 5, United States Code, to permit the reemployment of retired administrative law judges (ALJs) under regulations promulgated by OPM. The proposed rules would help agencies deal with temporary, irregular workloads for ALJs.

DATE: Comments must be on or before November 30, 1984.

ADDRESS: Office of Administrative Law Judges, Staffing Group, Office of Personnel Management, Room 6504, 1900 E Street, NW, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Craig B. Pettibone, Assistant Director for Administrative Law Judges, (202) 632–5677.

SUPPLEMENTARY INFORMATION: Since the enactment of the Administrative Procedure Act of 1946 (APA), the propriety of permitting the reemployment of retired ALJs has been seriously debated by interested parties. The problem has been that the Civil Service Retirement Act, then 5 U.S.C. 3323(b), provided that reemployed annuitants served "at the will of the appointing officer." This called into question the true independence and impartiality of a retired ALJ who might be reemployed. The APA seeks to assure the impartiality of permanently appointed ALJs under 5 U.S.C. 3105 by: (1) Requiring OPM to identify qualified applicants for appointment and to set compensation independent of agency recommendations or ratings; (2) requiring that OPM select ALJs for detail from one agency to another by and with the consent of the agencies; (3) requiring agencies to assign cases in rotation to the extent practicable; (4) barring agency appraisal of performance; and (5) permitting removal only for good cause upon a hearing on the record before the Merit Systems Protection Board (MSPB).

Under these requirements, the agency is, in effect, precluded from selecting a particular ALJ to hear a particular case or influencing the outcome of an assigned case in any way. These requirements are designed to assure the impartiality of the ALJs. In recognition of this requirement for the impartial selection of an ALJ without regard to a particular case, OPM's existing regulations on the employment of ALJs in 5 CFR 930.201–215 require that ALJ's appointments, promotions, reassignments, transfer, reinstatements, and details from one agency to another are done only with the prior approval of OPM. In each case, OPM must review the need for the action and determine whether the individual involved meets both current examination/qualification requirements and any appropriate agency-requested special qualification requirements. Accordingly, any regulations on the reemployment of retired ALJs must be consistent with this basis policy.

The proposed rules, as authorized by Pub. L. 98–224, provide for the temporary reemployment of retired ALJs under terms and conditions similar to those upon which ALJs are usually appointed and loaned from one agency to another. The rules propose that retired ALJs who are interested in reemployment should apply directly to the agency in which reemployment is desired. Agencies would review retired ALJs' qualifications for reemployment, verify their qualifications through reference checks and personal interviews, and then seek OPM approval of the reemployment. OPM would have to approve the need for the reemployment and determine whether the retired ALJs meet current ALJ examination/qualification requirements. OPM assures that the proposed reemployment of retired ALJs would generally occur infrequently and that it would involve agencies seeking temporary reemployment of their own former ALJs either to hear previously assigned cases that have been remanded or new cases that require their program expertise.

OPM would approve the temporary reemployment of retired ALJs only if no other ALJs with the appropriate expertise are available through OPM on detail from another agency. Therefore, retired ALJs would not be reemployed when regularly employed ALJs are available to do the work. The requesting agency would be required to assign such retired ALJ, if reemployed, either to hear a case or cases assigned before retirement or to hear other cases on its docket in normal rotation to the extent practicable. This requirement is deemed to be essential to preserve the fundamental APA policy that the selection of the ALJ and the assignment of the case to the ALJ are to be insulated activities to avoid any appearance that the agency might be selecting a particular ALJ to hear a particular case to influence of particular outcome. This assures the public that the ALJ will act impartially, as contemplated by the APA. If an agency need the temporary services of an additional ALJ and has a few unique cases where the agency's ability to assign the cases impartially in normal rotation would be questioned, OPM would arrange a detail of an ALJ from another agency rather than approve the reemployment of a retired ALJ.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

List of Subjects in 5 CFR Part 930

Administrative practice and procedures, Government employees, Motor vehicles.

Office of Personnel Management
Donald J. Devine,
Director.

Accordingly, OPM proposes to amend 5 CFR Part 930 as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

1. The authority for subpart B reads as follows:

Authority: 5 U.S.C. 1305, 3105, 3344, 5335, 5372, 7521 unless otherwise noted).

2. Section 930.216 is added to read as follows:

§ 930.216 Temporary Reemployment: Senior Administrative Law Judges.

(a) Subject to the requirements and limitations of this section, an annuitant, as defined by section 8331 of title 5, United States Code, who is receiving an annuity from the Civil Service Retirement and Disability Fund and has served with absolute status as an administrative law judge under § 3105 of that title, may be temporarily reemployed as an administrative law judge by an agency that has temporary, irregular workload requirements for conducting proceedings in accordance with sections 556 and 557 of that title. Such retired administrative law judges who are so reemployed will be known as senior administrative law judges.

(b) Retired administrative law judges who are available for temporary reemployment should apply directly to the agency with which reemployment is desired.

(c) An agency that wishes to temporarily reemploy retired administrative law judges must submit a written request to OPM. The request shall:

(1) Demonstrate that the agency is occasionally or temporarily understaffed; and

(2) Specify the period or periods for which reemployment is sought; and

(3) Identify the retired administrative law judge whom it wishes to reemploy and describe his or her qualifications for reemployment.

(d) OPM will approve agency requests for temporary reemployment of retired administrative law judges for a specified period or periods provided:

(1) The requesting agency fully justifies that it is occasionally or temporarily understaffed; and

(2) No other administrative law judge with the appropriate qualifications is available through OPM under § 930.213 of this subpart to perform the occasional or temporary work for which reemployment is requested; and

(3) The retired administrative law judge for whom reemployment is requested meets the requirements listed below:

(i) Eligibility for employment at the grade in which reemployment is requested has been established in accordance with requirements of OPM's Examination Announcement No. 318, or any revision or successor thereto; and

(ii) Experience satisfies all current qualification requirements for the position of administrative law judge and any appropriate special qualification requirements requested by the agency.

(e) Reemployment of retired administrative law judges is subject to investigation of suitability in accordance with §§ 731.201 through 731.303 of this chapter. It is also subject to conflict of interest and security investigation requirements by the appointing agency.

(f) Reemployment as a senior administrative law judge shall be for either: (1) A specified period not to exceed 1 year; or (2) such period as may be necessary for the reemployed administrative law judge to conduct and complete the hearing of one or more specified cases assigned but not completed before retirement. OPM may extend such period of reemployment when it is necessary to complete cases assigned during reemployment.

(g) An agency shall assign its senior administrative law judges either (1) to hear a case or cases assigned but not completed before retirement; or (2) to hear, in normal rotation to the extent practicable, a number of other cases on its docket. If an agency has a few unique cases on its docket and its ability to assign cases impartially in normal rotation may be subject to question, it may not use a senior administrative law judge to hear such cases. Such cases may only be heard by a permanently appointed administrative law judge or an administrative law judge obtained through OPM from another agency under § 930.213 of this subpart.

(h) Hours of duty, administrative support services, and travel reimbursement for senior administrative law judges will be determined by the employing agency in accordance with the same rules and procedures that are generally applicable to employees.

(i) A senior administrative law judge serves subject to the same limitations on performance appraisal and removal as any other administrative law judge employed under this subpart and § 3105 of title 5, United States Code. An agency cannot rate the performance of a senior administrative law judge. A senior administrative law judge cannot be removed by the employing agency before expiration of the period of reemployment, except for good cause established and determined by the Merit Systems Protection Board after opportunity for a hearing on the record before the Board as provided in §§ 1201.131 through 1201.136 of this title.

(j) A senior administrative law judge will be paid by the employing agency at the step of the grade that the duties to be performed have been classified, which is nearest (when rounded up) to the highest previous rate of pay earned as an administrative law judge before retirement. However, an amount equal to the annuity allocatable to the period of actual employment shall be deducted from his or her pay and deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

[FR Doc. 84-28616 Filed 10-30-84; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

[Docket No. AO-231-A51]

Milk in the Texas Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends that the handler and producer location adjustments be increased by 18 cents per hundredweight in the Houston portion of the Texas marketing area. The price increase is necessary to reflect increases in hauling costs and to assure the orderly marketing of substantial quantities of milk that must be shipped long distances to supply the fluid milk needs of the most heavily populated area in the market. The decision also recommends that a change be made in the computation of the uniform price to allow for a reduction in the producer-settlement fund reserve balance. The proposed amendments are based on the record of a public hearing held October 4–7, 1983, in Irving, Texas.

DATE: Comments are due on or before November 30, 1984.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington D.C. 20250, (202) 447-2089.

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

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Interested parties testified and presented evidence with respect to the probable impacts of various combinations of the pricing changes that were proposed, and such impacts were considered in the economic analysis that sets forth the need for the proposed amendments contained herein.

Prior documents in this proceeding:

Notice of Hearing: Issued August 29, 1983; published September 1, 1983 (48 FR 39643).

Correction to Notice of Hearing: Published September 12, 1983 (48 FR 40894).

Extension of Time for Filing Briefs: Issued November 25, 1983; published December 1, 1983 (48 FR 54243).

Partial Recommended Decision: Issued December 6, 1983; published December 12, 1983 (48 FR 55290).

Correction to Partial Recommended Decision: Published December 19, 1983 (48 FR 56060).

Extension of Time for Filing Briefs and Exceptions: Issued December 22, 1983; published December 29, 1983 (48 FR 57310).

Extension of Time for Filing Exceptions: Issued January 27, 1984; published February 1, 1984 (49 FR 4006).

Extension of Time for Filing Exceptions: Issued February 21, 1984; published February 24, 1184 (49 FR 6910).

Partial Final Decision and Termination of Proceeding: Issued May 14, 1984; published May 17, 1984 (49 FR 20825).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Texas marketing area. This notice is issued 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).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 30th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The material issues on the record relate to:

1. The Class III price level for producer milk used in butter, nonfat dry milk and cheddar cheese for December 1983, and March through June 1984.

2. Whether an emergency exists to warrant the omission of a recommended decision and the opportunity to file written exceptions thereto with respect to issue No. 1.

3. The Class I price level and location adjustments within the marketing area.

4. The Class II price level and location adjustments within the marketing area.

5. Location adjustments applicable for milk delivered to plants located outside the marketing area.

6. Classification of milk contaminated with antibiotics.

7. Shipping percentages applicable to pool supply plants.

8. Computation of the uniform price.

This decision deals only with issues 3 through 8. Issues 1 and 2 were considered in a previous decision on the record:

Findings and Conclusions

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

Background for pricing proposals concerning material issues 3, 4, and 5.

Schepps Dairy, Inc. (Schepps), which operates a pool distributing plant in Dallas, offered and supported proposals to revise the pricing structure under the Texas order. Generally, the proposals are intended to increase the difference between minimum order prices applicable at plants located in northern portions of the marketing area (primarily Dallas) and southern portions of the marketing area (primarily Houston) because of increases in the cost of hauling milk. These proposals (proposals 3 and 4 as contained in the Notice of Hearing) included a restructuring of Class I location adjustments applicable inside and outside the marketing area; the implementation of direct-delivery differentials in certain pricing zones in conjunction with or as as alternative to a revision of Class I location adjustments; and the implementation of plus location adjustments for milk in Class II uses in certain pricing zones. These proposals are the subject of material issues 3, 4, and 5 as set forth previously. The proposals are included as a group in this background discussion because the proponent presented them an alternative means for dealing with a common problem. In addition, opposing parties viewed the pricing issues in the Texas market and the basic arguments presented by proponents and opponents. A more detailed examination of each of the material issues follows this background discussion.

The current zoning pricing structure under the Texas order dates to the July 1, 1975, merger of six smaller markets into the Texas marketing area. Official notice was taken of the Assistant Secretary's decision of May 2, 1975 (40 FR 20004) that accomplished this action. For pricing purposes, the Texas marketing area was divided into 12 pricing zones. Location adjustments were specified for each zone (groups of counties) that resulted in Class I prices that were essentially the same as the prices applicable in such areas under the formerly separate marketing orders. Zone 1 (which includes the Dallas/Ft. Worth area) was established as the basing point at which location the Class I price to handlers and the blend price to producers are announced each month. A zero location adjustment applies to plants in Zone 1 and the Class I price is the Minnesota-Wisconsin price for the second preceding month plus $2.32 per hundredweight. Plus adjustments to the Zone 1 price were established for each succeeding zone, ranging from plus 6 cents in Zone 2 (Tyler, Marshall) to plus 75 cents in Zone 12 (Edinburg, Harlingen). The plus adjustments apply to milk used in fluid milk products (Class I uses) by plants in each zone as well as to the blend price payable to producers whose milk is received in each zone. It is noted that a thirteenth zone (Zone 1–A) was added to the marketing area effective January 1, 1983. The plant location adjustment in Zone 1–A is minus 12 cents from the Zone 1 price and is identical to the location adjustment applicable to such area under the Texas order prior to its inclusion in the marketing area.

The current zone pricing system under the order results in increasing, from North to South Texas, minimum order Class I prices to handlers and blend

prices payable to producers. The price differences among the various cities in the marketing area were unchanged (with some minor exceptions) by the merger of the marketing areas. Consequently, the current 36-cent Class I price difference between Dallas and Houston dates to the 1968 decision that implemented the South Texas milk order effective October 1, 1968. This price difference represented the cost of transporting bulk milk from Dallas to Houston based on a transportation rate of 1.5 cents per hundredweight per 10 miles. Official notice is taken of the Under Secretary's final decision issued August 8, 1968 (33 FR 11486) to implement the South Texas order. A review of this decision indicates that the same transportation rate was used to establish Class I prices under the former San Antonio, Austin-Waco and Corpus Christi orders. The Class I prices under these orders reflected the Class I price under the North Texas order plus 1.5 cents per hundredweight for each 10 miles between Dallas and the various basing points under the respective other orders.

The 1975 merger decision considered various proposals to increase Class I prices throughout the market and to change the relative price relationship between certain zones within the marketing area. One proposal would have increased the Class I price applicable at plants in the base zone (Zone 1—Dallas/Ft. Worth) by 58 cents per hundredweight. This proposal reflected the Class I price applicable at Eau Claire, Wisconsin, plus an adjustment for transportation to Dallas at 2 cents per hundredweight per 10 miles rather than the traditional 1.5-cent rate. Another proposal would have altered the location adjustments within the marketing area to reflect a transportation rate of 2.2 cents per 10 miles, which would have increased the Class I price difference between Dallas and other cities in the marketing area.

The 1975 merger decision acknowledged the fact that transportation costs had increased since 1968. However, the decision stated that market supply-demand conditions must be considered along with the cost of transporting milk from distant supply areas when determining the appropriate minimum order Class I price. The Assistant Secretary concluded that in spite of some increases in hauling costs, raw milk supplies were being made available to handlers in all parts of the marketing area and that substantial quantities of raw milk were being moved from the North Texas supply area to the consumption centers in South Texas. Thus, the decision concluded that the supply-demand relationship for the combined markets indicated that the prevailing Class I price structure was bringing forth an adequate, but not excessive, supply of milk for consumers. A higher minimum price level could stimulate additional production, not needed for fluid use, thereby resulting in a misallocation of agricultural resources. The decision also set forth, in substantial detail, the need to maintain an alignment of Class I prices among the various consumption centers within the marketing area to reflect the economic service performed in moving milk to such consumption centers from the heavy production areas in North Texas. Particularly noteworthy with respect to this proceeding was the conclusion that there was a greater economic service provided by producers for San Antonio area handlers than Houston area handlers since San Antonio is further from the North Texas supply area than is Houston.

In this proceeding, Schepps makes some of the same arguments that were presented in 1975 to attempt to justify increasing location adjustments to reflect a higher transportation rate than 1.5 cents per hundredweight per 10 miles. The stated objectives of Schepps' proposals is to restore price uniformity among producers and handlers by having order prices reflect the cost of transporting milk to plants located in deficit supply areas of the market. Schepps contends that since the present zoned Class I price structure does not cover the cost of hauling milk, market forces establish prices that are not uniform among either handlers or producers. Specifically, Schepps contends that the market price structure allows handlers in South Texas to obtain milk supplies at prices that do not reflect the full costs of transporting milk from the North Texas supply area. As a result, Schepps contends that producers are subsidizing in part the cost of the economic service they provide in shipping milk substantial distances to South Texas plants and, consequently, returns to producers are not uniform. Also, Schepps contends that the prices paid for milk in Class I uses by North Texas handlers are also used to subsidize, in part, the cost of moving milk to South Texas plants with whom North Texas handlers compete for sales of fluid milk products in South Texas. Schepps concludes that the resulting nonuniformity of prices to handlers and returns to producers are inconsistent with the requirements of the Agricultural Marketing Agreement Act of 1937, as amended; represent disorderly marketing conditions; and are the direct result of the failure of the order minimum price structure to reflect the cost of transporting milk.

Schepps' pricing proposals were opposed by a large number of handlers who are regulated under the order. In total these handlers (The Southland Corporation; Borden, Inc.; Carnation Company; Foremost Dairies, Inc.; Blue Bell Creamery; H. E. Buttt Grocery Company; Hygeia Dairy Company, Inc.; and Safeway Stores, Inc.) operate 22 of the 34 distributing plants that are fully regulated under the order. Such handlers also operate at least 13 other plants that distribute fluid milk and dairy products within the Texas marketing area and seven nonpool plants at which milk pooled under the Texas order is processed into Class II products.

These handlers contended that the proposals should be denied because the proposed price adjustments: (1) Would result in substantial cost increases to South Texas area handlers and consumers and generally discriminate against South Texas handlers; (2) would disrupt competitive conditions among handlers by distorting the inter- and intra-order alignment of prices; (3) are unrelated to any competent testimony that could establish the cost of hauling milk and, further, are inconsistent with any argument that hauling costs have increased because of proposed price reductions in North Texas areas; (4) are unnecessary because adequate supplies of milk are being made available to handlers throughout the entire market; (5) would not benefit producers, and further, were not supported by producers who proponent claims are subsidizing the cost of hauling milk to South Texas plants; and (6) cannot be adopted because the Department failed to comply with the requirements of the Regulatory Flexibility Act prior to the hearing.

Basically, opponents argue that adequate supplies of milk are being made available to all handlers throughout the marketing area under the current pricing structure in the market. They contend that since there is an adequacy of supply, and that milk is moving substantial distances under the current price structure, there is no basis upon which the Secretary can justify a price increase in South Texas areas. They further contend that the purpose of the proposals is nothing more than an attempt to improve proponent's competitive position with respect to packaged fluid milk sales in certain South Texas area (primarily San Antonio and Houston) that account for about one-half of proponent's total fluid

milk sales. Consequently, opponents contend that the purpose of the proposals is the same as that advanced by the same proponent at the hearing to merge six marketing areas under the Texas order, and that the proposals should be denied on the same basis as set forth by the Assistant Secretary in denying similar proposals in the 1975 merger decision. In this regard, opponents cite the decision's conclusion concerning the need to maintain Class I price alignment among Federal order markets and within the Texas market on the same basis, as well as the finding that milk moved substantial distances to meet all handlers' needs despite the fact that hauling costs exceeded the transportation rate reflected under the order. Opponents point out that the rationale advanced in the 1975 decision was upheld in *Schepps Dairy, Inc.* v. *Bergland*, 628 F.2d 11, (D.C. Cir. 1979).

Opponents further contend that the issue raised by Schepps is one that primarily affects milk producers who pay the cost of hauling milk to plants. They point out that no producers or their cooperative associations supported Schepps' proposal. In this regard, Mid-America Dairymen, Inc., (Mid-Am) opposed those parts of the proposal that would reduce prices in Zone 1 (Base Zone) and at Aurora, Missouri. Mid-Am represents producers who are located in Zone 1 and the cooperative also operates a supply plant that is located at Aurora, Missouri, that is pooled under the Texas order. Mid-Am contends that the proposed lower price for these areas would reduce milk production in such areas, thus jeopardizing the maintenance of milk supplies that are necessary to meet the fluid milk needs of southern deficit production areas. Mid-Am also contended that the proposed lower Zone 1 price would disrupt the price alignment among Federal order markets and that if any such price reduction is to be pursued it should be considered on a broader scale to consider the Class I price alignment with surrounding markets. Mid-Am contends that it a price incentive is necessary to attract milk to deficit southern areas, it should be accomplished by increasing prices in such areas rather than by reducing prices in Zone 1. Several nonmember producers also opposed any price reduction in Zone 1.

Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a substantial majority of the dairy farmers who furnish milk to handlers located throughout the marketing area, presented no testimony and took no position either in support of or in opposition to the proposed pricing changes in the marketing area. In its brief, AMPI opposed the changes in location adjustments at plants located outside the marketing area. One other interested party who operates a pool distributing plant in Zone 1–A (Preston Dairy) supported increasing the location adjustments under the order for deficit supply areas in the south to recognize increases in transportation costs that have occurred since the 1960's. One additional handler, Land O'Pine Dairy, who operates a pool distributing plant at Lufkin (Zone 4), proposed that Zone 2 and 4 be included in the same pricing zone. The handler stated that the basis for this modification is to improve his competitive position with respect to plants located in Zone 2 that now have a 12-cent lower Class I price under the order than applies to Zone 4.

3. *The Class I price level and location adjustments within the marketing area.* The order should be amended to increase the plus location adjustment in Zone 8 (Houston/Beaumont) to 54 cents per hundredweight. The 18-cent per hundredweight increase in the Class I and blend prices is necessary to reflect increases in hauling costs and to assure an adequate supply of milk for fluid use for the largest consumption center in the marketing area and to promote the orderly marketing of the substantial volumes of milk that must be shipped great distances from the major production areas in the market to meet the fluid milk needs of this deficit supply area. No other pricing changes that were proposed should be adopted on the basis of this record.

As previously stated in the background for the pricing issue, Schepps offered two proposals to revise the pricing structure under the order. One of the proposals would move the base zone (the zone at which location adjustments do not apply) southward from Zone 1 to Zones 3, 4, and 5. The current Class I differential in Zone I that is added to the basic formula price to establish the Class I price for the month is $2.32 per hundredweight. Movement of the base zone to the south would result in a reduction of the Clas I price in Zones 3, 4, and 5. The proposal would also establish minus location adjustments from the new base zone for Zones 1, 1–A and 2. Plus adjustments to the new base zone price are proposed for Zones 6 through 12. In conjunction with the location adjustments, Schepps also proposed that direct-delivery differentials be applied to Zones 8 and 9 in the amount of 18 and 6 cents, respectively.

The objective of the proposal is to increase the difference in the order Class I and blend prices between northern and southern portions of the marketing area to reflect increases in the cost of hauling milk. For purposes of illustrating the magnitude of the proposal, the Class I differentials that would result in each zone are set forth below. The proposed differentials are compared to the current order Class I differentials that apply to plants in each zone as a result of current order location adjustments. The location adjustments that establish Class I prices at plants in each zone are also used to adjust the blend price to producers for milk received at plants in such zone. Although each zone consists of groups of counties, the major cities within such zones are indicated below for reference purposes.

(Dollars per hundredweight)

Zone/Cities	Class I Differentials		
	Current	Proposed	Difference
1–A. Burkburnett	$2.20	$2.10	$−0.10
1. Dallas, Ft. Worth	2.32	2.22	−.10
2. Tyler, Marshall	2.38	2.27	−.12
3. Waco	2.47	2.32	−.15
4. Lufkin	2.50	2.32	−.18
5. Bryan	2.52	2.32	−.20
6. Abilene, San Angelo	2.57	2.62	+.05
7. Austin	2.62	2.67	+.05
8. Beaumont, Houston	2.68	2.95	+.27
9. San Antonio	2.74	2.89	+.15
10. Victoria	2.85	2.94	+.09
11. Corpus Christi	2.98	3.07	+.09
12. Edinburg, Harlingen	3.07	3.16	+.09

Schepps presented an alternative to the above proposal that was advanced by proponent as his preferred method in increasing prices in southern areas. This proposal would establish direct-delivery differentials to be paid by plants located in Zones 2 through 12 to their dairy farmer suppliers. Such differentials would apply to all milk received by handlers, regardless of use, and would be applied in addition to the current order location adjustments. For Zones 2 through 5, a direct-delivery differential of 10 cents per hundredweight would be established. A direct-delivery differential of 5 cents, 19 cents, 36 cents, and 23 cents would be established for Zones 6 through 9, respectively. The proposed direct-delivery differentials for Zones 10 through 12 would be 19 cents per hundredweight.

Either of the proposals would significantly increase the effective transportation allowance under the order to move milk from north to south, with particular emphasis on the Houston and San Antonio zones. The proposed Class I price at Houston would be 72 or 73 cents per hundredweight higher than

the Class I price at Dallas compared to the 36-cent difference that currently exists. Based on the mileage from Dallas to Houston, the proposed price change would reflect a transportation rate of about 3 cents per hundredweight per 10 miles compared to the 1.5-cent rate currently reflected under the order. Also, the proposed price difference between Dallas and San Antonio would reflect a transportation rate slightly below 2.5 cents per hundredweight based on the mileage from Dallas to San Antonio.

Schepps contends that hauling costs have increased significantly since 1968. As evidence to support his claim, Schepps relied upon USDA and university hauling cost studies and changes in indices reported by the Bureau of Labor Statistics that relate to hauling costs. Based on these studies, Schepps contends that a 3.6-cent per hundredweight per 10-mile hauling rate would be a reasonable approximation of the current cost of hauling bulk milk. Schepps contends that such rate is supported by the company's own experience in shipping packaged fluid milk products. Schepps testified that its current hauling costs for packaged products is 4.1 cents per hundredweight per 10 miles and that, based on comparative studies that indicate about a 15 percent higher cost for packaged than for bulk milk, a 3.6-cent rate is reasonable. Also, Schepps testified that its hauling costs had increased by 267 percent from 1970 to 1982 and that, therefore, the 240 percent proposed increase (from 1.5 cents to 3.6 cents) is appropriate.

Schepps further testified that such transportation rate is supported by the bulk milk hauling costs charged by AMPI that increased from $1.00 per loaded mile to $1.60 per loaded mile from 1978 to 1980. Schepps testified that such cost equates to a rate of 3.52 cents per hundredweight per 10 miles based on the average weight of 45,500 pounds of tank loads of milk received by Schepps from AMPI during August 1 through September 18, 1983. Schepps further contended that the 3.6-cent rate is consistent with the findings of the Assistant Secretary concerning hauling costs in the March 30, 1983, decision concerning the Georgia and certain other milk marketing orders (48 FR 14604).

Schepps argues that the failure of the order to reflect current transportation costs results in producer and handler inequities that are intensified by the disparate geographic distribution of population and milk production within the Texas marketing area. Schepps presented evidence concerning the population changes that occurred within the current Texas order pricing zones between 1970 and 1980 and statistics from the office of the market administrator. These statistics concern the percentage of milk priced in the various pricing zones that is produced in the major milk producing counties in the market, the relationship of milk production by zone to the volume of bulk milk received by plants in the same zone, the distances that bulk milk moves to supply the needs of fluid milk plants in the various zones, and maps that indicate the changes in the source of supply for the various pricing zones over time.

Schepps' testimony relative to the above statistics addressed primarily the circumstances existing with respect to Houston, (Zone 8). Schepps contends that Zone 8 is extremely deficit in terms of local production, and that substantial quantities of milk must be shipped long distances to meet the fluid milk needs of Zone 8 plants. Schepps points out that more than 50 percent of the bulk fluid milk needs of Zone 8 plants is shipped more than 250 miles and that the per hundredweight cost is 90 cents based on current hauling rates of 3.6 cents per 10 miles. Consequently, Schepps argues that the additional 54 cents in hauling costs that is not reflected in the order (now a 36-cent price difference between Dallas and Houston) is absorbed by producers who supply Zone 8 plants. Since most of such milk is shipped by AMPI, Schepps contends that AMPI is unable to return as high a price to its member producers as are returned to the nonmember producers that are located in the heavy production areas of the market around Sulphur Springs (Hopkins County), despite the fact that AMPI charges in excess of the order's minimum prices to the handlers the cooperative supplies. Schepps contends that handlers in Zone 1 (some of whom also operate plants in Zone 8) are able to purchase milk from nonmember producers at a lesser cost than is charged by AMPI but are able to return a blend price to nonmember producers that is in excess of the order blend because such handlers do not have the burden of subsidizing the cost of transporting milk to deficit southern markets. Consequently, Schepps argues that neither returns to producers nor costs to handlers are uniform as a result of transportation cost subsidization by AMPI that is incurred by supplying deficit southern markets such as Houston.

Schepps also presented additional information concerning his actual cost for milk received by AMPI at his Dallas plant as well as comparisons between such cost and a constructed cost for AMPI milk received at Houston on the basis of AMPI price announcements. Schepps notes that prior to May 1983, the difference between AMPI's announced prices at Dallas and Houston reflected a greater amount of the actual, additional transportation cost incurred in shipping milk to Houston. However, Schepps testified that he was charged the Houston price at his Dallas plant on that portion of his total fluid milk sales in Zone 8, which represent about one-half of his total sales. As a result, Schepps contends that he was charged a price that reflected a part of the cost incurred by AMPI in shipping milk to Houston, and that such charge represents a cost for a service Schepps did not receive. In addition, Schepps contends that such charge was in effect used to subsidize the cost of hauling milk to plants in Houston with whom Schepps competes for fluid milk sales in the Houston area. Since May of 1983 Schepps contends that a significant transportation subsidy exists since the over-order pricing structure was revised to result in a price difference of 36 cents between Dallas and Houston.

As a result of all of the above, Schepps contends that neither costs to handlers nor returns to producers are uniform under current marketing conditions. Opponents of the proposal, in addition to their views previously set forth, contend that Schepps' claims of disorder are a result of AMPI pricing practices and are a matter to be settled between AMPI and Schepps. Schepps' counter argument to such claim is that because of competitive conditions in the marketplace, AMPI is unable to institute an equitable pricing structure to reflect the cost of transporting milk that is not provided for under the order.

Resolution of the Class I pricing issue involves the consideration of the overall Class I price level for the market that is necessary to result in an adequate supply of milk for fluid use as well as the differences in the value of milk at various locations within the market that may be necessary to encourage its movement from where it is produced to where it is needed. As indicated hereafter, some intra-market price adjustment is necessary to provide incentives for milk movements. However, there is no indication that the overall price level in the market is inappropriate in terms of the overall market supply/demand relationship.

Although the Texas market can be characterized as having a relatively tight supply/demand situation compared to

other Federal order markets, the market has experienced a general increase in supplies in recent years that is representative of the national supply situation. For example, the Class I utilization of producer milk for the Texas market declined from 74.5 percent in 1981 to about 69 percent in 1982 and the monthly Class I utilization of producer milk during January through August of 1983 was below the Class I utilization during each of the corresponding months in 1982. In fact, concern with respect to handling the amount of milk available for manufacturing was the issue that was dealt with in a previous decision issued on the record of this proceeding.

Although the market supplies have increased, there has not been a sufficient showing by proponent that the Class I price level should be reduced in the primary northern production regions of the Texas market. In fact, proponent's only attempt to justify the proposed Class I price reduction in northern areas was that such reductions were necessary to offset the proposed price increases in southern portions of the marketing area so that the overall impact on returns to producers would be minimal. This aspect of the proposal, which was opposed by Mid-Am and independent milk producers, could jeopardize the maintenance of adequate supplies of milk in the heavy producing regions of the market that are necessary to meet the fluid milk needs of deficit producing regions of the market. In addition, the proposed Class I price reductions in northern areas would significantly alter the pricing relationship with other Federal order markets whose pricing provisions are not open for consideration on this record.

The price reduction aspect of the proposals must be denied primarily on the basis that there has been no showing that the increases in production in recent years are a result of the Class I differential. The recent supply/demand situation in the Texas market is not materially different from the national dairy situation where production has exceeded the demand for dairy products. National production increases have been in response to the price support levels established for manufactured dairy products as well as to other economic factors affecting the production and sale of milk and dairy products. Efforts are currently being taken under the price support program to deal with the surplus situation on a national basis. There is no indication that there need be any further incentive to encourage a reduction of production by reducing the Class I price level under the Texas order. In fact, any further reduction in prices applicable to the major milk production areas of the Texas market, in addition to the efforts being made under the price support program, could jeopardize the maintenance of an adequate supply of milk for current and anticipated future fluid milk needs in the market. Consequently, those portions of Schepps proposals that would reduce prices in certain portions of the market (Zones 1–A through 5) must be denied at this time. Such conclusion thus places a constraint on the remaining consideration of the issue to one of considering what plus adjustments to the base zone price may be necessary.

In this regard, there can be no significant increase in returns to producers at this time that would tend to bring forth additional supplies of milk. Such action would be contrary to efforts currently being taken under the price support program to reduce the overall supply of milk on a national basis. Any increase in producer returns that may be necessary must be kept to the minimum level necessary to encourage the movement of milk to deficit areas. In this regard, proponent's preferred option of establishing direct-delivery differentials on top of existing location adjustments would increase producer returns more than any other alternative proposed. It was estimated that the total adoption of such proposal would increase returns to dairy farmers by about $339 thousand to $346 thousand per month. Proponent argues that such an increase would be appropriate because it would not affect the pool value of the milk involved and thus would not increase the blend price since the additional dollars to cover transportation would accrue only to those producers who actually delivered milk to plants located in Zones 2 through 12. However, it is the total impact of the proposal on returns to producers that must be considered, not just the impact on pool proceeds. In this regard, the proposed increase in returns to producers under the direct-delivery proposal is more than is considered necessary to encourage the movement of milk to deficit supply areas.

A partial application of proponent's direct-delivery differential proposal with respect to certain areas (such as Zones 8 and 9) also should not be adopted. Direct-delivery differentials, as proposed, would apply to all milk delivered by producers directly from farms to plants regardless of whether such milk is utilized in Class I, II, or III uses. Application of such differentials to Class II and III uses at plants in Zones 8 and 9 raises issues with respect to the appropriate price levels of milk in such uses. Although this is discussed more fully under issue number 4, application of such differentials are, to an extent, contrary to the need to maintain a uniform application of the classification and pricing of milk in Class II and Class III uses. Such issues broaden the scope of the proceeding beyond what is necessary to consider the intra-market pricing of milk in fluid uses in the Texas market.

Although there are sufficient supplies of milk overall that are associated with the Texas market, certain portions of the market are extremely deficit in terms of local production. As a result, substantial amounts of milk must be shipped long distances to meet the fluid milk needs of certain southern portions of the marketing area. The current order price structure is based on the need to increase prices from north to south and maintains an alignment of prices among plants to provide an incentive for milk to move from where it is produced to the consuming centers where it is needed. In this regard, opponents' contention that they would be placed at a competitive disadvantage in making fluid milk sales relative to plants in northern areas is misplaced. It is true that significant price differences among nearby plants would result in competitive inequities among such plants in selling fluid milk products. However, the primary emphasis with respect to the alignment of prices must be placed on the alignment of prices among various locations that is necessary to attract a supply of milk to such locations from areas that must be relied upon for sources of supply. If prices are too low at any location relative to another area that relies upon the same source of supply, there is a danger that the lower priced area will not be able to procure a sufficient supply of milk. The appropriate alignment of prices must be a reflection of the difference in the cost of transporting milk to the alternative outlets from a common production area. It is, however, impossible to establish a precise alignment of prices among areas because of the variability in the costs of hauling milk. At best, an alignment of prices usually represents an average of the variable costs of hauling milk that is representative of market experience.

Also, it is not necessary at all times to recognize the average cost of hauling milk to alternative outlets, particularly in areas where, or during periods when, there are substantial supplies of relatively nearby milk available to meet fluid milk needs. In effect, in such

situations, milk is made available because of a lack of alternative outlets. No price adjustments are necessary to reflect increased hauling costs if there is sufficient evidence that ample supplies are being made available under orderly marketing practices and under circumstances from which it could be concluded that sufficient supplies of milk are likely to continue to be available.

The record indicates that milk is moving substantial distances to meet fluid milk needs and that plants operating in the various pricing zones throughout the marketing area appear to be adequately supplied. However, contrary to the views expressed by opponents of any pricing changes, the current adequacy of supply is not the sole basis for determining whether price changes in any area are necessary. The testimony reveals that the market pricing structure, as it currently exists and has been modified during recent years, has resulted in nonuniform returns to producers and nonuniform costs to handlers. These inequities among producers and handlers are not conducive to the orderly marketing of milk that must be transported substantial distances on a continuing basis to meet the fluid milk needs of certain southern deficit areas. A failure to recognize the minimum price adjustments that are necessary could jeopardize the continued movement of milk from northern production areas to southern consumption centers.

The population of the Texas marketing area increased by 28.6 percent from 1970 to 1980. However, there are three dominant consumption centers within the marketing area (Zone 1–Dallas/Ft. Worth; Zone 8–Houston/Beaumont; and Zone 9–San Antonio) that combined, accounted for about 67 percent of the total marketing area population. From 1970 to 1980, the population increase for Zones 1, 8 and 9 was 24.2, 37.8 and 20.2 percent, respectively. With the increase in population, Zone 8 accounted for 29 percent of total marketing area population in 1980, surpassing Zone 1 as the most heavily populated area. In 1980, Zone 1 accounted for 27.6 percent of marketing area population, versus 28.5 percent in 1970. Also, Zone 9 accounted for 10.5 percent of total population in 1980, down from 11.2 percent in 1970. All other pricing zones, although representing a relatively small proportion of total population, have shown increases in population from 1970 to 1980, ranging from 2.3 percent in Zone 1–A to 51.2 percent in Zone 12.

The increasing population, particularly in the major population centers in Zones 8 and 9, continues to rely on the major milk producing regions in North Texas for fluid milk needs. The degree to which each of the pricing zones must relay on alternative sources of supply is illustrated by record evidence that compares the milk production within each zone to the actual receipts of bulk fluid milk at distributing plants in each zone. The ratios of production in receipts, in addition to identifying those deficit zones that must rely on alternative sources of supply, identify those zones that contain sufficient reserve supplies for the deficit areas.

On an individual zone basis, the greatest surplus of production relative to individual zone fluid milk receipts is within Zones 3 and 5. During May 1983, production within Zones 3 and 5 represented 2,666 percent and 698 percent, respectively, of the bulk fluid milk received at distributing plants within such zones. During the same month, production within Zones 1–A and 4 represented 210 and 238 percent of the bulk milk receipts at distributing plants within such zones. In Zone 1, which has the greatest volume of production, production represented 145 percent of bulk milk receipts at such plants. Zone 2, which is east of Dallas, is deficit in terms of local production (production was 39 percent of bulk milk receipts) but contains only 2.85 percent of marketing area population and is surrounded by Zones 1, 3, and 4 that have a surplus of production relative to bulk receipts at distributing plants in such zones. Zone 6, which is the West Texas area, including Abilene and San Angelo, is reasonably well balanced in terms of zone production and receipts. In May of 1983, Zone 6 production represented 117 percent of bulk milk receipts, while such ratio was 95 percent in October 1982 when the market supply/demand relationship is tighter.

Collectively, Zones 1–A through 6 of the Texas market contain sufficient supplies of milk in excess of the fluid milk needs of those zones to meet the fluid milk demands of the more southern zones of the marketing area. However, the greatest volume of production is included within Zones 1 and 3, which contain 9 of the top 10 milk producing counties in the Texas marketing area, and which are the nearest alternative sources of supply for the southern pricing zones.

The ratios of zone production of bulk fluid milk receipts at distributing plants illustrate the degree to which Zones 7 through 12 are deficit in terms of zone production. During May of 1983, the ratios of production within each zone to the amount of bulk milk received were 48.4 percent for Zone 7 (Austin), 13.5 precent for Zone 8 (Houston), 30.8 percent for Zone 9 (San Antonio), 44.2 percent for Zone 11 (Corpus Christi), and 42.0 percent for Zone 12 (Edinburg). No ratios were computed for Zone 10 since there are no longer any distributing plants located in such zone. The most deficit zones contain the major consumption centers of Houston and San Antonio. During October 1982, when the market supply/demand relationship was tighter than in May 1983, the ratios of production to receipts for Zones 8 and 9 were 11.7 and 24.8 percent, respectively. The size of these consumption centers, in conjunction with the degree to which they are deficit producing areas, amplifies the need to maintain a pricing structure to assure these areas of a sufficient supply of milk. However, consideration must also be given to the distances that such deficit consumption centers must reach to obtain sufficient supplies of milk.

Evidence in the record establishes that plants located in the southern deficit Zones 7 through 12 (exclusive of Zone 10) must reach out varying distances to obtain the necessary supplies of milk for fluid use. As one would expect, plants in Zone 7, which is adjacent to the supplies of milk available in Zones 3 and 5, reach out the least distance to obtain their supplies. In July 1983, the weighted average distance of actual milk movements to Zone 7 plants was about 84 miles from Austin, with over 90 percent of the milk movements being less than 150 miles. For Zone 8, however, the weighted average distance of milk movements to Houston was almost 200 miles. In terms of milk movements in 50-mile increments, 49 percent of the milk supplies originated between 251 and 300 miles from Houston and more than half of the milk shipped to Houston fluid milk plants was produced more than 251 miles from Houston.

Plants at San Antonio in Zone 9 reach out about 161 miles, on a weighted average basis, to obtain milk supplies. About 40 percent of the milk received at distributing plants originated in areas between 201 and 250 miles from San Antonio. Consequently, plants in Zone 9 do not reach out quite as far for milk as plants in Zone 8, although San Antonio is about 33 miles further south from Dallas than is Houston.

The weighted average distance of milk movements to plants in Zones 11 and 12 is about 118 and 120 miles, respectively. Most of the milk supplies for Zone 11 are

obtained from areas within 200 miles of Corpus Christi whereas plants in Zone 12 reach between 201–250 miles from Edinburg for a large proportion of total supplies.

Milk moves greater distances on a regular basis to meet fluid milk needs of plants in Zones 8 and 9 (Houston and San Antonio) than with respect to the other southern deficit zones. Also, it is obvious that substantial quantities of milk must be transported over these long distances to meet the needs of these major population centers. Also, record evidence establishes that both the distances and quantities moved have increased substantially over a period of years (1961 to 1983) and that the greatest northward expansion of the procurement areas has occurred with respect to Zones 8 and 9.

The current distance from which Zone 8 plants must obtain milk supplies extends to the heavy milk producing counties in North Texas that are located northeast of Dallas. This area includes Hopkins County, which is the largest milk producing county in the Texas marketing area, as well as three of the other top ten producing counties (Franklin, Upshur and Wood). More than half of the bulk milk shipped to Zone 8 distributing plants originates beyond 251 miles from Houston, and the distance from Houston to Sulphur Springs (the County Seat of Hopkins County) is 253 miles.

Zone 8 plants also obtain substantial volumes of milk from the heavy producing areas of Comanche and Erath Counties that are located southwest of Dallas. Stephenville, the County Seat of Erath County, is 267 miles from Houston.

Plants in Zone 9 also reach to the heavy producing areas of north Texas for substantial supplies of milk, primarily the counties of Comanche and Erath. San Antonio is 205 miles from Stephenville and about 40 percent of the milk shipments to Zone 9 plants originate between 201 and 250 miles from San Antonio. The procurement area for Zone 9 does not extend to any significant degree to the Hopkins County area, which is about 335 miles from San Antonio as measured to Sulphur Springs.

The purpose of the current order pricing structure of increasing prices from north to south is to provide assurance that milk will move to the deficit southern consumption centers. From the previous description of the relationships of the locations of supplies of the demand for fluid milk, it is obvious that such a pricing structure continues to be necessary under current marketing conditions. However, it appears that a consideration of whether the current order location adjustments are continuing to provide the necessary price incentives for milk movements is critical only with respect to Zones 8 and 9. These zones contain major consumption centers, are extremely deficit in terms of local production, and must obtain increasing supplies of milk from distant alternative sources.

In this regard, no significant testimony or evidence was presented with respect to the need to adjust prices because of disorderly marketing conditions in zones other than Zones 1, 8, and 9. It appears that the price changes that would result from proponents' proposals were an attempt to maintain an alignment of prices among zones, with some adjustments for individual zone supply/demand relationships, on the basis of a higher transportation rate. For the most part, however, proponents' testimony concerning disorderly marketing conditions resulting from a current inadequacy of location adjustments and the need to increase southern prices centered primarily on the price relationships among Zones 1, 8 and 9, and in particular with the current price level in Zone 8.

For the previous reasons, it does not appear necessary at this time to undertake a total restructuring of the price relationship among all pricing zones in the area. However, consideration of the current prices applicable in Zones 8 and 9 and their relationship to each other and to the current Zone 1 prices is necessary.

It is obvious that the current alignment of prices among Zones 1, 8, and 9 at the rate of 1.5 cents per hundredweight per 10 miles does not reflect the current cost of hauling milk. No testimony or evidence presented by any interested party disputed this fact, although opponents contend that there is no credible evidence from which a hauling cost reflecting average, marketwide hauling experience can be derived. Further, they contend that no marketing problems exist even though hauling costs are not covered by current location adjustments since milk is currently moving long distances and all plants receive sufficient supplies of milk. This latter argument is superficial in that it totally disregards the inequities that are occurring among producers and handlers and the potential for such inequities to disrupt the movement of substantial quantities of milk to expanding consumption centers in South Texas, particularly Houston. Also, there is sufficient evidence in the record from which a conservative estimate of hauling costs can be incorporated in a location adjustment that will provide a greater measure of equity among market participants and a greater incentive for southern shipments of milk.

Additional transportation costs that are not reflected in order location adjustments must be either paid for by the handler receiving the milk or subsidized through a net reduction in returns to producers who supply such plants. Either option can result in inequities among market participants if there is a disproportionate application of the additional costs. The problem is, of course, a matter of degree, which depends on how much milk must be moved, the distance involved, and the transportation rate.

AMPI is the largest supplier of milk to handlers located throughout the marketing area and represents about two-thirds of the producers who supply the market. AMPI also markets the milk of Mid-Am producers through arrangements between the two cooperatives. AMPI establishes prices to buying handlers in excess of Federal order minimum Class I prices. These over-order prices cover a variety of services provided to handlers, including the cost of hauling milk from where it is produced to where it is needed for fluid use.

Record evidence established that the over-order charges varied over time and were also subject to various competitive credits from such prices and that hauling surcharges of varying amounts were also established. For most of the 1981 through 1982 period, the end result of the announced prices was that Class I prices in Houston were about 72 cents per hundredweight higher than in Dallas. This would indicate that such over-order prices represented differences in the location value of milk on the basis of a more current transportation rate. Since May of 1983, however, the over-order price structure was modified so that the difference in prices between Dallas and Houston reflected only the 36-cent price difference that applies under the order.

Since the order location adjustment does not cover the cost of hauling milk to Houston, AMPI producers must be subsidizing the additional transportation cost incurred in supplying Houston handlers under the pricing structure established in May 1983. The subsidization of transportation costs results in a lower blend price to AMPI producers relative to those producers who do not incur the additional transportation costs that result from supplying distantly located deficit southern zones of the marketing area. Substantial quantities of milk are shipped to Zones 8 and 9 from the heavy milk producing regions located northeast

and southwest of Dallas. Record evidence established that there are a large number of nonmember producers located in the heavy northeast production area but that there is no nonmember milk shipped from there to Houston. Consequently, it is AMPI producers who bear the burden of shipping milk to Houston and as a result there are inequities among producers in the heavy northeast milk producing counties.

There is no detailed information in the record that establishes precisely the extent to which AMPI pay prices are less than prices to other producers who supply the Texas market. However, testimony does indicate that AMPI pay prices have been slightly below the order blend price while pay prices to nonmember producers who supply Zone 1 plants have been in excess of the order blend price. However, even if additional information on AMPI pay prices were included in the record, it would not be known to what extent the Texas market AMPI pay prices are affected by the total marketing operations of AMPI, which extends well beyond the Texas market and includes all of the Federal order markets covered by AMPI's Southern Region. The AMPI Southern Region includes all of the area from Texas to Kansas and New Mexico to Alabama. However, this information is not necessary. Since substantial quantities of AMPI milk are shipped to deficit southern areas and additional transportation costs are not recovered under the current pricing structure, returns to AMPI logically must be reduced relative to other producers who do not incur the additional transportation costs that are not reflected in the order.

As previously stated, prior to May 1983, the difference in market Class I prices at Dallas and Houston reflects the higher cost of the service involved in supplying Houston area plants. The net differences in over-order Class I prices are computed by subtracting the order Class I price from the AMPI announced Class I price, and then adjusted by the competitive credit applicable to the Dallas and Houston areas. For all of 1981 and the first two months of 1982, the Houston area competitive credit (or discount) was 26 cents per hundredweight less than the Dallas area credit. During most of the remaining months in 1982, the difference in the credits was 16 cents per hundredweight. Application of the lower credit for Houston area handlers resulted in a higher Houston Class I price relative to Dallas. However, during this entire period, the Houston area credit was applied by AMPI to receipts at Schepps's Dallas plant on that portion of Schepps' sales in Houston (about one-half of Schepps' total sales of packaged fluid milk products). This meant that Schepps was paying a higher price for milk sold in Houston than for milk sold in Dallas, and that such higher price approached the price paid by Houston handlers even though the milk was being received at Dallas from nearby production areas. To the extent that the AMPI price differences between Dallas and Houston reflect the additional cost of hauling milk, the application of the Houston area credit to receipts at Dallas represents a charge for a service that Schepps did not receive, namely, the transportation of milk to Houston. Consequently, costs among handlers that resulted from the application of over-order prices to recover hauling costs not reflected under the order were not uniform or related to specific services.

For 1981 through April 1983, AMPI's announced prices were adjusted to include a hauling surcharge for the delivery of milk to certain areas. From January 1981 through February 1982, the hauling surcharge to Houston was 10 cents per hundredweight higher than for delivery to Dallas. In March 1982, the difference in the hauling surcharge was increased to 20 cents and beginning in May 1983, the difference in the hauling surcharge between Dallas and Houston was eliminated. The most recent changes in the over-order price structure were implemented in view of the impact of the overall supply/demand balance in the market that was resulting in a loss of fluid markets by AMPI.

The previous and current over-order price structure has been affected by competitive conditions that are influenced by market supply/demand relationships. There is every indication that at times there has been a lack of uniformity in costs to handlers and returns to producers that is not representative of orderly marketing conditions. The inequities among handlers and producers, to a large degree, are a result of the failure of the order pricing structure to reflect a sufficient amount of the current cost of hauling milk. The magnitude of the deficiency is amplified because of the substantial distances involved and the amounts of milk that must be moved to the major consumption centers in the South. Consequently, a greater transportation allowance needs to be considered under the order to attract milk to the deficit Zones 8 and 9 from the nearest alternative sources of supply that are available to meet fluid milk needs.

There is no broad-based statistical evidence in the record from which any precise transportation rate can be calculated that would represent a marketwide average variable cost of hauling milk. However, evidence presented through a number of witnesses indicated various costs or charges that are applicable in the Texas and surrounding marketing areas for hauling bulk milk. The hauling charges ranged from $1.60 to $1.80 per loaded mile. The lower charge, which converts to a rate of 3.2 to 3.5 cents per hundredweight per 10 miles, depending on the weight of the load, is AMPI's freight rate quotation for hauling services provided to buyers and such charge was also attributed to an independent hauler. In addition, Mid-Am indicated that it pays $1.64 per loaded mile for transporting milk on regular long distance hauls. Although this evidence does not establish a precise average or standard market price for milk transportation services, it does show that the cost of hauling bulk raw milk is significantly greater than 1.5 cents per hundredweight per 10 miles.

In view of the lack of certainty over the extent to which hauling costs have increased, a conservative estimate of hauling costs should be used to consider the location adjustment change that is necessary at this time. If location adjustments were based on a rate in excess of costs, significant economic incentives could be created to move milk to obtain hauling profits. A conservative hauling rate, which falls short of covering actual costs, would maintain incentives to implement hauling efficiencies.

In view of the above, the hauling rate should be slightly below the lowest rate identified on the record as being representative of the cost of hauling milk in the Texas marketing area. It is concluded that a rate of 3 cents per hundredweight per 10 miles should be used to consider the location adjustments that are appropriate for Zones 8 and 9 of the marketing area. Such rate should encourage the continued implementation of hauling efficiencies and at the time cover a significantly greater proportion of current hauling costs than are currently reflected under the order.

As previously stated, the current relationship of prices among Zones 1, 8, and 9 is based on the distance between Dallas and Houston and Dallas and San Antonio. Application of the 1.5-cent rate to the current distance of 237 miles between Dallas and Houston results in a

36-cent higher price at Houston. Also, on the same basis, the 270 miles between Dallas and San Antonio results in approximately a 42-cent higher price at San Antonio relative to Dallas. The merger decision concluded that the resulting price relationship between Houston and San Antonio was appropriate because San Antonio was further from the North Texas supply area than Houston.

Continuing to align prices from Dallas but at the higher transportation rate of 3 cents per hundredweight would result in location adjustments of 72 cents in Zone 8 and 81 cents in Zone 9. However, in addition to using a higher transportation rate, a refinement of the alignment of prices is necessary to better reflect the different distances that milk must move from common supply areas to alternative outlets, and because of an increase in production in certain areas that are advantageously located to supply the fluid milk needs in Zone 9.

Plants in Zone 9 receive substantial quantities of milk from the heavy producing Comanche-Erath County area that is located southwest of the Dallas/Ft. Worth area. This ares is 205 miles from San Antonio (as measured to Stephenville, the County Seat of Erath County). This two-county area also furnishes substantial supplies of milk to Zone 8 handlers but is 267 miles from Houston. On this basis, the location adjustment should be lower for Zone 9 than for Zone 8, which is contrary to the current alignment of prices under the order. Producers in the Stephenville area provide a lesser service by supplying Zone 9 handlers than they provide in supplying Zone 8 handlers since they are 62 miles closer to San Antonio than Houston.

Since Zone 9 handlers have been able to secure a supply of milk from increased production that has occurred in the Comanche-Erath County area, the appropriate location adjusted for Zone 9 should be based on this supply area. However, this two-country area also supplies the major Dallas/Ft. Worth consumption area in Zone 1. The Stephenville area is 97 and 67 miles from Dallas and Ft. Worth, respectively. (Official notice is taken of the Official State Mileage Guide, Texas Statistical Research Service, Austin, Texas.) Producers supplying the Dallas/Ft. Worth area receive the Zone 1 price and must pay the farm-to-plant hauling cost. Consequently, in order to be indifferent to supplying the San Antonio area, only the additional mileage in moving milk to San Antonio must be considered in establishing the Zone 9 location adjustment. Based on the Dallas/San Antonio alternative, this is a different of 108 miles, which equates to a location adjustment of 33 cents with the 3-cent hauling rate. Based on the Ft. Worth-San Antonio comparison, the location adjustment woud be 42 cents, (205−67=138 or 14-ten-mile increments x 3¢) which is the current location adjustment for Zone 9. Consequently, even through hauling costs have increased, no price increase is necessary for Zone 9 because of the increase of production in an area that is advantageously located to supply the fluid milk needs of handlers operating plants in Zone 9.

The same procedure as previously set forth for Zone 9 should also be used to consider the appropriate location adjustment for Zone 8. To the extent that Zone 8 needs to rely on the Stephenville area for a source of supply, the location adjustment for Zone 8 would need to result in a price that would make Stephenville area producers indifferent to supplying San Antonio of Houston. As such, the price at Houston would have to cover the additional distance that milk must be hauled to supply Houston rather than San Antonio. In this case, the additional distance is 62 miles, which translates to a 21-cent higher price at Houston than at San Antonio. In other words, based on price adjustments from Dallas, the Zone 8 location adjustment would be 63 cents.

However, in establishing location adjustments, incentives should be created to attract milk from the nearest alternative supply areas that are available to supply fluid milk needs. In this case, Houston is nearer to the heavy supply areas that are located northeast of Dallas (the Hopkins County area) than to the Stephenville area. Houston is 253 miles from Sulphur Springs (the County Seat of Hopkins County), about one ten-mile zone closer than Houston is from Stephenville. Although a greater proportion of the supplies for Houston plants originates in the Stephenville area than in the Sulphur Springs area, the Zone 8 location adjustment should be based on the price incentive necessary to attract milk supplies from the nearer Sulphur Springs area.

As was the case with the Stephenville area, the Sulphur Springs area supplies a substantial proportion of the fluid milk needs of the large Dallas/Ft. Worth consumption center. In order to establish an incentive for milk to move to Houston, the Zone 8 location adjustment must reflect the additional miles involved in hauling milk to Houston rather than Dallas. In this case, Houston is 174 miles further from Sulphur Springs than in Dallas. Thus, the 18 ten-mile zones at 3 cents per ten miles require a location adjustment of 54 cents in Zone 8, an increase of 18 cents over the current order location adjustment.

The modification to the Zone 8 location adjustment is the only price change that is necessary at this time. The higher price will cover a greater proportion of current transportation costs, establish a greater degree of equity among producers and handlers, provide a greater assurance that supplies of milk will be made available to supply the fluid milk needs of the largest consumption center in the marketing area and promote stable and orderly marketing conditions as required by the Act. Also, the increased location adjustment represents a refinement of the current price alignment among Zones 1, 8 and 9 by recognizing the nearest alternative different sources of supply for Zones 8 and 9 and the proximity of such supply areas to Zone 1 consumption centers.

The price increase in Zone 8 that improves the price alignment among Zones 1, 8 and 9, does not significantly disrupt the price alignment among Zone 8 and other zones of the marketing area. Distributing plants located at Lufkin and Bryan (which are in Zones 4 and 5, respectively) are 119 and 95 miles from Houston. Under the current order price structure, the Houston price is 16 cents higher than the price at Bryan and 18 cents higher than the price at Lufkin. With the price increases at Houston, the Zone 8 price will be 34 cents higher than the price at Bryan and 36 cents higher than the price at Lufkin.

Based on the distance from Bryan to Houston, and the 3-cent hauling rate, a precise alignment of prices between Bryan and Houston would be accomplished with a 50-cent location adjustment at Houston, rather than the 54-cent adjustment adopted herein. The additional 4 cents that is provided herein should help attract milk from the Zone 5 area, yet it would not be so great as to jeopardize the maintenance of a supply of milk for the one distributing plant in Zone 5. As previously stated, there is a substantial amount of production in Zone 5 that is in excess of the bulk fluid milk receipts at the distributing plant in such Zone. Also, fluid milk needs are relatively small as the total population in Zone 5 represents only about 1.7 percent of total marketing area population.

Based on the distance between Lufkin and Houston and the 3-cent hauling rate, the 36-cent higher price at Houston relative to Lufkin represents a precise alignment of prices. Beaumont, which is

located in Zone 8 northeast of Houston, is 108 miles from Lufkin. Consequently, the price at Beaumont will be only 3 cents per hundredweight higher than the price at Lufkin plus the implied transportation cost of 33 cents between Lufkin and Beaumont.

The prices increase in Zone 8, although designed to provide the incentive for milk supplies to be procured from the nearest heavy producing area around Sulphur Springs, results in a total expansion of the theoretical procurement area for Zone 8 plants. The higher price shifts the procurement area to the west and northwest towards the Zone 9 procurement area. It has already been noted that both zones procure milk supplies from the Comanche-Erath County area even though the current Zone 8 price is not currently competitive in such area relative to the Zone 9 price. Even though the proposed Zone 8 price moves the potential supply area from Houston towards the San Antonio supply area, the price would not be so high as to jeopardize the supply of milk for Zone 9 plants that are advantageously located with respect to the heavy producing Comanche-Erath County area.

The Zone 8 price increase also shifts its theoretical procurement area south towards Corpus Christi by about 60 miles. Such shift does not extend into the current primary procurement area of plants located in Zones 11 and 12 to any significant degree. Most of the milk supplies for plants in these zones are procured from areas in competition with Zone 9 plants and the price relationships in Zone 9, 11 and 12 are not altered in this decision.

The proposed modification to combine Zones 2 and 4 into one pricing zone that was supported by the handler who operates a plant at Lufkin should not be adopted. Proponent's claim of being at a competitive disadvantage in selling fluid milk products in competition with Zone 2 handlers is not a proper basis for the proposed action. The current 12-cent difference in the Class I price between the two zones must be maintained to facilitate the southward movement of milk. If the price in Zone 4 were reduced to the Zone 2 price, the maintenance of the milk supply for the Lufkin plant would be jeopardized because of the incentive for producers to ship milk further south to the deficit Zone 8. The need to maintain the current Zone 4 price at its current level is even greater because of the price increase adopted herein for Zone 8. On the other hand, if the Zone 2 price were increased to the Zone 4 level, such price would be too high relative to the price at Dallas and the proximity of Zone 2 to the heavy northeast Texas production area. As such, an increase in the Zone 2 price would negate the primary objective of the price increase in Zone 8 to attract a supply of milk from the northeast Texas supply area.

Opponents to the pricing proposals contend that the proposals cannot be considered because the Department failed to publish an initial regulatory flexibility analysis prior to holding the hearing, which they contend is required by the Regulatory Flexibility Act.

Section 608c(4) of the Agricultural Marketing Agreement Act of 1937, as amended, provides that the Secretary must base a marketing order on evidence contained in the record of a public hearing. Therefore, proceedings to amend Federal milk orders are governed by sections 556 and 557 of Title 5 of the United States Code. Under these "formal" rulemaking procedures, decisions can be based only on evidence contained in the record of a public hearing. As a result, it would not be appropriate for the Secretary to publish an analysis containing conclusions that describe the impact of the proposals on small businesses prior to holding a public hearing to gather the evidence on which the decision must be based. Therefore, publication of an analysis or a certification that the proposed amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities is not made until the recommended or final decision stage of a proceeding that provides for amendatory action.

The notice scheduling the hearing specifically invited interested parties to present evidence on the probable impact on small businesses of the hearing proposals or modifications of the proposals for the purpose of tailoring their applicability to small businesses. In opposing any of the pricing changes, opponents testified to the probable impacts of various combinations of proposed pricing changes in terms of changes in the value of producer milk and costs to handlers.

This testimony on the probable impact of the proposed pricing changes was considered in this decision which contains a certification that the proposed amendments, which include the minimum price change for Zone 8, will not have a significant economic impact on a substantial number of small entities. The 18-cent price increase in Zone 8 will not be significant, as it represents only a 1.2 percent increase from the minimum order Class I price at Houston in effect at the time of the hearing. As discussed in this decision, the price increase is intended to cover only part of the current cost of shipping milk long distances on a regular basis to meet increased fluid milk needs of the largest population center in the marketing area. As an intentional consequence the amendment will have only a minimum impact on returns to producers so as not to encourage additional production or to further discourage the production of milk that is necessary to meet the fluid milk needs of the market.

4. *The Class II price level and location adjustments within the marketing area.* No changes should be made with respect to pricing of milk in Class II uses under the order.

Milk in Class II uses is currently priced at the same level throughout the marketing area, as is the case in nearly all Federal order markets. The Class II price is the price for milk in Class III (manufactured) uses plus a formula derived differential. The Texas order Class II price is the same as the minimum Class II price under 32 other Federal order markets and the classification of milk in such uses is uniform throughout most Federal order markets.

Schepps proposed that for certain pricing zones the Class II price under the Texas order be subject to the same location adjustments that were proposed to apply in those zones to Class I milk. Specifically, Schepps proposed that the Class II price for plants in Zones 6 through 12 be increased from the Class II price announced for the market. Proposed increases to the Class II price for these zones were: Zone 6, 30 cents; Zone 7, 35 cents; Zone 8, 45 cents; Zone 9, 51 cents; Zone 10, 62 cents; Zone 11, 75 cents; and Zone 12, 84 cents. For Zones 1 through 5, no location adjustments were proposed so that Class II prices would be the same as the Class II price that currently applies throughout the marketing area.

The plus location adjustments were proposed for those zones that proponent considers to be deficit in terms of milk production. Proponent contends that since plants in these deficit zones must reach out to alternative areas for sources of supply, the prices they pay for milk should cover the transportation cost incurred in moving milk to their plants regardless of whether the milk is utilized in Class I or Class II uses. Proponent contends that producers who ship milk to plants incur the transportation cost for total milk shipments, regardless of how it is used. Proponent also contends that the higher Class II prices in deficit zones would

provide an incentive for milk in Class II uses to be processed at plants in surplus production zones of the market rather than in deficit supply areas. Proponent contends that this would result in overall marketing efficencies by eliminating the transportation costs for the liquids that are eliminated in the process of making Class II products.

Opponents of the pricing proposals opposed this proposal on the basis that it not only discriminates against South Texas handlers relative to handlers in North Texas, but would place South Texas handlers at a competitive disadvantage with respect to substantial competition from Class II manufacturers throughout the country. They contend that the proposal would result in marketing inefficiencies in that South Texas handlers could not afford to utilize surplus cream in Class II products that is associated with the standardization of producer milk for use in fluid milk products. They contend that the incentives for handlers to attempt to receive milk uniformly on a seven-day basis would be reduced because of the inability to utilize those receipts in Class II uses. Opponents also contend that the proposal would provide an economic incentive for South Texas handlers to use manufactured milk ingredients (such as butter and nonfat dry milk) to make Class II products rather than fluid cream. They contend that this would result in a lowering of returns to producers since the manufactured ingredients would be priced at the Class III (manufacturing) level rather than at the Class II price.

Increasing the Class II price through location adjustments would not provide any incentive for milk to be shipped from the relatively surplus areas of the Texas market to those more deficit areas of the market on a direct farm-to-plant shipped basis. The blend price payable to producers is adjusted by the same location adjustments that are applicable to milk in Class I uses. For example, producers who supply plants in Zone 8 would receive a blend price that is 54 cents per hundredweight higher than the blend price payable to producers who supply plants in Zone 1, as adopted under the previous issue. Consequently, the application of Class II location adjustments, all other things being equal, would result in an increase in the total value of milk pooled under the order and, consequently, increase the blend price level to all producers supplying the market. There is no indication that producer returns need be increased to provide an additional incentive to producers to increase production to satisfy the Class I and Class II needs of the market.

More importantly, however, the proposed increase in the Class II price level through location adjustments ignores the need to maintain uniformity in both the classification and pricing of milk in other than fluid milk uses in view of the competitive situation among handlers and producers over a much broader area than occurs with the sale of fluid milk products. The uniform pricing and classification provisions for 39 Federal order markets became effective on August 1, 1974, and official notice is taken of two decisions issued by the Assistant Secretary on February 19, 1974, concerning such provisions under 32 orders (Georgia, et al., 39 FR 8452, 8712, 9012) and under seven orders (Chicago Regional, et al., 39 FR 8202). These "uniform classification" proceedings involved all of the then existing Federal order markets that were subsequently merged to form the Texas marketing area, except the South Texas marketing area. However the South Texas order was also amended effective August 1, 1974, after the issuance of a separate decision based on evidence presented at the hearing to merge the marketing areas of six Texas orders. Consequently, official notice is also taken of the Deputy Assistant Secretary's decision of April 24, 1974 (39 FR 14950). The decision concluded that it was necessary to implement the uniform classification and pricing provisions under the South Texas order concurrently with the implementation of such provisions under the other Texas orders and that procedures to merge the marketing areas could not be completed by the August 1 effective date. The decision concluded that an interim implementation of the uniform classification and pricing provisions in the South Texas order was necessary because of the substantial competition between South Texas handlers and handlers regulated under the other Texas orders.

The marketing of Class II products is conducted on a wider regional basis, relative to the marketing of fluid milk products, as was recognized in the uniform classification and pricing decisions, and is illustrated by the examples of the locations of plants that distribute such products in the Texas marketing area. Consequently, the competitive relationships among handlers and producers extend far beyond the Texas marketing area. The record of this proceeding does not demonstrate that the minimum order value of milk in Class II uses in certain zones of the Texas marketing area should be significantly different than the value of Class II milk in other Federal order markets. If there were a need to consider a higher value of milk in such uses, the competitive relationship among handlers and producers over a broad area is necessarily involved and cannot be appropriately addressed in an amendatory proceeding involving one market.

5. *Location adjustments applicable for milk delivered to plants located outside the marketing area.* No change should be made to current order location adjustments that apply at plants located outside the marketing area.

The order currently provides for adjusting the Class I and producer prices for milk received at plants that are not located in the marketing area. The provisions were established when the present Texas marketing area became regulated under one order and are necessary to price Texas order producer milk that may be diverted to distantly located plants for manufacturing, as well as to establish prices at distant plants that may become associated with the Texas market. The Texas order Class I and producer prices at plants outside the marketing area but in Texas and most of Oklahoma are adjusted for location on a zone pricing basis but are related to Class I prices under Federal orders applicable in those areas. At most other out-of-area plants, a minus location adjustment applies at the rate of 1.5 cents per hundredweight for each 10 miles that such plant is located from Dallas. No location adjustments apply at plants in Louisiana, New Mexico, or El Paso County, Texas.

Schepps proposed that the location adjustment for plants located in the States of Oklahoma, Arizona, Colorado, Kansas, Missouri, Arkansas and Louisiana be computed on the basis of the difference between the Texas order Class I price and the Federal order Class I prices applicable in such States. For any specific plant in such States, the location adjustment would be the difference between the current Zone 1 Class I price and the Class I price applicable at such plant if it had been regulated under the Federal order for the marketing area nearest to such plant as measured from the plant to the zero pricing point in the orders applicable in such a State. For locations outside the above-listed States, the location adjustment would be the difference between the announced Texas order Class I price (the price that applies in Zones 3, 4 and 5 under Schepps' in-area pricing proposal) and the higher of the Class I prices at Dallas, Abilene and

San Antonio reduced by 3.6 cents per hundredweight per 10 miles that the plant is located from each of these cities.

Proponent contends that the out-of-area location adjustment proposal is necessary to maintain price alignment between the Texas order and other Federal order markets, even though the differentials between markets do not reflect the cost of hauling milk. For more distant areas than those in the listed States, the location adjustment represents an extension of the 3.6-cent per hundredweight transportation rate advocated by Schepps. Proponent contends that use of such rate would establish and economic incentive for milk to be shipped to the Texas market when needed.

The proposal was opposed by Mid-Am because it would result in a change in pricing at the cooperative's supply plant in Aurora, Missouri. Mid-Am contends that the proposal would increase the current minus 60-cent location adjustment at its plant to as much as minus 99 cents per hundredweight. Mid-Am contends that such price reduction would jeopardize the maintenance of a reserve supply of milk for the Texas market. Mid-Am points out that milk is currently shipped from its plant to Texas pool distributing plants and that, based on projected population increases for the State of Texas, there will be an increasing need for the Texas market to rely on areas such as southwest Missouri for supplemental supplies of milk. Mid-Am contends that the present method of calculating location adjustments for the Aurora plant has not resulted in any disorderly marketing conditions.

In its brief, AMPI opposed the out-of-area location adjustment proposal because of pricing disparities that would result at locations in New Mexico and areas in the State of Texas that are outside the Texas marketing area. For example, AMPI pointed out that the proposal would result in a price at El Paso, Texas, that would be about $1.00 per hundredweight lower than the price at that location under the Rio Grande Valley order.

The major thrust of the out-of-area location adjustment proposal was to maintain the relationship of prices among the Texas and other orders that currently exists. Apparently, such proposal was considered necessary to conform with the overall intra-market pricing changes that were proposed that included a 10-cent reduction in the current Zone 1 price and the southern movement of the base zone to Zones 3, 4 and 5. However, since these changes were denied as indicated under issue number 3, conforming changes are not necessary to maintain the current price relationship and, thus, the issue is moot.

It must also be pointed out that the mechanics of the proposal were deficient in maintaining current price relationships as evidenced by the change in location adjustments that would occur at various locations. Proponent offered no evidence to establish any need for changes in location adjustments in these out-of-area locations. It should also be pointed out that even if the proposal had resulted in maintaining the current price relationship, the location adjustments could be subsequently modified on the basis of amendatory proceedings for the other markets rather than for the Texas market. Although there is a need to maintain a coordination among order prices, it would be preferable that the Texas order prices at all locations be made on the basis of a hearing for the Texas market.

6. *Classification of milk contaminated with antibiotics.* A proposal to permit the pooling of certain contaminated milk without such milk being either received at or diverted from pool plants should not be adopted.

The Southland Corporation proposed that the "Producer milk" and "Classes of utilization" provisions of the order be amended to permit the pooling of milk that is rejected by a handler because of antibiotic contamination. Under the proposal, rejected, contaminated, tank truck loads of milk would be treated as producer milk (except for the milk of the producer(s) responsible for the antibiotics) and would be classified and priced under the order, provided that the market administrator is notified of the rejection and given the opportunity to verify the antibiotics. Such milk could be disposed of by the handler for animal feed or be dumped and thus be subject to Class III utilization and pricing to the handler. Producers, except the producer(s) responsible for the contamination problem, would receive the order blend price.

The Southland Corporation operates five distributing plants under the order, four of which are either totally or partially supplied by nonmember producers. Southland's witness testified that the purpose of the proposal is to alleviate to some extent problems incurred in handling milk from nonmember producers that is contaminated with antibiotics. Such milk cannot be disposed of for human consumption, and Southland takes precautions to prevent the receipt of such milk in its fluid milk plants by performing tests to detect for the presence of antibiotics on each tank truck before unloading the milk. This initial test takes 15 to 30 minutes to complete. If the test is positive, the tanker is held while a second test is completed that takes about two and one-half hours to complete. If the test is positive, the load is rejected.

Southland testified that prior to September 1982, there was an outlet for manufacturing animal feed from such rejected milk. Disposition to the manufacturing plant qualified as a diversion, and, thus, Southland was able to pool the milk of the producers who did not cause the problem. Southland stated that its returns for such milk were small, but that the company's total cost of the milk was the difference between its returns from the sale of the milk and the Class III price applicable to Southland for such milk under the order. Producers who did not cause the problem, but whose milk was nevertheless contaminated by being commingled with other milk in the tank truck, received the order blend price.

Southland further testified that the outlet for processing such milk into animal feed discontinued receiving the milk in September 1982, and that there is no other outlet available that provides the opportunity for the contaminated milk to be pooled on a diverted basis. Furthermore, according to Southland, the only feasible outlet that the company has found provides no return and, thus, Southland's cost for the milk of the producers who did not cause the problem is the order blend price. Although the order does not require payment for milk that is not received by a handler, Southland feels compelled to return such price to producers since the milk is contaminated through no fault of their own and to preserve such producers as a source of supply.

AMPI opposed the proposal on the basis that the pooling provisions of the order should not be relaxed in any way to permit milk to share in the pool if it is not physically received at a pool plant or diverted to a nonpool plant. Furthermore, AMPI testified that since such milk must be dumped or disposed of for other than human consumption according to Texas Health Department regulations, it should not be pooled under the order. AMPI further opposed the proposals on the basis that the cost of administering the order would be increased because the market administrator would have to physically verify the rejection, the reason for the rejection, the disposition of the milk and also verify the identity of the producer who cause the problem whose milk would not be pooled. AMPI further testified that the proposal would place

the market administrator in the position of performing the duties of a "duly constituted regulatory agency" for determining quality standards, and that the performance of such duties goes beyond the role of Federal milk orders. AMPI also testified that adoption of the proposal could set a precedent for other proposals to pool milk (that is neither received nor diverted) that a handler claims is not suitable for processing for any number of reasons pertaining to quality and flavor.

AMPI further contended that the proposal does not address the solution to the problem. AMPI suggested that all segments of the industry should work together to obtain better enforcement of existing health regulations by regulatory agencies. Also, AMPI contended that adoption of the proposal would weaken the industry incentive to develop programs to avoid the incidence of antibiotic contamination.

Record evidence does not indicate that the incidence of antibiotic contamination is any significant problem in terms of the overall milk supply. Industry efforts outside the order provisions, as portrayed by the activities of Southland and AMPI, are geared to prevent the delivery or receipt of any contaminated milk. There is every indication that producers and handlers have significant incentives to continue to provide high quality milk and dairy products.

The proposal should not be adopted because it would result in an extension of the Federal order program to establishing and enforcing quality standards for milk. The establishment and enforcement of such standards are the function of other jurisdictions that have the responsibility for assuring the maintenance of minimum quality standards relating to public health considerations. The Texas order refers to the applicable health authorities in general terms as "a duly constituted regulatory authority" to encompass the full range of agencies that may have the authority to establish the state or local health standards, including various health departments and state departments of agriculture. The order refers to these agencies in the various pool plant and producer milk definitions. In order to market milk to dairy products under the Texas order, milk plants and dairy farmers must be approved by a duly constituted regulatory agency for the production, disposition, processing or packaging of Grade A milk. Once approval is obtained from the appropriate agencies, the marketing of such milk and dairy products is regulated under the terms and provisions of the order. The order thus regulates only the marketing activities while other agencies have the responsibility for developing and enforcing the standards to promote the public health.

If a handler were to reject milk under the proposal, the market administrator would have no specific standards within the order to determine whether such milk should or should not be rejected. Presumably, in the absence of such standards, the market administrator would have to rely upon standards developed by other regulatory agencies that are responsible for the public health. This would amount to placing the market administrator in the position of enforcing health laws established by other agencies and would result in an inappropriate expansion of the scope of the marketing order.

7. *Shipping percentages applicable to pool supply plants.* No change should be made to the current shipping standards for polling supply plants under the order.

The order currently provides for the pooling of two categories of supply plants if certain minimum performance standards are met in supplying the fluid milk needs for distributing plants. The pooling standard for one category of supply plants is based on shipments to pool distributing plants while the pooling standard for the other category of supply plants recognizes shipments to distributing plants that are regulated under the other orders. The pooling standards for pooling both categories of supply plants, however, are similar in that 50 percent or more of such plants' Grade A receipts must be shipped to distributing plants during the month in order to attain pool plant status. During the months of August and December, however, the shipping standard is 15 percent of receipts if the supply plant was pooled during the immediately preceding month. Also, any supply plant that is pooled during each of the immediately preceding months of September through January retains pool plant status during the months of February through July without making qualifying shipments, unless the plant operator requests nonpool status.

Mid-Am proposed that the order be amended to provide the Director of the Dairy Division with the authority to temporarily increase or decrease the order shipping standards by up to 10 percentage points if the Director finds that such revision is needed to either obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director would investigate the need for the revision, either on his own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director would issue a notice stating that a temporary revision of the shipping standard is being considered and inviting views of interested persons concerning the proposed revision. After evaluating such views, the Director would then decide whether a temporary revision is warranted.

Mid-Am's witness pointed out that under current procedures the order shipping standards can be revised only through a time-consuming amendatory proceeding or by a suspension action. In addition, changes accomplished through suspension are limited because of procedural requirements to relaxing rather than increasing the shipping standards. Thus, Mid-Am contends that the inclusion of a provision to adjust the supply plant shipping standards on a temporary basis would enhance the ability of the order to deal in a timely manner with short-run changes in supply/demand conditions. Mid-Am further testified that, for the purposes of its proposal, a temporary period is defined as one or more months during the qualifying period when supply plants must make shipments to distributing plants to obtain pool plant status.

The basic thrust of Mid-Am's proposal is to provide for additional flexibility under the order to deal with short-run changes in supply/demand conditions. Also, Mid-Am contends that a temporary revision of the shipping standards could be accomplished more rapidly than a suspension action.

The Mid-Am witness testified that its supply plant located at Aurora, Missouri, which has been pooled under the order since August 1982, would be the only plant affected by the proposal. The witness stated that if the proposal had been in effect in August of 1983, Mid-Am would have requested a reduction of 10 percentage points in the shipping standards. The witness contended that shipments were made from the supply plant to pool distributing plants during that month solely for the purpose of meeting the pooling standards since the milk was not needed by distributing plants. The witness stated that the cooperative was unaware that it could not meet the shipping standards without making unnecessary shipments until it was too late to request a suspension of the supply plant pooling standards for August.

AMPI supported the proposal for essentially the same reasons presented by Mid-Am. The AMPI witness testified that the purpose of pooling standards for

supply plants is to assure that such plants would ship milk at the times and in the quantities needed to meet fluid milk needs, but that supply plants should not be forced to make uneconomic shipments to distributing plants when milk is not needed. The witness testified that at times additional shipments were made from its supply plant located in Hillsboro, Kansas, to Texas pool distributing plants to meet the pooling standards, particularly during the months of August and December 1982.

At the time of the hearing there were only two supply plants pooled under the order. In addition to Mid-Am's plant at Aurora, Missouri, a pool supply plant operated by Southern Milk Sales at Yantis, Texas, was pooled under the order on the basis of shipments to pool distributing plants during October 1983. This plant has been pooled under various pooling categories during 1982 and 1983, including the provisions for pooling a cooperative association plant that are not at issue under the Mid-Am proposal. (Official Notice is taken of the Market Administrator's monthly *List of Handlers*, January 1982 through October 1983). An additional supply plant operated by AMPI at Hillsboro, Kansas, ceased being pooled under the Texas order effective August 1, 1982.

Proponent's contention that the proposal could be effective in bringing forth additional quantities of milk for fluid use, should the need arise, is not supported by the prevailing supply structure of the market. The Texas market distributing plants are basically supplied on a direct-shipped basis with little reliance on supply plant shipments to meet the fluid milk needs of the market. As indicated by Mid-Am, the proposal would apply essentially to only one supply plant. Consequently, any temporary action to increase the shipping standard by the full 10 percentage points would have virtually no impact in bringing forth any significant quantity of milk to meet the fluid milk needs of a market that pools in excess of an average of 349 million pounds of producer milk per month.

Rather than temporarily increasing the shipping standards, it appears that the major concern of proponent is to provide a mechanism to temporarily lower the shipping standards, particularly for the months of August and December. In this regard, the current supply plant pooling standards have been in effect since the Texas order was implemented July 1, 1975, and there have been no suspension actions taken to relax the pooling standards for supply plants under the order. The current pooling standards were based on marketing conditions existing at that time and specifically recognized the seasonal changes in supply/demand conditions during August and December by providing a pooling standard of 15 percent for plants pooled in the immediately preceding months, rather than the 50 percent standard applicable during the remaining shipping period for supply plants. A review of the seasonal variation in the percentage of producer milk in Class I uses does not indicate that the shipping standard for August and December are out of line with marketwide supply/demand conditions. In any event, because of the limited shipping standard during these months, any additional flexibility provided by the authority to lower the shipping standard, versus a suspension of the pooling standards, is of dubious value.

Proponent's major contention is that the proposal would provide for a mechanism to reduce the pooling standard more quickly than can be accomplished through current suspenstion procedures. This is simply not the case. The proposal provides for the issuance and publication of proposed rule making with the opportunity for public comment, and the issuance of and publication of final temporary rules. Essentially, this is the same procedure that is applicable to suspension actions. Therefore, if supply plant operators do not recognize or anticipate changes in supply/demand conditions in time to request a suspension action, there would also be insufficient time to request a temporary lowering of the supply plant shipping standards. In such a situation, the proposal would be of no useful value to proponents.

8. *Computation of the uniform price.* A minor revision should be made in the order provisions concerning the computation of the uniform price as proposed by the Dairy Division. Specifically, the 4-cent per hundredweight lower limit on the amount to be retained in the producer-settlement fund should be removed. Adoption of the proposal, which was not opposed by any interested party, will provide for the opportunity to reduce the reserve balance in the producer-settlement fund.

The producer-settlement fund reserve is maintained through the computation of the uniform price. Each month, current order provisions require that not less than one-fourth of the unobligated balance in the producer-settlement be added to the handlers' value of milk. Also, the order requires that not less than 4 cents nor more than 5 cents per hundredweight be subtracted from the total aggregate value of milk to maintain the producer-settlement fund reserve for subsequent months. The purpose for the reserve under the order is to facilitate the handling of audit adjustments on handlers' receipts and dispositions.

Unlike most Federal orders, the Texas order provides for a payment system whereby all obligations by plants for milk purchased from producers and cooperatives are paid to the producer-settlement fund. The market administrator then pays producers and cooperatives, as well as handlers who wish to pay their own producers, from the producer-settlement fund. The order provides that any shortage in payments by any handler be reflected by reduced payments to such handler or the handler's producer suppliers and that producer-settlement funds not be used to supplement such payments. Also, as a result of the payment practices under the order, the producer-settlement fund reserve is not necessary for handling audit adjustments. Such adjustments are handled by debiting and crediting handler accounts each month.

Under current order operations, the entire unobligated balance in the producer-settlement fund is added to the current month's uniform price computation. However, between 4 and 5 cents per hundredweight must then be deducted from the uniform price computation. This results in a producer-settlement fund balance of a minimum of about $150,000 on a monthly basis.

Such a balance in the producer-settlement fund is not necessary under the current payment practices under the order. Elimination of the current lower 4-cent limit that can be deducted in the uniform price computation will provide the means by which the producer-settlement fund reserve can be reduced.

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 conclusions are denied for the reasons previously stated in this decision.

A ruling of the Administrative Law Judge to which a specific objection was taken in a brief has been reviewed. An

objection was raised by the attorney representing Schepps Dairy to the Administrative Law Judge excluding the admission of two exhibits offered as evidence. The exhibits were marked for indentification and were proffered as an offer of proof when the Administrative Law Judge excluded them.

The exhibits are reproductions of advertisements that were included in a supplement to a newspaper published in Sulphur Springs, Texas. The advertisements for a grocery and feed store contain milk prices reportedly paid to producers in Zone 1 by cooperatives and proprietary handlers including AMPI, Cabell, Foremost, Metzgers, Mid-Am, and Southern Milk for August 1982 through July 1983. A witness for Schepps testified that the store proprietor told him how he obtained the information which was used for the store advertisements. According to arguments presented at the hearing and in the brief, the exhibit should have been received to illustrate the disparity among pay prices to producers in Zone 1 and that the accuracy of the prices was corroborated by witnesses representing AMPI and Mid-Am. An attorney representing handlers who oppose Schepps' proposals objected to the exhibit as being hearsay, while the attorney for AMPI objected on the basis of the information being totally unreliable for the purpose of comparing the listed prices.

In rejecting the exhibits, the Administrative Law Judge noted that the pay prices listed in the exhibit were not reported by a newspaper, but were inserted by a grocery and feed store. The Administrative Law Judge's ruling to exclude the exhibits has been reviewed in light of the arguments presented and is affirmed on the basis that the exhibits are not sufficiently reliable sources of information on the magnitude of the pay price differences among producers. The reliability of the exhibits is so attenuated by the particular hearsay nature of the information that they are not the sort of evidence, "upon which responsible persons are accustomed to rely." (7 CFR 900.8(d)(1).

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Texas 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 specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Texas marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. In § 1126.52(a)(1), the adjustment per hundredweight for Zone 8 is changed from "Plus 36 cents" to "Plus 54 cents".

§ 1126.52 Plant location adjustments for handlers.

(a) * * *

(1) * * *

	Adjustment per hundredweight
* * * * *	
Zone 8	Plus 54 cents
* * * * *	

* * * * *

2. In § 1126.61, paragraph (e) is revised to read as follows:

§ 1126.61 Computation of uniform price (including weighted average price).

* * * * *

(e) Subtract not more than 5 cents per hundredweight. The result shall be the "weighted average price."

* * * * *

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

Signed at Washington, D.C., on October 25, 1984.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 84-28847 Filed 10-30-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-33-AD]

Airworthiness Directives; Fairchild Aircraft Corporation; Models SA26-T, SA26-AT, SA226-T, SA226-T(B), SA226-AT, SA226-TC Airplanes

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Fairchild Aircraft Corporation Models SA26–T, SA26–AT, SA226–T, SA226–T(B), SA226–AT, SA226–TC Airplanes. This AD would supersede and incorporate certain requirements of AD 83–19–02 and also require modification of the hydraulic and oxygen systems by replacing certain hydraulic lines and oxygen system components. Recent service history indicates that lines and system components have failed resulting in leakage of flammable fluids and oxygen in the cockpit area which could possibly result in a catastrophic fire. This proposed action will prevent a cockpit fire from these conditions.

DATES: Comments must be received on or before December 6, 1984.

ADDRESSES: Fairchild Service Bulletin (S/B) 226–29–005 revised September 6, 1984, S/B 226–35–003 issued September 6, 1984, and S/B 24–021 dated March 21, 1983, applicable to this AD may be obtained from Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284 or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No.

84–CE–33–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Garry Sills, Telephone (817) 877–2073 or Mark R. Schilling, Telephone (817) 877–2589, Airplane Certification Branch ASW–150, Southwest Region, FAA, Post Office Box 1689, Fort Worth, Texas 76101.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by sumitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–CE–33–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

As a result of a Fairchild (Swearingen) fire prior to takeoff on August 27, 1983, and subsequent investigation, the FAA along with Fairchild Corporation, have studied the susceptibility to fatigue cracking of the hydraulic tubing in Model SA226 airplanes. This investigation revealed the hydraulic lines would normally experience line pressure in excess of 2000 psi. This pressure exceeds the material design properties of the existing hydraulic lines.

In addition, the FAA is aware of several instances of oxygen line leaks, caused by chafing and cold-flow of the plastic type oxygen lines installed in certain Model SA226 airplanes. As a result, AD 83–19–02 was issued requiring a 200-hour repetitive inspection of the plastic-type oxygen lines. Fairchild Aircraft Corporation has subesequently made a production change to install metal oxygen supply lines. The FAA has determined that repplacement of certain plastic oxygen lines with metal oxygen lines deletes the need for the repetitive inspection of AD 83–19–02.

Since the condition described herein is likely to exist or develop in other airplanes of the same type design, the proposed AD would require modification of the hydraulic and oxygen systems by replacement of certain hydraulic lines and oxygen systems components on certain Fairchild Aircraft Corporation Model SA26–T, SA26–AT, SA226–T SA226–T(B), SA226–AT, SA226–TC airplanes. The FAA has determined there are approximately 320 airplanes that will be affected by the proposed AD. The cost of modifying these airplanes in accordance with the proposed AD is estimated to be $5,139 per airplane. The total cost is estimated to be $1,593,090 to the private sector. The cost of compliance with this proposal for each airplane is so small and the distribution of the airplanes among the entities owning them is such that the cost to any small entities owning these airplanes will not be a significant amount under the criteria of the Regulatory Flexibility Act. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Fairchild Aircraft Corporation: Applies to Models SA26–T, SA26–AT, SA226–T, SA226–AT SA226–T(B) (all serial numbers); and Model SA226–TC, (all serial numbers below S/N TC398), airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent cockpit fires, accomplish the following:

(a) Within the next 25 hours time-in-service, after the effective date of this AD on airplanes not previously inspected per AD 83–19–02 or within 200 hours time-in-service after the last inspection per AD 83–19–02 and within each 200 hours time-in-service thereafter:

(1) Visually inspect the hydraulic and oxygen lines for leakage in the vicinity of the side panel and behind the instrument panel on both sides of the aircraft. Apply maximum pilot effort to the brake pedals while inspecting the brake lines.

(2) Visually inspect, in the forward-pressure bulkhead area, for hydraulic fluid contamination from the brake reservoir vent.

(3) Before further flight, clean or replace any hydraulic fluid-contaminated structure, material or equipment and replace any lines or tubing which leak or have stress cracks which could cause future leaks found during inspection per paragraphs (a) (1) and (2).

Note.—Follow FAA Advisory Circular 43.13–1A, Chapter 10, paragraph 393, and Chapter 8, paragraph 363, when accomplishing these inspections and corrective action required by paragraphs (a) (1), and (2) and (3).

(4) Visually inspect the electrical wires in the vicinity of the cockpit side panels and behind the instrument panel on both sides of the aircraft for contact or inadequate clearance between the wires and adjacent components, especially hydraulic and oxygen lines. Determine that the wire bundles near the rudder pedals have adequate separation with the pedals in their extreme positions. Prior to further flight, add additional supports or reroute, as necessary, to prevent wire contact or chafing which may damage the wire insulation, and clean any contamination from the bundles.

Note.—Follow FAA Advisory Circular 43.13–1A, Chapter 11, when accomplishing these inspections and corrective action.

(b) Within the next 25 hours time-in-service after the effective date of this AD unless already accomplished:

(1) Inspect wires and wire terminations within and below the generator control junction box (J-box) and install phenolic insulator on side of J-box and spiral wrap on wires in accordance with Fairchild Service Bulletin 24-021 dated March 21, 1983.

(2) On Aircraft Models SA226-T, (S/Ns T201 through T287); SA226-AT (S/Ns AT001 through AT066); and SA226-TC (S/Ns TC201 through TC247), in which MIL-H-5606 hydraulic fluid is used, drain and purge the main hydraulic and brake system reservoirs and refill these reservoirs with MIL-H-83282 hydraulic fluid. Change the placards on both reservoirs to specify MIL-H-83282 fluid.

(c) On or before December 31, 1985, on Aircraft Models SA226-T (S/Ns T201 through T291 except T276); SA226-AT (S/Ns AT001

through AT074); SA226-TC (S/Ns TC201 through TC397); SA226-T(B) (S/Ns TB276, TB292 through TB417).

(1) Modify the hydraulic system in accordance with Fairchild Service Bulletin (S/B) 226–29–005 revised September 6, 1984.

(2) Modify the crew oxygen system in accordance with Fairchild Service Bulletin 226–35–003 dated September 6, 1984.

(d) On airplanes modified in accordance with paragraph (c) of this AD.

(1) If equipped with an anti-skid brake system compliance with inspections required by paragraphs (a) (1), (2) and (4) of this AD is not required.

(2) If not equipped with an anti-skid brake system compliance with inspections required by paragraph (a) (1) and (4) of this AD is not required.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) The intervals between repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(g) An equivalent method of compliance with this AD may be used when approved by the Manager, Aircraft Certification Division, ASW–100, Southwest Regional Office, FAA, Fort Worth, Texas 76101; Telephone (817) 624–4911, extension 511.

This AD supersedes AD 83–19–02.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(G) (Revised Pub. L. 97–449, January 12, 1983); and Section 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on October 22, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84–28603 Filed 10–30–84; 8:45 am]

BILLING CODE 4910–13–M

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[Policy Statements Docket No. 42199; PSDR–85]

Sharing of Single Carrier Designator Code; Statements of General Policy

Dated: October 23, 1984.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to amend Part 399 of its regulations to state that it will be the Board's policy to regard it as an unfair and deceptive practice for two or more carriers to share a single carrier designator code without giving reasonable notice to consumers of the identity of carriers actually providing service under the shared code. This action is taken in response to a petition from certain independent regional carriers.

DATES: Comments by: November 20, 1984. Comments received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 42199, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Robert D. Young (202) 673–6060, Samuel E. Whitehorn (202) 673–5450, Paul Samuel Smith (202) 673–5450, Barry L. Molar (202) 673–5205 or George S. Baranko (202) 673–6011, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: Airlines use two-letter codes in their schedules, the Official Airline Guide (OAG), computer reservations systems (CRS's) and on tickets to identify the carrier that is providing any particular flight or service. For the most part, each carrier has its own code and each code is assigned exclusively to one carrier. Recently, however, certain carriers have begun to integrate their schedules and operations to varying degrees and, as part of that integration, to share their designator codes. In the typical case, some or all of the flights operated by a commuter carrier are identified with the two-letter designator code of the large carrier with which it has a special relationship.

On May 14, 1984, a group of twelve Independent Regional Carriers—Air North/Clinton Aero, Britt Airways, Inc., Chaparral Airlines, Inc., Command Airways, Inc., Horizon Air, Imperial Airlines, Inc., Midstate Airlines, Inc., Pilgrim Airlines, Provincetown-Boston Airlines, Inc., Scheduled Skyways, Inc., Sun Aire Lines, and Wright Air Lines, Inc.—filed a petition requesting an emergency rule prohibiting code-sharing. They would have us prohibit carriers from sharing designator codes unless they have entered into a *bona fide* franchise agreement approved by the Board. Subsequently, Air Virginia, another regional carrier, joined the petition, while Air North/Clinton Aero withdrew its name from the list of petitioning carriers.

A number of parties have filed comments which generally support the petition but suggest modifications to the proposed rule. Wright, Britt and Pilgrim filed comments stating that they opposed designator code sharing under any circumstances. United Air Lines, Inc. supports a rule limiting code sharing to *bona fide* franchise arrangements in which the carrier whose code is used assumes legal responsibility for the actions of the carriers using the code. The American Society of Travel Agents and the Aviation Consumer Action Project support a rulemaking proceeding, but would prefer that the rule focus on adequate disclosure rather than the degree of interrelationship that should be required.

The carriers that filed answers opposing the IRC request include Atlantic Southeast Airlines, Inc., Ransome Airlines, Inc., and Rio Airways, Inc. (the Delta commuters); Continental Air Lines, Inc.; Delta Air Lines, Inc.; Eastern Air Lines, Inc.; Piedmont Aviation, Inc., and Henson Aviation, Inc; Metro Airlines and Empire Airlines, Inc. (the Joint Regional Airlines); Frontier Air Lines, Inc.; and Pan American World Airways, Inc.

In addition, Air Kentucky Airlines, Inc., Chautauqua Airlines, Inc., Crown Airways, Inc., Fischer Bros. Aviation, Inc., Pocono Airlines, Inc., Southern Jersey Airways, Inc., Suburban Airlines, Pennsylvania Airlines, and USAir, Inc. (the USAir group), filed comments requesting that any Board action not interfere with the continuation of the Allegheny Commuter program. Alaska Airlines, Inc., filed comments requesting that, if a rule is adopted, the Board consider making an exception for service within the State of Alaska because of the importance of subcontracting arrangements in providing service to bush communities. Such arrangements usually include a sharing of designator codes.

As discussed more fully below, we do not believe that joint service arrangements are necessarily anticompetitive, unfair or deceptive. Such arrangements usually involve flight coordination and some integration of passengers handling services and can result in services superior to ordinary interline service. However, code-sharing as part of such arrangements may cause confusion and may be deceptive to consumers in some cases. The degree of coordination and integration varies from carrier to carrier. Passengers and travel agents frequently are given few clues that a cooperative arrangement is involved or that the conditions of carriage may vary on differing legs of a journey. Specifically, we have received a number of complaints that consumers are not being informed of the true

identity of the carrier actually providing service or the nature of the arrangements under which they are to travel. The complaints, for the most part, arise because of the failure of air carriers to give adequate notice to consumers of the nature of the activities being conducted under the shared code. Therefore, we propose to amend Part 399 of our regulations to state that we consider it an unfair and deceptive practice for two or more carriers to share airline designator codes without giving consumers reasonable notice of the identify of the carrier actually providing service on any given flight.

Background

Since 1967 major carriers and commuter carriers have entered into arrangements whereby the two airlines coordinate their operations, scheduling and marketing to some degree. These arrangements initially were designed as a means for larger carriers to meet service obligations to small communities. *See, e.g.,* Order E–25834, October 13, 1967, involving the Allegheny Commuter system. Cooperative arrangements have proliferated since the passage of the Airline Deregulation Act of 1978. As large carriers developed hub and spoke operations, they realized that many markets could not be operated with large equipment. Arrangements with smaller carriers, usually commuters, began to develop. This enabled large carriers to gain, increase, or in some cases retain feed passengers for their systems. Today many commuter operations are coordinated with large carriers' operations, and the joint service often provides many of the same amenities of traditional on-line connections. As a part of these arrangements, the cooperating carriers frequently identify the smaller carrier's flights with the two-letter designator code of the larger carrier.

When travel, agents, airline reservations agents and passengers read schedules in CRS's the OAG or elsewhere, they determine which carrier is providing the service and whether connections are on-line or interline by deciphering the airline designator codes that appear as part of the flight number. Where two airlines use the same code, it will appear that one airline is operating all the flights and that connections between them are pure on-line connections, unless there is some notation to the contrary. In addition, the major CRS vendors have recognized consumers' preference for on-line connections and afford such flights a higher priority in their displays. They determine whether flights are eligible for the higher display position by treating all connections with the same designator code as on-line service. As a result, a wide variety of cooperative interline arrangements are treated as pure on-line services in the major industry information sources.

The controversy over the use of common designator codes stems in large measure from the belief that representing the connecting flights of cooperating carriers to be those of a single airline is deceptive. In essence, the complaint is that most, if not all, of the integrated connecting flights are more like interline service on-line service. The practice is assertedly deceptive to consumers because the label on the service does not accurately portray what is being offered. In addition, opponents of code-sharing complain that a smaller carrier's use of the code of a larger carrier in the OAG and CRS's constitutes a representation that the larger carrier is operating the flight when it is actually being operated by the smaller carrier. Passengers are thereby left in the dark on the important question of the identity of the carrier that is transporting them. This may also result in confusion over the type of equipment being operated. The smaller carrier can masquerade as the larger carrier and thereby improperly reap the benefits of its goodwill and reputation, to the detriment of competing airlines that accurately market their services.

As the popularity of cooperative service arrangements has increased so have the number of complaints about the practice. Air carriers have complained about the code sharing issue in two other proceedings. In Docket 41875, American Airlines filed an enforcement complaint challenging the code sharing practices of Eastern, Frontier, and Pan American. Answers were filed in support and in opposition to the complaint, and our Enforcement Division has sought additional information about the programs from the respondents. The complaint is still pending.

We also considered the issue of designator code sharing in Docket 41686. In that proceeding, we received an emergency rulemaking petition asking us to prevent CRS owners from unilaterally determining that code sharing is deceptive. In response to that petition, we adopted a rule, ER–1377, 49 FR 12675, March 30, 1984, prohibiting airline owners of CRS's used by travel agents from deleting carriers that share designators codes from their systems or otherwise discriminating against those carriers in the display of their services. While we did not find out that code sharing could never be unfair or deceptive, we did conclude that CRS owners should not be free unilaterally to exclude their competitiors from their systems if they engaged in code sharing.

The number of consumer complaints about cooperative service agreements and code sharing has also increased. A review of our records has revealed most complaints were in the last six months. Generally consumers complain that they have been deceived by code sharing in a variety of ways. Examples brought to our attention, which we will place in the docket, include problems with which ticketcounter a passenger should go to, what type of aircraft—jet or commuter—the passenger anticipated flying on, and lost baggage caused by the lack of interline arrangements. Other consumers complained that they were forced to fly on routings they specifically sought to avoid. These complaints indicate the existence of either actual or potential confusion and deception. Commenters should address this point.

Analysis

Section 411 of the Act constitutes our basic authority to take action against carrier practices in this area. That section provides that "unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof" are unlawful. 49 U.S.C. 1381.

Section 411 was patterned after Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and, as the Supreme Court has noted, has the same general purposes. *Pan American World Airways v. U.S.,* 371 U.S. 296, 303 (1963). As the Supreme Court has consistently held, "unfair methods of competition" in the Federal Trade Commission Act "was designed to supplement and bolster the Sherman and the Clayton Act . . .—to stop in the incipiency acts and practices which, when full blown, would violate those acts." *FTC v. Motion Picture Advertising Service Co.,* 344 U.S. 392, 394–95 (1953). *Atlantic Refining Co. v. FTC,* 381 U.S. 357 (1965); *FTC v. Brown Shoe Co.,* 384 U.S. 316 (1966). The companion prohibition against "unfair or deceptive practices" in both section 411 and section 5 of the Federal Trade Commission Act was intended to protect consumers from trade practices which, while not necessarily anticompetitive, were misleading, contrary to recognized public policy or injurious to consumers. *FTC v. Sperry & Hutchinson Co.,* 405 U.S. 233, 244 (1972).

As noted above, when we have examined cooperative service

agreements and code-sharing practices in the past, we found that they were not inherently unfair, deceptive or anticompetitive. *See* Order 79–2–108, February 15, 1979 and ER–1377, *supra*,. The IRC and the supporters of their petition have not presented evidence that convinces us otherwise. In effect, such arrangements are similar to franchise arrangements in which the franchisor permits its franchisees to use its trademarks and trade names. As long as consumers know with whom they are dealing and what they can expect, franchising or licensing is not deceptive.

The connecting service offered under many cooperative agreements may well be superior to the typical interline connection. Cooperating carriers frequently provide the public with services that are associated with on-line connections, including *inter alia*, lower through fares, easy connections because of the proximity of gate and terminal space, convenient connect times and integrated baggage handling. Most of the petitioning carriers recognize this fact and would allow arrangements that provide connecting service comparable to true on-line connections to continue.

On the other hand, they note, correctly, that the connecting services provided by some cooperative agreements bear little resemblance to true on-line connections. As a result, most of the petitioners would have us define which services must be offered in order for a connection to be labelled "on-line." However, their views on what a cooperative agreement must contain in order for a connection to be labelled on-line differ widely. For example, the IRC believes that a connection has to have all the attributes of Allegheny commuter connections and United asserts that one carrier must assume legal responsibility for the other. With respect to the latter suggestion, we note in passing that the carrier whose code is used on the contract (*i.e.*, the passenger's ticket) may indeed be liable for the actions of its partner under general contract law.

We will not try to define what is a proper on-line connection or what attributes are necessary for a valid "airline franchise" in this proceeding. The complaints we have recieved from both consumers and carriers relate primarily to the manner in which cooperative services are held out rather than the underlying arrangements themselves. Moreover, as we have found in other contexts, consumer expectations of what is meant by a descriptive term often vary considerably. *See Mid Pacific Airlines, Inc. Enforcement Proceeding*, Order 84–4–33, April 10, 1984. Any standard we would devise would, therefore, be somewhat arbitrary. In addition, it would stifle individual management prerogatives to innovate and offer new services.

More importantly, such action would probably not be responsive to the problem we see in the marketplace. In our view, the problem is not one of air carriers failing to meet consumer expectations with regard to on-line service. Rather, it is fundamentally a question of disclosure. Travelers are not being given timely information they need to make a carrier choice.

Specifically, it appears that some carriers are not taking reasonable steps to inform the traveling public of the existence, nature and limitations of their cooperative service arrangements and the identity of the carriers providing service. Almost all of the complaints we have received are against a few carriers, while there appears to be little or no consumer dissatisfaction with the cooperative arrangements of several other carriers engaged in cooperative service agreements and code-sharing. Consumers satisfaction with some cooperative arrangements, but not others, seems to be related to a carrier's efforts to inform the public of the existence of special relationship. USAir, for example, appears to have gone to considerable lengths to make the public aware of the existence of its commuter arrangements. Allegheny Commuter flights are identified as such in the OAG and the actual operator of the flight is disclosed in USAir's timetables and advertising. Moreover, USAir advertises the existence and discloses the nature of the arrangements in travel agent periodicals. Delta has made similar efforts and has gone further by sending notices to each of its agents of the existence and nature of its cooperative agreements.

While we do not find that the actions of these specific carriers are necessarily adequate in every circumstance, the fact that their actions seem to have forestalled consumer complaints supports a conclusion that the problem created by cooperative service arrangements is fundamentally one of disclosure.

Before explaining our proposed response to this problem, we will address IRC's argument that cooperative agreements harm competition by cutting off feed from independent commuter carriers that do not have a long-haul partner. They argue that, without feed traffic, they cannot operate profitably and consequently they must either become associated with a major carrier or perish.

At the outset we should point out that the IRC concern it with cooperative service themselves, rather than with the sharing of designator codes. We have little evidence that cooperative service agreements, as opposed to code-sharing practices, are deceptive or are causing consumers harm.

Nor do the agreements appear to be injuring competition. We considered similar contentions in Order 79–2–108, February 15, 1979, in the context of the Allegheny Commuter agreements. As we indicated there, cooperative service arrangements would only harm competition if the agreement substantially foreclosed other commuter carriers from feed traffic of the large carrier and the larger carrier held either a monoply or near monopoly at a hub. The IRC offers little more than unsubstantiated speculation that this is the case with several current cooperative agreements. While a cooperative arrangement may reduce an independent commuter's feed traffic from one major carrier, we have seen no evidence to show that it is substantially foreclosed in any instance. In addition, the independent commuter still has access to feed traffic from any other major carriers, and indeed from other commuters, serving their hubs. Finally, there are many commuter carriers that have not entered into cooperative arrangements, yet compete with affiliated carriers and operate profitably.

Our Proposal

We believe that the current problem with code-sharing is disclosure, and our solution should focus on ensuring that it is adequate. We are proposing, therefore, to amend Part 399 of our regulations to state that we consider it an unfair and deceptive practice for two or more carriers to share airline designator codes without giving consumers reasonable notice of the nature of service being provided and the identity of the carrier actually providing service on any given flight. We believe that the current consumer confusion surrounding cooperative service arrangements and common designator codes will be eliminated by this action.

While we do not plan to specify precisely what reasonable notice entails, we will offer some guidance. As a general matter, the notice must be direct, timely and calculated to communicate the necessary information in close conjunction with the use of the code. It must, at a minimum, specifically disclose the existence of the special relationship and identify the parties to the agreement. It should also alert

consumers and agents to the possible need or desire to seek further information on the nature and limitations of the cooperative arrangement.

At present our view is that circumstantial notice is inadequate; that is, it is insufficient, standing alone, for the OAG or a CRS to reveal a flight number or a type of equipment that is not normally associated with a particular carrier. In some circumstances the exceptionally knowledgeable customer or agent will check the aircraft type or flight number, recognize the discrepancy and search out information on which carrier is actually providing service. But in the normal case, the consumer or agent probably will not check the aircraft type or flight number, or recognize its significance.

For the disclosure to be effective, it must reach the consumer as close as possible to the point of sale. Thus, the carriers involved should make sure that their own reservations agents disclose the relevant information when consumers contact them directly. In addition, the existence of the relationship, the identity of the carrier actually providing service and the type of aircraft used for each flight segment should be disclosed in the carrier's printed schedules, in advertisements, and perhaps in any video displays of flight information at the airports a carrier serves.

Furthermore, reasonable disclosure would require some effort to inform travel agents. The need for disclosure to agents is obvious: agents sell the great majority of air transportation tickets and must be relied upon to disclose important information to consumers. We believe that agents will, in fact, communicate important information to travelers to retain them as clients.

Probably the most effective notice to agents would be specific disclosure wherever the code appears in their primary information sources, i.e., the OAG and their CRS's. Some carrier have adopted special codes or otherwise highlighted the existence of cooperative relationships in the OAG. The most important travel agent information service, CRS's, however, currently do not highlight that a connection is a product of a cooperative agreement or to signal that a carrier other than the one whose code is used is actually providing the service. If cooperative connections were marked with an asterisk, a special code or some other prominent notice, agents would be alerted to investigate the type of service before recommending it to the customer. Such a practice might reduce the need for direct notice to consumers—at least those consumers that use travel agent services.

On the other hand, some cooperative arrangements of carriers like Delta and USAir do not appear to have generated a significant amount of consumer dissatisfaction. These efforts at disclosure include a special flight numbering system, periodic notices sent directly to travel agents, advertisements in travel agent publications, and frequent, detailed advertisements to the public. Those disclosures, taken together, may provide an adequate basis for informed consumer choice without requiring notice through CRS displays.

In sum, we contemplate that reasonable notice will entail efforts to inform both the public and travel agents of the existence of the cooperative arrangements and its participants. In addition, the notice must be timely. It should occur no later than the purchase transaction and certainly must occur prior to the operation of the flight. Only then will consumers have the information they need to make educated travel purchase decisions.

Given the apparent success of those disclosure methods, our rule as proposed would give cooperating carriers limited freedom to make the required disclosures in places and through media other than those in which the code appears. Parties should comment on the extent to which we can expect such methods to be effective, as well as the feasibility and cost of those and other disclosure methods.

Alternative Proposal

While we are currently inclined toward allowing alternative forms of disclosure, we nonetheless believe that direct disclosure in the OAG, CRS's and other places where the common codes appear would be more effective. We therefore request comments on an alternate approach that would define "reasonable notice" to mean notice given in the same medium in which the code appears, by means such as an asterisk or special symbol after the designator code. While the information we have suggests that it is feasible for CRS vendors to indicate the existence of the cooperative arrangement, we request information on the cost and burden to CRS vendors of such a requirement. We seek comment on those issues and on whether we can or should require CRS vendors to provide disclosure capability.

We wish to caution carriers that compliance with either version of the proposed policy statement will not necessarily assure compliance with section 411. A code-sharing arrangement may have so few of the attributes of single carrier service that use of a shared carrier code could be unfair or deceptive even with disclosure. By adopting the proposed policy statement, we do not intend to give up our discretion to examine the merits of particular arrangements in individual investigations under section 411.

Indeed, a number of parties have argued that individual enforcement cases are preferable to rules of general applicability in this area. We request comments on whether the Board should follow the enforcement proceeding approach rather than proceeding with rules.

Comment Period

The matter of code sharing is viewed as especially important by the industry and, we believe, by consumers because of the increasing number of complaints we are receiving. This trend appears likely to continue. In order to deal with the problem expeditiously, we are allowing 20 days for public comments. We are choosing this period and not providing for reply comments because we wish to decide upon a final rule before the Board sunsets at the end of the year. We note, moreover, that the parties have already had several opportunities to comment on the general issues regarding the sharing of designator codes. Under the circumstances, we find that a period shorter than the usual 60 days is advisable, and that the public benefits from expedited consideration outweigh any adverse effects.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, Pub. L. 96-354, we certify that this rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

Commuter carriers which the Board defines as small entities are the most common participants in cooperative service arrangements covered by the proposed rule. The proposed rule would permit the arrangements to continue, including the sharing of carrier codes. The rule would also leave the nature of the arrangements largely to the discretion of the carriers.

The disclosure requirement will not likely have a substantial impact on commuter carriers. Industry practice to date suggests that major carriers such as USAir or Delta provide substantial advertising support under these cooperative service arrangements, and we have no reason to believe that they would not supply similar support for this kind of disclosure. The consumer benefits in having more complete disclosure of the nature of the services

they are buying justifies this minimal burden.

The Board's proposal is also less intrusive than any alternative available. Substantive regulation of cooperative service arrangements or a prohibition, by their very nature, would impose a greater burden on carriers desiring to participate in these arrangements. Ultimately, the approach might deprive small communities and consumers of the benefits of these arrangements.

The second alternative, use of individual enforcement proceedings under section 411 might also have long-term negative impact. The record to date demonstrates that problems exist with some cooperative service arrangements which warrants Board action. A decision to proceed by individual enforcement proceedings could create an environment of uncertainty in which major carriers are reluctant to participate in such agreements. Adoption of a general policy would eliminate this uncertainty and the impediment it could represent.

Paperwork Reduction Act

The collection-of-information requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. Those requirement have been submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the collection-of-information requirements to OMB and to the Board. Comments sent to OMB should be addressed to: Office of Information and Regulatory Affairs, ATTN: Desk Officer for Civil Aeronautics Board, Office of Management and Budget, Washington, D.C. 20503.

List of Subjects in 14 CFR Part 399

Advertising, Air carriers, Air transportation, Antitrust, Consumer protection, Essential air service, Travel agents.

All Members concurred except Vice Chairman McConnell who concurred and dissented. Member Schaffer filed a concurring statement, with which Chairman McKinnon agreed, set forth below. Vice Chairman McConnell filed a concurring and dissenting statement set forth below.

Statements of Members

Schaffer, Member Concurring

Under the proposed rule, the majority would permit a carrier which uses a dual designator code to refuse to disclose that fact through the use of an asterisk or other identifying mark in the computer reservations system (or in the OAG). Rather, it would permit carriers the option to disclose the existence of cooperative service aggreements in some other less defined, manner.

The majority states in the NPRM that, despite the fact that they would consider permitting alternative forms of disclosure "we nonetheless believe that direct disclosure in the OAG, CRS's and other places where the common codes appear would be more effective." Given this belief, I would strongly argue that where CRS vendors and airline guide publications willingly make available a special code or symbol to designate cooperative service arrangements, cooperating carriers should be required to make use of those procedures.

When the Board seeks to remedy a practice of the industry which it finds tends to confuse the traveling public, it has the obligation to propose the solution which is most likely to remedy the problem. This benefits not only consumers, but the industry as well, by making clear the standards of business practice which will conform to the Board's rule.

I hope that commenters to this NPRM will focus on the alternative of requiring direct disclosure where the OAG and CRS vendors have made the means available, and that the majority will see the wisdom of including such a provision in the final rule.

Gloria Schaffer.

McConnell, Vice Chairman, Concurring and Dissenting

I agree completely with most of the "dicta" in the majority's analysis but cannot agree with the proposed policy. Of course carriers who engage in unfair or deceptive practices should be penalized, but like the majority I feel that: 1) most of the cooperative arrangements are not deceptive; 2) the Board should not attempt to define the attributes of a "proper" arrangement, since such a rule would stifle individual management prerogatives to innovate and offer new services; and 3) we have little evidence that cooperative service arrangements are inherently or generally deceptive or are causing consumers harm.

I prefer targeted enforcement action against those few arrangements which may be deceptive. And I favor informal Board guidance to carriers to assist them in avoiding consumer confusion. Those many arrangements which have existed without complaints for years and those non-deceptive new arrangements should be allowed to continue as before.

I agree that if there is actual or attempted deception of the public those specific practices should be enjoined and penalized by the Board. Enforcement action against carriers who engage in deception practices should be entered under section 411 of the Act, with provides that "unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof" are unlawful. 49 U.S.C. 1381. This mechanism is in place and can be used now without added regulation.

Instead, the majority has chosen to propose a "policy statement" (which, I submit, will be pursued with the force of a rule).

The majority's policy is overly broad. It would require that travel agents and consumers be notified "of the existence of any cooperative agreement arrangements" if a designator code is shared. Carriers have myriad cooperative arrangements for baggage handling, gate handling, flight attendant training, fueling, maintenance and many other purposes. This proposed policy reaches many arrangements that have never been the subject of complaint; nor do they relate to the problem the Board is asked to solve. In fact the Board would require major revamping of the very carrier service arrangements it points to as satisfactory.

The policy statement is arbitrary in its coverage. A carrier which has the same arrangements but does not share designator codes would not be obligated to disclose who handles its passenger's bags, fuels its planes, trains its flight attendants, etc. even though cooperative arrangements may exist.

The policy statement may well ban the use of these arrangements because in practice the suggested policy would be unworkable. The cooperative arrangements vary so greatly that requiring an asterisk or a flight number distinction on a a computer display, in the Official Airline Guide or other information source could not possibly disclose all of the information covered by this policy.

The proposal sweepingly states that "the airlines (who share designator codes) must give consumers and travel agents reasonable timely notice of the existence of any cooperative arrangement, and the identity of the carrier actually providing the service on any given flight." This language is riddled with problems. Which airlines? Both airlines? U.S. Air must disclose any arrangements it might have an *any* flight? *Any* cooperative arrangements? Does "the service" relate to all service provided by another carrier? The language here is not limited to the actual flight service.

Contrary to the majority's assertion, I feel that the proposed rule would have a significant economic impact on a substantial number of small entities. Small commuters must bear the cost of notice or sacrifice the productivity gains of cooperative arrangements. Small communities might sacrifice improved service.

Also, in contrast to the majority's assertion I do not agree that the majority's proposal is less intrusive than available alternatives. The Board majority proposes precisely what it protests would impose a greater burden on carriers desiring to participate in these arrangements. It proposes substantive regulation of cooperative service arrangements.

While the use of common designator codes has existed for years, all complaints have been in the past year and focus on a very few carriers. Instead of requiring carriers to disclose continuously or frequently all cooperative arrangements for any given flight I would prefer that the Board examine the thirty or so complaints it has received to see if a pattern of abuse exists with any particular carrier or carriers.

Barbara E. McConnell.

PART 399—[AMENDED]

Accordingly, the Civil Aeronautics Board proposes to add a new § 399.88 to 14 CFR Part 399, *Statements of General Policy*, to read:

§ 399.88 Policy on common designator code practice.

It is the policy of the Board to consider the use of a single airline designator code by two or more airlines to be unfair and deceptive and in violation of section 411 of the Act unless, in conjunction with the use of such codes, the airlines give consumers and travel agents reasonable, timely notice of the existence of any cooperative arrangement and the identity of the carrier actually providing service on any given flight. Reasonable notice shall as a minimum include either continuous notice in the same medium in which the common designator is used, or frequent, periodic notice in other media that can reasonably be expected to convey the relevant information to consumers in a timely fashion.

(Secs. 102, 204, 404, 408, 411, 412, 419, 1102; Pub. L. 85-726 as amended; 72 Stat. 740, 743, 760, 769, 797; 92 Stat. 1732; 49 U.S.C. 1302, 1324, 1374, 1378, 1381, 1382, 1389, 1502)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-28728 Filed 10-30-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-97-79]

Consolidated Return Regulations; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to consolidated returns.

DATES: The public hearing will be held on Monday, December 10, 1984, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Monday, November 26, 1984.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-97-79), Washington, DC. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Tuesday, July 31, 1984 (49 FR 30528).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, November 26, 1984, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-28741 Filed 10-30-84; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 301

[LR-213-84]

Tax Shelter Registration and the Requirement To Maintain Lists of Investors in Potentially Abusive Tax Shelters

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to tax shelter registration, and the requirement to maintain lists of investors in potentially abusive tax shelters. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by December 31, 1984. The amendments are proposed to apply to tax shelters in which any interest is first sold after August 31, 1984, and are proposed to be effective after August 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-213-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Clark, (with respect to tax shelter registration) or Alice M. Bennett (with respect to the requirement to maintain lists of investors) of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution

Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3828, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations portion of this issue of the Federal Register amend Part 301 of Title 26 of the Code of Federal Regulations. These amendments change the rules relating to tax shelter registration under section 6111 of the Internal Revenue Code of 1954, as added by section 141 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 678). These amendments also change the rules relating to the requirement to maintain lists of investors in potentially abusive tax shelters under section 6112 of the Internal Revenue Code of 1954, as added by section 142 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 681). For the text of the temporary regulations, see FR Doc. 84–28610 (T.D. 7990) published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations provides a discussion of the rules. The final regulations, wihch this document proposes to base on those temporary regulations, would amend Part 301 of Title 26 of the Code of Federal Regulations. Those final regulations are to be issued under the authority contained in sections 6111, 6112 and 7805 of the Internal Revenue Code of 1954 (98 Stat. 678, 26 U.S.C. 6111; 98 Stat. 681, 26 U.S.C. 6112; 68A Stat. 917, 26 U.S.C. 7805).

Executive Order 12291; Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although this document is a notice of proposed reulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing on these proposed regulations will be held in conjunction with the public hearing on the proposed regulations relating to tax shelter registration published in the Federal Register for Wednesday, August 15, 1984 (49 FR 32728), and the proposed regulations relating to the requirement to maintain lists of investors in potentially abusive tax shelters published in the Federal Register for Wednesday, August 29, 1984 (49 FR 34246). The public hearing on those proposed regulations scheduled for November 15, 1984, will be postponed and a notice of the new time and place will be published in the Federal Register.

The collection of information requirements contained in this notice of proposed ruelmaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Cynthia L. Clark of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84–28611 Filed 10–26–84; 10:03 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7 84–29]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Florida, Georgia, South Carolina

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is considering adding to the regulations governing drawbridges across the AIWW from Little River, South Carolina to Miami, Florida to provide that all bridges will open on demand for regularly scheduled cruise vessels during authorized closed periods. These large vessels cannot safely maintain position while awaiting scheduled bridge openings. This proposal is being made to provide for consistency in the regulation of drawbridges and to ensure the safety of navigation. This action will eliminate the delay that regularly scheduled sightseeing and passenger vessels often incur while awaiting scheduled openings, thus providing for the reasonable needs of navigation.

DATE: Comments must be received on or before December 17, 1984.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 S.W. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 S.W. 1st Avenue, Room 816, Miami, Florida, 33130. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT:

Mr. Walt Paskowsky, Bridge Administration Specialist, telephone (305) 350–4108.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reason for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

Presently 12 drawbridges across the AIWW within the Seventh District have operating regulations that provide for the passage, at any time, of regularly scheduled sightseeing or passenger vessels. There are an additional 22 drawbridges across the AIWW that provide for the passage at any time of public vessels of the United States, tugs with tows, and vessels in distress. The proposed amendment expands this provision to include the passage of regularly scheduled cruise vessels.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This action will have a positive economic effect on commercial marine traffic and due to the paucity of cruise vessels in the Seventh Coast Guard District, this rule is not expected to significantly increase the number of openings of bridges with scheduled openings. We conclude this because of the relative scarcity of regularly scheduled cruise vessels in the Seventh Coast Guard District. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by amending §§ 117.261, 117.353 and 117.911 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Florida

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami [Amended]

In § 117.261 add the phrase "regularly scheduled cruise vessels," immediately following the phrase "public vessels of the United States," in the following paragraphs: (a) (b) (c) (d) (f) (g) (h) (k) (l) (m) (n) (o) (p) (q) (r) (t) (u).

Georgia

§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River [Amended]

In § 117.353 add the phrase "regularly scheduled cruise vessels," immediately following the phrase "public vessels of the United States," in the following paragraph: (c).

South Carolina

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River [Amended]

In § 117.911 add the phrase "regularly scheduled cruise vessels," immediately following the phrase "public vessels of the United States," in the following paragraphs: (a) (b) (c).

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: October 5, 1984.

A. R. Larzelere,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 84-28476 Filed 10-30-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 180

[PP 3E2923/P358; FRL-2706-2]

Benomyl; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the fungicide benomyl and its metabolites in or on the raw agricultural commodity Chinese cabbage. The proposed regulation to establish a maximum permissible level for residues of the fungicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 3E2923/P358], must be received on or before November 30, 1984.

ADDRESS: Written comments by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 3E2923 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Florida and California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide benomyl (methyl 1-[butylcarbamoyl]-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodity Chinese cabbage at 10 parts per million (ppm).

The data submitted in the petition and other relevant material have been

evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include a 2-year dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (12.5 milligrams (mg)/kilogram (kg) of body weight (bw)/day; a 2-year rat feeding study with a NOEL of 2,500 ppm (125 mg/kg bw/day); a 3-generation rat reproduction study with no effect on reproductive performance up to 100 ppm (5.0 mg/kg bw/day); a rabbit teratology study (dietary dosing), negative for teratogenic effects at 500 ppm (15 mg/kg bw/day); a rat teratology study with a teratogenic NOEL of 30 mg/kg/day; and oncogenicity studies discussed below.

A comprehensive review of the data available for the chemical was conducted in connection with the rebuttable presumption against registration (RPAR) for benomyl which was published in the Federal Register of December 6, 1977 (42 FR 61788). This presumption was based on information indicating that benomyl posed the risks of mutagenicity (point mutation and non-disjunction), spermatogenic depression and teratogenic effects, acute toxicity to aquatic organisms, and significant population reduction in nontarget organisms. In the Federal Register of August 30, 1979 (44 FR 51166), the Agency published a Preliminary Notice of Determination, which concluded that benomyl continued to pose the risks noted above with the exception of point mutations and significant population reductions in nontarget organisms. In the Notice and accompanying Position Document 2/3, the Agency weighed the risks and benefits of use together, and determined that certain modifications to the terms and conditions of use were necessary to reduce the risks of use to applicators.

Subsequent to these findings, data have been made available indicating that benomyl is oncogenic in mice and additional teratogenic tests have been submitted. A reexamination of the presently registered and proposed uses of benomyl, in light of the potential oncogenic and teratogenic adverse effects, has been completed. Both benomyl and MBC, the common metabolite of benomyl and thiophanate-methyl, have shown to be hepatocarciogens in tests with mice. The upper limit to the oncogenic lifetime risk to the general public via worst case dietary exposure to previously published tolerances is estimated to be 7.5×10^{-5}. The incremental increase in risk from the proposed tolerance for Chinese cabbage is 2.0×10^{-7}. Benomyl has the potential to cause teratogenic effects. The NOEL for these effects is set at 30 mg/kg/day based on results from a gavage study in rats. Margins of safety (MOS) for teratogenicity from dietary exposure range from 254 to 60,000 (single serving basis).

The MOS for teratogenic risks resulting from ingestion of single servings of benomyl treated raw Chinese cabbage is 2,400, as calculated using a provisional NOEL of 30 mg/kg (gavage study). The MOS for reproductive effects (damage to spermatogonia and seminal vesicles) resulting from existing and approved tolerances (including this proposed tolerance) for benomyl is 210.

The Agency's position concerning the RPAR issues with benomyl was published in the Federal Register of October 20, 1982 (47 FR 46747), in the Notice of Determination Concluding the Rebuttable Presumption Against Registration for benomyl. In this Notice, the Agency determined that the benefits of benomyl use exceed the risk of use if a dust mask is used when mixing and loading for aerial application. Registrants are required to amend their product label to require use of protective equipment for persons who mix and load benomyl for aerial application.

The acceptable daily intake based on the 3-generation rat reproduction study (NOEL of 100 ppm, or 5.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.05 mg/kg/ bw/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 3.0 mg/day. The theoretical maximum residue contribution (TMRC) from established tolerances for a 1.5-kg daily diet is calculated to be 1.9221 mg/day; the current action will increase the TMRC by 0.00441 mg/day (0.23 percent).

The nature of the residues is adequately understood and an adequate analytical method, fluorometric spectrometry or liquid chromatography employing an ultra-violet detector, is available for enforcement purposes. Secondary residues are not expected in meat or milk from the use on Chinese cabbage since this item is not used as an animal feed. Continued registration of this chemical is subject to the requirements of the determination concluding the rebuttable presumption against registration of benomyl.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.294 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3E2923/P358]. All written comments filed in response to this petition will be available in the Information Services Section at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e))).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: October 19, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.294 be amended by adding and alphabetically inserting the raw agricultural commodity Chinese cabbage to read as follows:

§ 180.294 Benomyl; tolerances for residues.

* * * * *

Commodities	Parts per million
Chinese cabbage	10.0
* * * * *	

[FR Doc. 84-28675 Filed 10-30-84; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 510

[Docket No. 84-29]

Licensing of Ocean Freight Forwarders

AGENCY: Federal Maritime Commission.

ACTION: Enlargement of time to comment.

SUMMARY: The comment period in this rulemaking proceeding (49 FR 34253; August 29, 1984) is presently scheduled to expire October 29, 1984. Legislation (H.R. 5833) recently passed by Congress and now awaiting the President's signature would amend the Shipping Act, 1916 to relieve ocean freight forwarders operating in the foreign commerce of the United States from the agreement filing requirements of that Act, and would render this proceeding unnecessary. To avoid the filing of possibly unnecessary comments, the comment period is extended 60 days.

DATE: Comments due on or before December 28, 1984.

ADDRESS: Comments (Original and twenty (20) copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-28682 Filed 10-30-84; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 83-523]

Instructional Television Fixed Service; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: This action grants a joint request for a two-week extension of time for filing reply coments in response to the *Further Notice of Proposed Rulemaking* in MM Docket No. 83-523 (Amendment of Part 74 of the Commission's Rules and Regulations in Regard to the Instructional Television Fixed Services).

DATES: Reply comments are now due by November 16, 1984.

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

FOR FURTHER INFORMATION CONTACT Joel M. Margolis, Mass Media Bureau, (202) 632-6495.

Order Extending Time for Filing Reply Comments

In the Matter of Amendment of Part 74 of the Commisson's Rules and Regulations In Regard to the Instructional Television Fixed Service (MM Docket No. 83-523).

Adopted: October 23, 1984.
Released: October 24, 1984.

By the Chief, Mass Media Bureau.

1. On July 26, 1984, a *Further Notice of Proposed Rulemaking* was adopted in the above-captioned proceeding, 49 FR 32610 (published August 15, 1984). The *Further Notice* provided that comments be filed by September 17, 1984, and that reply comments be filed by October 2, 1984. In response to a request filed by the National Association of State Universities and Land-Grant Colleges, the Chief, Mass Media Bureau, by *Order* released September 4, 1984, extended the date for filing comments and reply comments in the proceeding to October 17, 1984, and November 2, 1984, respectively.

2. On October 19, 1984, the law firm of Crowell and Moring filed a joint request to extend the date for filing reply comments to November 16, 1984, on behalf of: The Association for Continuing Education; the Association for Higher Education of North Texas; California State Polytechnic University; Illinois Institute of Technology; The Leland Stanford Junior University; Northeastern University; Portland Community College; Region IV Education Service Center; and the University of Texas Health Science Center (Joint Parties). In support of their request for a two-week extension, the Joint Parties assert that they are affiliated with educational institutions that have limited staff and resources, and that additional time is necessary to "permit review and analysis of the numerous and extensive comments filed with respect to the fundamental issues in this proceeding."

3. Under these circumstances, the requested extension is appropriate. Accordingly, it is ordered that, the request for extension of time filed on behalf of the Joint Parties is granted. It is further ordered that, the date for filing reply comments to the above-captioned proceeding is extended to and including November 16, 1984. This action is taken by authority delegated by § 0.283 of the Commission's Rules, 47 CFR 0.283.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 84-28718 Filed 10-30-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Parts 81, 83 and 87

[PR Docket No. 83-431; FCC 84-499]

Digital Selective Calling in the Maritime Mobile Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Further Notice proposes to amend the rules to provide the parameters under which the Digital Selective Calling (DSC) system would be implemented by ships and coast stations operating within the Maritime Mobile Service. DSC is a system used to establish contact with a station or group of stations by radio. The primary reason for implementing DSC is to provide a standard method for establishing radio contact in the maritime environment and to promote more efficient use of the radio spectrum. DSC will be an integral part of the Future Global Maritime Distress and Safety System developed by the International Maritime Organization and planned for final implementation in the next decade. The intended effect is to make DSC available to the maritime community on an optional basis at an early date.

DATES: Comments must be received on or before March 5, 1985 and reply comments must be received on or before April 4, 1985.

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

ADDRESSES: .

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, Private Radio Bureau, Special Services Division, Washington, D.C. 20554 (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 81

Coast stations, Communications equipment, Radio.

47 CFR Part 83

Communications equipment, Marine safety, Radio, Ship stations.

47 CFR Part 87

Aeronautical stations, Radio.

Further Notice of Proposed Rule Making

In the matter of Digital Selective Calling System in the Maritime Mobile Service (PR Docket No. 83–431).

Adopted: October 18, 1984.

Released: October 26, 1984.

By the Commission.

1. In a Notice of Proposed Rule Making and Order (NPRM&O) adopted by the Commission on April 27, 1983 (48 FR 23673), the Commission proposed to amend Parts 81 and 83 of its rules to implement the Digital Selective Calling (DSC) system of the International Radio Consultative Committee (CCIR) in the Maritime Mobile Service. Subsequent to adoption of the NPRM&O, the Final Acts of the World Administrative Radio Conference for the Mobile Services (MWARC '83) were published. These Final Acts contain a number of provisions pertinent to the DSC system, particularly with regard to frequencies to be exclusively employed. In light of the new MWARC '83 provisions and comments provided thus far in this proceeding, this Further Notice of Proposed Rule Making is appropriate.

Background

2. The development of a system to improve calling procedures has long been recognized as essential to a major improvement of maritime mobile communications. Selective calling systems were described as early as the International Telecommunication Union's (ITU's) Nine Plenary Assembly of CCIR in 1959. In 1967, the ITU Radio Regulations were amended to provide for a sequential single frequency code (SSFC) system of selective calling to meet immediate maritime needs. When the SSFC system was introduced, the ITU called for the development of a system with greater capability for future maritime use. After considerable developmental effort primarily within the United States, the digital technique was selected as being the most able to meet all future selective calling requirements.

3. The CCIR, at its meeting in 1974, recommended the adoption of a digital selective calling system. Later that year, the 1974 World Maritime Administrative Radio Conference established dedicated digital selective calling frequencies, and adopted the digital technique subject to final definition of the technical characteristics by the CCIR. The ITU's Fifteeenth Plenary Assembly of the CCIR (CCIR, Geneva, 1982) adopted the DSC operational and technical characteristics which are contained in CCIR Recommendation 493–2 and the DSC operational procedures which are contained in CCIR Recommendation 541–1. These CCIR recommendations, in conjunction with Article 62 of the ITU Radio Regulations, form the background for implementation of DSC.

4. The Inter-Governmental Maritime Consultative Organization (now International Maritime Organization), through its Subcommittee on Radiocommunications, commenced development of the Future Global Maritime Distress and Safety System (FGMDSS) in 1979. The FGMDSS is expected to become fully operational in the next decade. It will replace the present system which relies primarily on ship-to-ship distress alerting using Morse Code. The future system will rely mainly on ship-to-shore distress alerting using polar-orbiting and geostationary satellites and a terrestrial system employing digital selective calling in all frequency bands.

5. The FGMDSS is now being developed internationally. The MWARC '83 provided frequencies for implementation of the FGMDSS. When the FGMDSS is implemented in the United States, DSC will be mandatory for certain classes of cargo and passenger ships. Other classes of ships will be required to install compatible DSC equipment in order to contract Rescue Coordination Centers operated by the U.S. Coast Guard since the Coast Guard is planning to discontinue its manual distress watches once DSC is fully operational.

6. There is growing user demand from both coast and ship stations for a universal, automated, radiotelephone system. The matter has been the subject of considerable study. The Radio Technical Commission for Marine Services, a Federal Advisory Committee, completed a study in 1981 on the subject of a "VHF Automated Radiotelephone System." The work of this advisory committee was the basis for United States recommendations to Interim Working Party 8/5, established by the CCIR. The Radio Technical Commission for Maritime Services (RTCM) is continuing to study DSC with a view toward encouraging more efficient use of the frequency spectrum.

7. U.S. coast stations today employ various systems of selective calling other than the DSC system. These systems range from simple to complex depending upon the type of service and number of features provided. The most prominent existing domestic example of selective calling is the Great Lakes VHF Radiotelephone System operated by Lorain Telecom Corporation. Lorain's 14 stations provide an automated service to vessels whose voyages are confined to the Great Lakes. Special equipment is furnished by Lorain to its subscribers for this service. Other coast station operators provide a local automated service on one or more stations but, once outside their service area, calls must be made manually. This results in disparities in service and often long queues to communicate with busy coast stations.

8. Implementation of the CCIR DSC system will tend to assist the Commission's enforcement effort. Transmissions using DSC equipment will have a nine digit station identity which is automatically transmitted. Rapid access using an on-line data base can be used to identify stations that are operating in violation of the Commission's rules.

NPRM&O Response

9. Comments were filed in response to the NPRM&O by the following:

—Global Communications Corporation (GLOBAL)
—Radio Technical Commission for Maritime Services (RTCM)
—Waterway Communications System, Inc. (WATERCOM)
—American Commercial Barge Lines, Inc. (ACBL)
—Harris Telephone Company, Inc. (HARRIS)
—Marine Telephone Company, Inc. (MARINE TELEPHONE)
—WJG Telephone Company, Inc. (WJG)
—Mobile Marine Radio, Inc. (MMR)

Reply comments were filed by WJG and Marine Telephone and a written *ex parte* presentation was filed by Marine Telephone.

10. In general, the commenters either concurred with or did not object to the concept that oceangoing vessels falling within the scope of the FGMDSS be mandatorily equipped with DSC equipment when the FGMDSS becomes operational. The specific carriage requirements are being considered by the International Maritime Organization. However, there was enough discussion of equipment characteristics, operating procedures and other matters to warrant a revision of our proposed rules rather than their adoption.

11. WATERCOM, ACBL and HARRIS took the position that marine communications in the 216–330 MHz

band should not be required to use internationally standardized DSC equipment and protocols. They argued that the operations of the Inland Waterways Communication System (IWCS), in the 216–220 MHz band are distinctive in that neither is it internationally standardized, nor does it permit common or universal access. They point out that the system is designed to meet the domestic needs of vessels operating in specific inland waters and that there is no requirement for universal access to the system. In opposing this position, WJG holds that there should be a single, uniform system of signalling mandated by the Commission in order that major equipment manufacturers and large system designers can focus their efforts upon an appropriate conforming system. The Commission considers that communications in the 216–220 MHz band should be excluded from the scope of this proceeding since any vessel that participates in the IWCS must purchase special equipment which has no utility other than within the IWCS. Since neither the frequencies assigned nor the equipment to be used have international application, little would be gained by requiring internationally standardized DSC equipment and protocols to be used in conjunction with maritime communications in the 216–220 MHz band. The proposed rules are not applicable to the 216–220 MHz band.

12. Global and Marine Telephone argued that VHF band selective calling systems, other than the DSC system, should not be precluded from use after grandfather periods. They contend that the maritime public should be permitted the option to use immediately available, affordable, dual-tone multi-frequency (DTMF) and synthesized voice signalling technologies in the marine VHF band.[1] RTCM, HARRIS and WOG favor the DSC system to be the single uniform system of selective calling used on all internationally designated marine bands including the marine VHF band. WJG contends that the per unit cost for production of DSC equipment would not impose a hardship upon small users. In view of the U.S. Coast Guard's position that it will equip its radio stations for only the FGMDSS, it appears that DSC should be proposed as the single uniform system of selective calling for use on all internationally designated marine bands. Since sufficient information is not available to establish exact DSC implementation dates, the Appendix reflects two open-ended dates which are applicable to the "phasing in" of DSC equipment and the "phasing out" of tone or synthesized selective calling equipment.

13. RTCM recommended that the proposed operational characteristics be amended to permit public coast and ship stations to direct dial to a group of ships in a particular geographical area. RTCM believed this to be important for distress and safety related communications. The Appendix reflects the proposed changes.

14. RTCM concurred that dot patterns [2] should precede distress calls. Additionally, RTCM recommended that the dot pattern be authorized for other than distress calls under those conditions when it will facilitate the establishment of communications. The Appendix reflects this recommendation.

15. RTCM and MMR pointed out a need for compulsorily equipped ships fitted with DSC to maintain a watch on DSC frequencies in order that they may be contacted by a coast station whenever required. Section 83.329(c) of the Appendix accommodates this concern.

16. MMR urged that the recommended receiver bandwidth be left at 270–340 Hz rather than changed to 200–270 Hz as proposed in the NPRM&O. This technical issue was considered at a recent international CCIR Working Group meeting concerned with proposed changes to CCIR Recommendation 493–2. The Working Group proposed that the receiver bandwidth of newly designed DSC receivers should not exceed 300 Hz. Section 81.144(g) of the Appendix has been changed to reflect the CCIR Working Group proposal.

17. MMR recommended that the filter bandwidth for coast and ship station receivers be specified at 60 dB. MMR contends that such a standard is essential to prevent adjacent channel interference. Commission precedent has let this matter to the equipment manufacturer in order to permit flexibility of design. However, the Commission will consider recommending a DSC receiver 60 dB bandwidth, provided a specific bandwidth can be agreed upon and adequate technical justification is provided.

18. RTCM recommended that the frequencies proposed for DSC be modified to incorporate the DSC frequencies identified by the MWARC '83. The Appendix reflects DSC frequencies contained in Article 62 of the ITU Radio Regulations as modified by MWARC '83.

19. HARRIS supported the proposed amendments to §§ 81.203, 81.204, 81.205 and 83.330 and took the position that since the Commission was updating NB–DP rules, this was an opportunity for the Commission to affirm that it was following CCIR Recommendation 476–3 by referring to it in one of the sections proposed for amendment. However, there was no intent to update the NB–DP Rules in this proceeding. The amendments resulted from a rearrangement of the rules to accommodate rules pertinent to DSC. Since the proposed rules were concerned with frequencies and NB–DP operational procedures, and since CCIR Recommendation 476–3 is concerned with the technical characteristics of direct printing telegraph equipment, Harris's suggestion is beyond the scope of this proceeding.

20. MMR expressed a concern regarding the lack of clarity as to what type of equipment would be considered non-conforming selective calling equipment and recommended that the proposed rules be clarified. MMR was particularly concerned that NB–DP telex systems may be construed to be non-conforming selective calling equipment. It is not the Commission's intent to outmode the selective calling techniques used in conjunction with NB–DP telex systems. The Appendix reflects the recommended clarification.

21. RTCM pointed out that the Commission's current rules require voluntarily equipped ships to maintain an aural watch on VHF Channel 16 whenever the radio is turned on and not being used for messages. RTCM strongly urged the Commnission to delete this requirement for ships equipped with DSC on VHF. RTCM holds that elimination of the Channel 16 watch as proposed would result in more ships being available to receive distress communications on the DSC calling channel and provide needed assistance in distress situations. The safety aspect trade-offs are difficult to assess but the Commission initially considers that the overall marine safety environment would be improved by relaxing the Channel 16 watch under certain conditions. Comments from the maritime community are invited with respect to this safety assessment. The Appendix proposes it rescind the requirement for an aural VHF Channel 16 watch during the hours of service of voluntarily equippped ships, whenever the radio is not being used for messages, when such ships are DSC equippped and maintaining a DSC watch on Channel 70

[1] Marine Telephone Company, Inc., in their *ex parte* presentation dated May 8, 1984, provided information concerning a "Proposed Low Cost Selective Calling System for the VHF Public Maritime Mobile Radio Service."

[2] A dot pattern is a series of alternate marks and spaces which precede the DSC signal in order to facilitate the use of scanning receivers.

and located within the VHF service area of a U.S. Coast Guard radio facility capable of DSC operations on Channel 70.

Proposal

22. The following paragraphs summarize the DSC implementation concepts contained in the Appendix. The proposed rules reflect the provisions applicable to DSC provided for the MWARC '83, and many of the recommendations made by commenters in response to the initial NPRM&O. We have included numbers within brackets opposite pertinent portions of paragraphs A.3. and B.3. of the Appendix. These numbers refer to the applicable section of CCIR Recommendation 493–2 and are included to assist the public in comparing the delineated minimum operational characteristics with the maximum available operational characteristics.

23. Implementation of the DSC system is proposed on the basis of two open-ended dates:

Date ALPHA—A date in the future to be established by FCC Order. After date ALPHA, new installations of selective calling equipment operating on internationally designated maritime mobile bands must meet DSC operational and technical characteristics.

Date BRAVO—A date in the future to be established by FCC Order which will be a minimum of three years subsequent to date ALPHA. After date BRAVO, all selective calling equipment operating on internationally designated maritime mobile bands must meet DSC operational and technical characteristics.

All coast and ship stations would be authorized to install and use DSC equipment on the effective date of the Report and Order in this proceeding. Such equipment must contain, as a minimum, the operational characteristics delineated in the Appendix. Tone or synthesized selective calling equipment in use on date ALPHA will be authorized for continued use until date BRAVO at the same installation.

24. The technical provisions of CCIR Recommendation 493–2, with indicated exceptions, would be adopted by reference into the rules. For compulsorily equipped ships, the radio frequency tolerance of transmitters used with digital selective calling equipment in the MF and HF bands should be +10 Hertz after January 1, 1990. The receiver maximum recommended 6 dB bandwidth after January 1, 1990, for receivers of new design would be 300 Hertz. The same standards pertain to voluntarily equipped ships except that a date of January 1, 1995, is applied. For coast stations after January 1, 1990, the radio frequency tolerance of transmitters used for digital selective calling equipment in the MF and HF bands should be +10 Hertz and the recommended receiver 6 dB bandwidth for receivers of new design will be 300 Hertz.

25. The operational provisions of CCIR Recommendations 493–2 and 541–1 would be adopted by reference in the rules. When the FGMDSS becomes operational, the following functions which heretofore had to be performed by other human or equipment means may be performed automatically:

—Continuous watchkeeping on distress frequencies
—Automatic recording of distress calls and distress messages
—Alerting of operators in receipt of distress, urgency and other vital safety calls
—Automatic/pushbutton transmission of distress calls and distress information
—Continued watchkeeping on all required safety or commercial channels
—Capability to get access to any coast station, including frequency and/or channel indications
—Capabilities for acknowledgement of a call
—Telecommand facilities allowing for unattended reception or unattended operations
—Recording of received calls.

26. The system of Maritime Identification Digits (MID's) as contained in the ITU Radio Regulations (Resolution 313 and Appendix 43) and modified by the MWARC '83 would be used in conjunction with the implementation of the DSC system.

27. The frequencies designated exclusively for simplex DSC distress and safety purposes by the MWARC '83 would be made available to ship radio stations within the scope of existing ship radio station licenses.

28. Notwithstanding the fact that the frequency 156.525 MHz (Channel 70) was designated exclusively for simplex CCIR DSC distress and safety purposes by the Final Acts of the MWARC '83, the Commission is proposing to make Channel 70 available to ships and coast stations for DSC distress and safety purposes and for DSC general purpose calling. Section 4 of Article 6 of the Radio Regulations allows assignments to be made in derogation of provisions of the Radio Regulations under the express condition that harmful interference shall not be caused to services carried on by stations operating in accordance with the Radio Regulations. The Commission invokes this prerogative because a single multipurpose calling frequency should be adequate to meet the volume of VHF DSC calling for the forseeable future. If the volume of general purpose calling becomes such that harmful interference may be caused to the use of DSC for distress and safety purposes, general purpose calling will be removed to a second calling frequency which will be made available for that purpose. In that case, Channel 70 will be exclusively used for DSC Distress and Safety purposes. This approach would preclude the need for a second receiver on ship stations to be retrofitted with CCIR DIS equipment. Moreover, our experience is that more voluntarily equipped ships will maintain a watch on a multipurpose calling frequency and thereby be available to receive distress/safety communications and provide needed emergency assistance to ships in distress.

29. Section 81.203 of the rules authorizes the use of Article 62 DSC frequencies for NB-DP purposes until such time as a digital selective calling system and associated procedures have been agreed upon and adopted into the ITU Radio Regulations. The current use of these frequencies for NB-DP operations is estimated to be minor. Therefore, the Commission proposes to rescind the use of these frequencies for NB-DP operations.

30. The duplex DSC general purpose calling HF frequencies contained in Article 62 of the ITU Radio Regulations as amended by the MWARC '83 would be made available for ship and coast stations.

31. Coast and ship stations would be authorized to use DSC procedures on authorized MF and HF working frequencies. DSC procedures would be limited on VHF to those frequencies listed in the Port Operations, State Control, Commercial, Noncommercial, Public Correspondence and Digital Selective Calling categories.

32. Use of the frequency 156.525 MHz (Channel 70) between aircraft and ship stations under special conditions would be rescinded. This is necessary to preclude interfernece on Channel 70 which is proposed for use as a VHF multipurpose calling frequency.

33. The note contained in § 81.356(b)(12) of the current rules is obsolete and would be removed.

Comments

34. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are

advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

35. The proposed amendments to the rules, as set forth in the Appendix, are issued under authority contained in sections 4(i) and 303(a), (b), (c) and (r) of the Communications Act of 1934, as amended.

36. Under the applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before March 5, 1985, and reply comments on or before April 4, 1985. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching this decision, the Commission may take into consideration information and ideas not contained in the comments, provided such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

37. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

38. This item does not propose to make the use of selective calling equipment mandatory in the Maritime Service. It does propose that at some future date yet to be established, to require selective calling equipment to be compatible with CCIR Recommendation 493–2. Presently very few vessels and coast stations have selective calling equipment of any type. This action would not require ships, boats or coast stations to use selective calling equipment or replace non selective calling radio equipment. Therefore, the Commission has determined that Section 605 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) does not apply to this rulemaking proceeding. Therefore, the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

39. It is ordered, that a copy of this Further Notice of Proposed Rule Making shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

40. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

41. Regarding questions on matters covered in this document, contact Robert E. Mickley, telephone (202) 632–7175.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 81, 83 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA FIXED SERVICE

1. Section 81.8 is amended by adding the term "Digital Selective Calling System" and its definition, in alphabetical order, to the existing list of terms and definitions, as follows:

§ 81.8 Technical definitions.

* * * * *

Digital Selective Calling (DSC)—A system used to establish contact with a station or group of stations automatically by means of radio. The system was developed by the International Radio Consultative Committee (CCIR). It is a synchronous ten bit digital code consisting of seven information bits and an associated three bit binary code for error detection. The operational and technical characteristics of this system are contained in CCIR Recommendation 493.

* * * * *

2. Section 81.131 is amended by revising paragraph (b) to read as follows:

§ 81.131 Authorized frequency tolerance.

* * * * *

(b) Authorized frequency tolerances for coast stations operating on frequencies below 515 kHz or within the band 1605 to 27,500 kHz:

Frequency ranges	Tolerance—parts in 10^6 unless shown as Hertz (Hz)
(1) From 14 to 525 kHz [1]:	
For A2H emission	20 Hz
For other than A2H emission.	200
(2) From 1605 to 4000 kHz [1]:	
For A3A, A3H, A3J, A4J and F4 emissions.	20 Hz
For other than A3A, A3H, A3J, A4J and F4 emissions.	50
(3) From 4000 to 27,500 kHz [1]; All emssions.	15 Hz

[1] Until January 1, 1990, the radio frequency tolerance for coast station transmitters associated with DSC equipment in the MF and HF bands is ±15 Hertz. Thereafter, the radio frequency tolerance for coast station transmitters associated with DSC equipment in the MF and HF bands should be ±10 Hertz.

* * * * *

3. Part 81 is amended by adding § 81.144 to read as follows:

§ 81.144 Selective calling equipment.

This section specifies the operational and technical characteristics of DSC equipment, the applicability of such equipment and an implementation plan.

(a) Selective calling equipment installed in coast radio stations subsequent to [a date to be established by FCC Order], must be compatible with CCIR Recommendation 493 except that:

(1) station identification need only be numerical,

(2) the order of entry and readout for coordinates must be—first latitude then longitude,

(3) except for the VHF band, dot patterns must automatically precede distress calls from ships in order to accommodate the use of scanning devices, and

(4) more restrictive technical provisions in these rules take precedence.

(b) Unless otherwise stated, reference to any CCIR Recommendation appearing in this part means the most recent version of the CCIR Recommendation.

(c) The requirement for use of DSC equipment, as contained n paragraph (a) to this section is not applicable to the following:

(1) Equipment used in conjunction with the Inland Waterways Communication System (IWCS) in the band 216–220 MHz.

(2) Equipment which performs a selective calling function as a part of the Narrow-Band Direct-Printing (NB–DP) system in accordance with CCIR Recommendation 476—(effective).

(d) The operational format of a call sequence of the DSC is the following:

format specifier
address
category
self-identification
message 1
message 2
.
.
end of sequence

DSC equipment shall have the following operational characteristics as a minimum:

Note.—The numbers in the brackets refer to the applicable section of Annex I to CCIR Recommendation 493).

(1) Minimum operational characteristics of the call sequence in order to receive a DSC call:

(i) format specifier [2]

(A) distress call [2.1.2]; a separate and distinct aural alarm is required.

(B) all ships call [2.1.3]

(C) selective call [2.1.5]

(ii) address [3]

(A) distress call [3.1]

(B) all ships call [3.1]; the address information for "distress calls" and "all ships calls" is contained in the format specifier.

(C) selective call [3.2]; recognize the called coast station numerical identification. [3.2.1]

(iii) category [4]

(A) distress call [4.1]; the category information is contained in the format specifier.

(B) priorities [4.2.1]

(*1*) distress [4.2.1.1]; the same separate and distinct aural alarm is required as listed for distress calls in paragraph (d)(1)(i)(A) of this section

(*2*) urgency [4.2.1.3]

(*3*) vital safety [4.2.1.3]

(*4*) important safety [4.2.1.4]

(*5*) ship business priority [4.2.1.5]

(*6*) routine [4.2.1.6]

Note.—The same aural or visual indicator may be used for urgency, vital safety, important safety, ship business priority and routine priorities.

(iv) self-identification [5]; not applicable to the receiving mode.

(v) messages [6]; display a two digit channel number when used on VHF; otherwise, display a four digit channel number. [6.3.2]

(vi) end of sequence [7]; recognize the "end of sequence".

(2) Minimum operational characteristics of the call sequence in order to transmit a DSC call:

(i) format specifier [2]

(A) all ships call [2.1.3]

(B) selective call [2.1.5]

(C) selective call for a group of ships in a particular geographical area [2.1.6]; except for limited coast stations.

(ii) address [3]

(A) all ships call [3.1]; the address information for "all calls" is contained in the format specifier. [3.1]

(B) selective call [3.2]; transmit the called ship numerical identification. [3.2.1]

(C) identification of a particular geographical area [3.2.3]; except for limited coast stations.

(iii) category (priority) [4]

(A) distress [4.2.1.1]

(B) routine [4.2.1.6]

(iv) self-identification [5]; automatically transmit coast station identity. [5.1]

(v) messages [6]; transmit a two digit number on VHF channels; otherwise, transmit a four digit channel number.

(vi) end of sequence [7]; automatically transit "end of sequence".

(e) The technical format of the call sequence of the DSC is comprised of the following:

dot pattern
phasing sequence
format specifier
address
category
self-identification
message 1
separator (if required)
message 2
separator (if required)
.
.
error check character

(f) When all of the following conditions are met, tone or synthesized selective calling equipment not in conformance with the technical characteristics of CCIR Recommendation 493 may be operated until [a date to be established by FCC Order]. The date will be a minimum of three years from the date subsequent to which DSC equipment is required for new selective calling installations. The conditions are:

(1) the equipment, must have been installed and operational by [the date to be established by FCC Order].

(2) The equipment must be used only at the same radio station where located and operational on the date to be established in accordance with paragraph (a) of this section.

(g) Until January 1, 1990, the maximum recommended receiver 6 dB bandwidth is 340 Hertz. Thereafter, the maximum recommended receiver 6 dB bandwidth for receivers of new design will be 300 Hertz.

4. Section 81.203 is revised to read as follows:

§ 81.203 Digital selective calling frequencies.

(a) The carrier frequencies in the following table are available for use by coast stations for general purpose calls to ship stations using digital selective calling techniques. The associated reply frequencies are also shown.

Coast station transmit to ships (kHz)	Coast station receive from ships (kHz)
4357.0	4187.5
6506.0	6281.5
8718.5	8375.5
13100.0	12562.0
13100.5	12562.5
17232.0	16750.5
17232.5	16751.5
22595.0	22248.0
22595.5	22248.5

(b) Digital selective calling techniques are authorized for use on appropriate working frequencies in the following bands assigned to public coast stations:

415—525 kHz
1605—4000 kHz
4000—27500 kHz

(c) When calling ship stations by DSC, the coast station must use the ship station identity and its assigned identity. Both the ship station identity and the coast station identity are nine digit numbers which will be assigned by the Commission. The numerals are compatible with international operations.

(d) Operating procedures for the use of digital selective calling (DSC) equipment in the Maritime Mobile Service are as contained in CCIR Recommendation 541 as modified by § 81.363(c).

(e) Frequencies available to ship stations for DSC distress and calling are also available to coast stations under the conditions contained in CCIR Recommendation 541. These DSC frequencies are identified by § 81.304(b)(22).

5. Section 81.204 is amended by revising paragraph (b)(6) to read as follows:

§ 81.204 Assignable frequencies—Narrow-band direct-printing radiotelegraph and transmission systems.

* * * * *

(b) * * *

(6) Calls to ship stations by NB–DP must be made by radioteleprinter on the NB–DP frequencies assigned to the coast station. However, when the above alternatives are unsuccessful, coast stations may call ship stations by A1 Morse radiotelegraphy, shift to A1 radiotelegraphy working frequencies, and complete arrangements for setting up a NB–DP circuit.

* * * * *

6. Section 81.205 is amended by adding paragraph (f).

§ 81.205 Narrow-band direct-printing (NB–DP) operating procedure.

* * * * *

(f) In calling ship stations by narrow-band direct-printing, the coast station must use the ship station selective calling number (5 digits) and its assigned coast station identification number (4 digits). Calls to ships station must employ the following format; Ship station selective call number, repeated twice; "DE", sent once; and coast station identification number, repeated twice. When the ship station does not reply to a call sent three times at intervals of two minutes, the calling must cease and must not be renewed until after an interval of fifteen minutes.

7. In § 81.304, paragraph (a) is amended by adding the symbol "20" to the "limitations" column of the table opposite all frequency entries from 1619 kHz to 3261 kHz, inclusive, and from 161.800 MHz to 162.025 MHz, inclusive. "Carrier frequencies" and "Conditions of use" are added in frequency numerical order to the frequency table and paragraphs (b)(20), (b)(21) and (b)(22) are added to read as follows:

§ 81.304 Frequency available

(a) * * *

Carrier frequency	Conditions of use	
	Section	Limitations
Kilohertz		
2187. kHz	81.203, 81.305	21, 22
* *	* *	*
4188.0 kHz	81.203, 81.305	21, 22
4357.0 kHz	81.203, 81.305	20, 21
* *	* *	*
6282.0 kHz	81.203, 81.305	21, 22
6506.0 kHz	81.203, 81.305	20, 21
* *	* *	*
8375.0	81.203, 81.305	21, 22
8718.5 kHz	81.203, 81.305	20, 21
* *	* *	*
12563.0 kHz	81.203, 81.305	21, 22
13100.0 kHz	81.203, 81.305	20, 21
13100.5 kHz	81.203, 81.305	20, 21
* *	* *	*
16750.0 kHz	81.203, 81.305	21, 22
17232.0 kHz	81.203, 81.305	20, 21
17232.5 kHz	81.203, 81.305	20, 21
* *	* *	*
22595.0 kHz	81.203, 81.305	20, 21
22595.5 kHz	81.203, 81.305	20, 21
* *	* *	*
Megahertz		
156.525 MHz	81.203, 81.305	20, 21, 22

(b) * * *

(20) Use of this frequency by coast stations is authorized for general purpose calling using digital selective calling techniques.

(21) Use of this frequency is limited to CCIR digital selective calling techniques.

(22) Use of this frequency by coast stations is authorized for distress and safety calling, acknowledgement, and distress relay purposes using digital selective calling techniques under the conditions contained in CCIR Recommendation 541.

* * * * *

8. Section 81.305 is amended by adding paragraph (c) to read as follows:

§ 81.305 Frequencies for calling and distress.

* * * * *

(c) *Digital Selective Calling Frequencies:* These exclusive digital selective calling frequencies are available for use as indicated:

(1) *Distress and Safety.* Section 81.304(b)(22) identifies frequencies available for distress and safety purposes using digital selective calling techniques.

(2) *General Purpose Calling.* Section 81.304(b)(20) identifies frequencies available for general purpose digital selective calling techniques.

9. Section 81.315 is added to read as follows:

§ 81.315 Digital selective calling operating procedures.

(a) Operating procedures for DSC equipment in the Maritime Mobile Service are contained in CCIR Recommendation 541.

(b) When calling ship stations by means of digital selective calling, the coast station must use the ship station identity and effect self-identification by use of a coast station identity. Both the ship station identity and the coast station identity are nine digit numbers which will be assigned by the Commission based upon a system of Maritime Identification Digits (MID's) designed to be compatible with international operations.

§ 81.356 [Amended]

10. In Section 81.356, Paragraph (a) is amended by adding the symbol "4" to the "Conditions of Use" column of the frequency table opposite all frequency entries to the Port Operations, Commercial and Noncommercial categories. A new category, "Digital Selective Calling", is added to the frequency table below the Noncommercial category, paragraphs (b)(4) and (b)(5) are added and paragraph (b)(12) is removed to read as follows:

(a) * * *

Digital Selective Calling				
70	156.525	156.525	Coast to ship	4, 5

(b) * * *

(4) Authorized for general purpose calls to ships by means of digital selective calling.

(5) Authorized for alerting purpose related to distress and safety using digital selective calling techniques.

* * * * *

(12) [Reserved]

11. In Section 81.360, paragraph (f) is added as follows:

§ 81.360 Frequencies available below 27.5 MHz.

* * * * *

(f) The coast station frequencies identified by § 81.304(b)(2) are available for use by limited coast stations for general purpose calling using digital selective calling techniques.

12. Part 81 is amended by adding § 81.363 to read as follows:

§ 81.363 Digital selective calling operating procedures.

(a) Operating procedures for the use of DSC equipment in the maritime mobile service are contained in CCIR Recommendation 541.

(b) When calling ship stations by means of DSC the coast station must use the ship station identity and its assigned identity. Both the ship station identity and the coast station are nine digit numbers which will be assigned by the Commission. The numerals are

compatible with international operations.

(c) DSC acknowledgement of DSC distress and safety calls are to be made by designated coast stations and such acknowledgement must be in accordance with procedures contained in CCIR Recommendation 541. Non-designated public and limited coast stations are to follow the guidance provided for ship stations in CCIR Recommendation 541 with respect to DSC "Acknowledgement of distress calls" and "Distress relays".

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. Section 83.7 is amended by adding paragraphs (m) and (n) to read as follows:

§ 83.7 Technical.

* * * * *

(m) Selective calling—A means of calling in which signals are transmitted in accordance with a prearranged code for the purpose of operating a particular automatic attention device at the selected station.

(n) Digital Selective Calling (DSC)—A system used to establish contact with a station or group of stations automatically by means of radio. The system was developed by the International Radio Consultative Committee (CCIR). It uses a synchronous ten bit digital code consisting of seven information bits and an associated three bit binary code for error detection. The operational and technical characteristics of this system are contained in CCIR Recommendation 493.

2. In § 83.131, paragraph (a) is revised, footnote symbol "2" is added to the introductory portions of subparagraphs (b)(4), (b)(5) and (b)(7), and footnote 2 is added to read as follows:

§ 83.131 Authorized frequency tolerance.

(a) The frequency tolerances authorized for stations on board ships subject to this part must be as prescribed in paragraphs (b) through (g) of this section.

(b) * * *

(4) Ship stations from 1605–2070 and 2080–3500 kHz: [2]

* * * * *

(5) Ship stations from 2070–2080 kHz: [2] For transmitters type accepted or type approved:

* * * * *

(7) Stations when using frequencies with the band 4000–27500 kHz: [2]

* * * * *

3. Section 83.147 is added to read as follows:

§ 83.147 Selective calling equipment.

This section provides for the operational and technical characteristics of DSC equipment, the applicability of such equipment and an implementation plan.

(a) Selective calling equipment installed in ship radio stations subsequent to [a date to be established by FCC Order], must be compatible with the operational and technical specifications contained in CCIR Recommendation 493 except that:

(1) Station identification need only be numerical,

(2) the order of entry and readout for coordinates must be—first latitude and then longitude,

(3) except for the VHF band, dot patterns must automatically precede distress calls from ships in order to accommodate the use of scanning devices,

(4) dot patterns may be used in other than distress calls only under those conditions when it will facilitate the establishment of communications, and

(5) more restrictive technical provisions in these rules take precedence.

(b) Unless otherwise stated, reference to any CCIR Recommendation appearing in this part means the most recent version of the CCIR Recommendation.

(c) The requirement for use of DSC equipment, as contained in paragraph (a) to this section, is not applicable to the following:

(1) Equipment used in conjunction with the Inland Waterways Communication System (IWCS) in the band 216–220 MHz.

(2) Equipment which performs a selective calling function as a part of the Narrow Band-Direct Printing (NB–DP) system in accordance with CCIR Recommendation 476.

(d) The operational format of a call sequence of DSC is the following:

format specifier
address
category
self-identification
message 1
message 2
end of sequence

DSC equipment shall have the following operational characteristics as a minimum:

Note.—The numbers in the brackets refer to the applicable section of Annex I to CCIR Recommendation 493.

(1) Minimum operational characteristics of the call sequence in order to receive a DSC call:

(i) format specifier [2]

(A) distress call [2.1.2]; a separate and distinct aural alarm is required.

(B) all ships call [2.1.3]

(C) selective call [2.1.5]

(ii) address [3]

(A) distress call [3.1]

(B) all ships call [3.1]; the address information for "distress calls" and "all ships calls" is contained in the format specifier.

(C) selective call [3.2]; recognize the called ship numerical identification. [3.2.1]

(D) identification of a particular geographical area [3.2.3]; except for VHF use.

(iii) category [4]

(A) distress call [4.1]; the category information is contained in the format specifier.

(B) priorities [4.2.1]

(*1*) distress [4.2.1.1]; the same separate and distinct aural alarm is required as set forth for distress calls in paragraph (d)(1)(i)(A)

(*2*) urgency [4.2.1.2]

(*3*) vital safety [4.2.1.3]

(*4*) important safety [4.2.1.4]

(*5*) ship business priority [4.2.1.5]

(*6*) routine [4.2.1.6]

Note.—The same aural or visual indicator may be used for urgency, vital safety, important safety, ship business priority and routine priorities.

(iv) self-identification [5]; not applicable to the receiving mode.

(v) messages [6]; display a two digit channel number on VHF; otherwise, display a four digit channel number [6.3.2]

(vi) end of sequence [7]; recognize the "end of sequence".

(2) Minimum operational characteristics of the call sequence in order to transmit a DSC call:

(i) format specifier [2]

(A) distress call [2.1.2]

(B) all ships call [2.1.3]

(C) selective call [2.1.5]

(ii) address [3]

(A) distress call [3.1]

(B) all ships call [3.1]; the address information for "distress calls" and "all ships calls" is contained in the format specifier.

(C) selective call [3.2]; transmit the called ship or coast identification. [3.2.1]

---

[2] The radio frequency tolerance for shipboard transmitters associated with digital selective calling equipment in the MF and HF bands is ±20 Hertz:

Until January 1, 1990, for ships which are compulsorily equipped with radio, and

Until January 1, 1995 for ships which are voluntarily equipped with radio.

After the above dates for the respective categories of ships, the tolerance for shipboard transmitters associated with digital selective calling equipment in the MF and HF bands should be ±10 Hertz.

(iii) category [4]

(A) distress call [4.1]; the category information is contained in the format specifier.

(B) priorities [4.2.1]

(*1*) distress [4.2.1.1]

(*2*) routine [4.2.1.6]

(iv) self-identification [5]; automatically transmit the ship station identity. [5.1]

(v) message [6]; transmit a two digit channel number on VHF; otherwise, transmit a four digit channel number. [6.3.2]

(e) The technical format of the call sequence of DSC is comprised of the following:

dot pattern
phasing sequence
format specifier
address
category
self-identification
message 1
separator (if required)
message 2
separator (if required)

.
.

end of sequence
error check character

(f) When all of the following conditions are met, tone or synthesized selective calling equipment not in conformance with the technical characteristics of CCIR Recommendation 493 may be operated until [a date to be established by FCC Order]. The date will be a minimum of three years from the date subsequent to which DSC equipment is required for new selective calling installations. The conditions are:

(1) The equipment must have been installed and operational by [the date to be established by FCC Order].

(2) The equipment must be used only at the same radio station where located and operational on the date to be established in accordance with paragraph (a) of this section.

(g) For ships which are compulsorily equipped with radio, the maximum recommended receiver 6 dB bandwidth is 340 Hertz until January 1, 1990. Thereafter, the maximum recommended receiver 6 dB bandwidth for receivers of new design will be 300 Hertz.

(h) For ships which are voluntarily equipped with radio, the maximum recommended receiver 6 dB bandwidth is 340 Hertz until January 1, 1995. Thereafter, the maximum recommended receiver 6 dB bandwidth for receivers of new design will be 300 Hertz.

4. In § 83.224, paragraph (c) is added to read as follows:

§ 83.224 Watch on 156.8 MHz.

* * * * *

(c) For a station on board a voluntarily equipped vessel fitted with digital selective calling (DSC) equipment, maintaining a DSC watch on 156.525 MHz whenever such station is not being used for exchanging communications, and while such station is within the VHF service area of a U.S. Coast Guard radio facility which is DSC equipped to operate on 156.525 MHz.

5. Section 83.318 is revised to read as follows:

§ 83.318 Digital selective calling frequencies.

(a) *Distress and safety calling.* The following frequencies are available for use by ship stations for distress and safety calls using digital selective calling techniques:

2187.5 kHz
4188.0 kHz
6282.0 kHz
8375.0 kHz
12563.0 kHz
16750.0 kHz
156.525 MHz

Note.—The frequencies 2187.5 KHz and 156.525 MHz may be used for DSC acknowledgements of DSC Distress Calls under conditions contained in CCIR Recommendation 541.

(b) *General purpose calling.* The frequencies in the following table are available for use by ship stations for general purpose calls to coast stations using digital selective calling techniques. The associated reply frequencies are also shown.

Ship station transmit to coast (kHz)	Ship station receive from coast (kHz)
4187.5	4357.0
6281.5	6506.0
8375.5	8718.5
12562.0	13100.0
12562.5	13100.5
16750.5	17232.0
16751.0	17235.5
22248.0	22595.0
22248.5	22595.5
156.525	156.525

(c) *Working frequencies.* Appropriate working frequencies in the following bands are available for use by ship stations using digital selective calling techniques:

415–525 kHz
1605–4000 kHz
4000–27500 kHz

6. Section 83.329 is revised to read as follows:

§ 83.329 Digital selective calling operating procedures.

(a) Operating procedures for DSC in the maritime mobile service are contained in CCIR Recommendation 541.

(b) When calling ship or coast stations by DSC, the ship station must use the appropriate nine digit ship or coast station identity and its assigned identity.

(c) Compulsorily equipped ships underway and fitted with DSC must monitor the appropriate distress and safety calling DSC frequencies.

7. § 83.330, paragraph (d) is revised to read as follows:

§ 83.330 Narrow-band direct-printing operating procedure.

* * * * *

(d) In calling the coast station by NB-DP, the ship station shall use the coast station identification number (4 digits) and effect self-identification by the use of ship station selective calling number (5 digits). Calls to a coast station or other ship station must employ the following format: Coast station identification number, repeated twice; "DE", sent once; and ship station selective call number, repeated twice. When the coast station does not reply to a call sent three times at intervals of two minutes, the calling shall cease and shall not be renewed until after an interval of fifteen minutes. When it is known that the coast station maintains a watch on other frequencies for ship station calls by NB-DP, the ship station should make its initial NB-DP call on these frequencies.

* * * * *

8. In § 83.351 paragraph (a) is amended by adding the symbol "53" to the "Limitations" column of the frequency table opposite frequency entries 1619 kHz through 3261 kHz, inclusive; opposite the frequency entry 5680 kHz, opposite the frequency entries 156.050 MHz through 156.275 MHz, inclusive, opposite frequency entries 156.325 MHz and 156.350 MHz; opposite frequency entries 156.400 MHz through 156.500 MHz, inclusive; opposite frequency entries 156.550 MHz through 156.625 MHz inclusive; opposite frequency entries 156.675 MHz through 156.725 MHz, inclusive, opposite frequency entries 156.850 MHz through 157.025 MHz, inclusive; and opposite frequency entries 157.200 MHz through 157.425 MHz, inclusive. The frequency table in paragraph (a) is further amended by adding and changing "Frequencies" and "Conditions of Use" in frequency numerical order, and by adding paragraphs (b)(53) and (b)((54) to read as follows:

§ 83.351 Frequencies available.

(a) * * *

Carriers frequency Kilohertz	Conditions of use	
	Section	Limitations
2187.5 kHz	83.352(d)	19, 20, 54
* *	* *	*
4187.5 kHz	83.353(b)	19, 20, 53
4188.0 kHz	83.352(d)	19, 20, 54
* *	* *	*
8281.5 kHz	83.353(b)	19, 20, 53
8282.0 kHz	83.352(d)	19, 20, 54
* *	* *	*
8375.0 kHz	83.352(d)	19, 20, 54
8375.5 kHz	83.353(b)	19, 20, 53
* *	* *	*
12562.0 kHz	83.353(b)	19, 20, 53
12562.5 kHz	83.353(b)	19, 20, 53
12563.0 kHz	83.352(d)	19, 20, 54
* *	* *	*
16750.0 kHz	83.352(d)	19, 20, 54
16750.5 kHz	83.353(b)	19, 20, 53
16751.0 kHz	83.353(b)	19, 20, 53
* *	* *	*
22248.0 kHz	83.353(b)	19, 20, 53
22248.5 kHz	83.353(b)	19, 20, 53
* *	* *	*
156.525 MHz	83.352(d), 83.353(b), 83.359.	19, 20, 53, 54

* * * * *

(b) * * *

* * * * *

(53) Use of this frequency by ship-stations is limited to general purpose calling using digital selective calling techniques.

(54) Use of this frequency by ship stations is limited to distress and safety alerting purposes using digital selective calling techniques.

* * * * *

9. In § 83.352 paragraph (d) is added to read as follows:

§ 83.352 Frequencies for use in distress and search and rescue operations.

* * * * *

(d) The frequencies identified in § 83.351(b)(54) are available for use by ship stations for distress and safety calls using DSC.

10. Section 83.353 is revised to read as follows:

§ 83.353. Frequencies for calling.

(a) The frequency 2182 kHz is the international general calling frequency for radiotelephony; it may be used for this purpose by ship and aircraft stations operating in the maritime mobile service in the bands between 1605 and 4000 KHz. The frequency 156.8 MHz is the international distress, safety and calling frequency for maritime radio telephony stations when using frequencies in the 156 and 174 MHz bands. In addition, these frequencies may be used for transmission of:

(1) The international urgency signal and very urgent messages preceded by this signal concerning the safety of a ship, aircraft, or other vehicle, or the safety of some person on board or within sight of the ship, aircraft, or vehicle.

(2) The international safety signal and messages preceded by this signal concerning the safety of navigation or giving important meteorological warnings; however, safety messages must be transmitted on a working frequency after a preliminary announcement on 2182 kHz.

(3) Brief radio operating signals.

(b) Digital selective calling identified in § 83.351(b)(53) may be used to establish radiotelephony communications. The frequencies are available for use by ship stations for general purpose calls to public coast stations using digital selective calling techniques.

11. Section 83.354 is amended by changing the section title, designating existing material as paragraph (a) and adding a new paragaph (b) as follows:

§ 83.354 Frequencies available for communication with public coast stations on frquencies between 4000 and 27500 kHz.

(a) * * *

(b) Appropriate working frequencies identified in Section 83.351(b)(53) are available for use by ship stations using digital selective calling techniques.

12. Section 83.355 is amended by adding paragraph (c) as follows:

§ 83.355 Frequencies available or communications with public coast stations operating in the band between 1605 and 4000 kHz.

* * * * *

(c) Appropriate working frequencies identified in § 83.351(b)(53) are available for use by ship stations using digital selective calling techniques.

13. In §83.359, paragraph (a) is amended by deleting Channel 70 and all horizontal entries in the Noncommercial category of the frequency table; and by adding a new category, "Digital Selective Calling", to the frequency table below the Public Correspondence category, by revising the introductory text of paragraph (b) and by adding a new paragraph (c) to read as follows:

§ 83.359 Frequencies in the band 156–162 MHz available for assignment.

(a) * * *

Digital Selective Calling			
70	156.525	156.525	Intership and ship to coast.

(b) In addition to the limitations contained in § 83.351(b)(15), (b)(33) and (b)(44) aircraft may use the frequencies 156.3, 156.375, 156.4, 156.425, 156.450, 156.a625, 156.9 and 157.425 MHz under the following circumstances and subject to the following limitations:

* * * * *

(c) Appropriate working frequencies in the 156–162 MHz band identified in § 83.351(b)(53) are available for use by ship stations for general purpose calls using digital selective calling techniques.

14. Section 83.360 is amended by revising paragraphs (b)(3) and (b)(6) to read as follows:

§ 83.360 Frequencies for business and operational purposes.

* * * * *

(b) * * *

(3) Digital selective calling techniques may be used on the following working frequencies: 2065 kHz, 2079 kHz, 2096.5 kHz, 4125 kHz.

* * * * *

(6) The class of emission must be 2.8A3J. When digital selective calling techniques are being used the emission must be F1B.

16. Section 83.366 is amended by adding paragraph (k) to read as follows:

§ 83.366 General radiotelephone operating procedure.

* * * * *

(k) Digital selection calling. Operating procedures for the use of digital selective calling (DSC) equipment in the maritime mobile service are as contained in CCIR Recommendation 541. When calling ship or coast stations by means of digital selective calling, the ship station shall use the appropriate nine digit ship or coasts station identity and effect self-identification by use of a nine digit ship station identity.

PART 87—AVIATION SERVICES

1. Section 87.183 is amended by revising the introductory text of paragraph (j)(3) to read as follows:

§ 87.183 Frequencies available.

* * * * *

(j) * * *

(3) The frequencies 156.300, 156.375,[1] 156.400, 156.425, 156.450, 156.625, 156.800, and 156.900 MHz may be used by aircraft stations to communicate with ship stations under these conditions:

* * * * *

[FR Doc. 84-28717 Filed 10-30-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-81; Notice No. 1]

Transportation of Natural and Other Gas by Pipeline; Ovality of Field Bends in Steel Pipe

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Part 192 limits the ovality of field bends in steel pipe more than 4 inches in diameter by specifying that the maximum outside diameter may not exceed the minimum outside diameter by more than 2½ percent of the nominal diameter. This rule in § 192.313(a)(2) has been reviewed along with other pipe bending requirements and has been found to be unnecessary for safety. Therefore, MTB proposes to remove the ovality limitation requirement.

DATE: Interested persons are invited to submit written comments on this proposal. All comments must be filed December 31, 1984, although late filed comments will be considered as far as is practicable. Persons should submit as a part of their written comments all material that is considered relevant to any statement of fact or argument made.

ADDRESS: Comments should be sent to the Dockets Branch, Room 8426, Materials Transportation Bureau, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, and identify the docket and notice numbers. All comments and other docket material are available in Room 8426 for inspection and copying between the hours of 8:30 a.m. and 5:00 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: William A. Gloe, 202-426-2082, regarding the content of this proposal, or the Dockets Branch, 202-426-3148, regarding copies of the proposal or other information in the docket.

SUPPLEMENTARY INFORMATION: As part of its program to review existing regulations and to eliminate those that are unnecessary for safety, MTB has reviewed § 192.313. Section 192.313(a)(2) requires that each field bend in steel pipe, other than a wrinkle bend made in accordance with § 192.315, must comply with the following:

> For pipe more than 4 inches in nominal diameter, the difference between the maximum and minimum diameter at a bend must not be more than 2½ percent of the nominal diameter.

In a previous rulemaking on bending limitations (Docket No. OPS-23, Amdt. 192-26, 41 FR 26106, June 24, 1976), it was stated that MTB intends to propose that the ovality restriction in § 192.313 be deleted. MTB averred in the preamble of the final rule that the deletion could not be made in that proceeding because it had not been proposed in the Advance Notice or the NPRM. Comments were occasioned on the ovality restriction for the reason that MTB had proposed amending § 195.212 of the hazardous liquid pipeline regulations to include the limitation then existing only in Part 192 as § 192.313(a)(4). The following excerpt from the preamble describes evaluation of the comments and the decision to exclude the limitation from Part 195:

> Ovality—For pipe more than 4 inches in nominal diameter, § 192.313(a)(4) provides a numerical restriction on ovality due to bending. The liquid pipeline bending regulations do not contain a similar requirement. Because the ovality restriction limits wall thinning and excessive strain due to bending, MTB proposed that § 195.212 be amended to include the ovality limitation now existing in § 192.313(a)(4). This proposal resulted in a considerable amount of negative comment. Commenters pointed out that the proposed ovality requirement is twice as restrictive as the current industry practice and more stringent than the ovality limitation in pipe manufacturing specifications. In the latter case, if the proposal were adopted, pipe from a manufacture could exceed the ovality restriction before being bent. Another commenter pointed out that liquid pipeline carriers have not filed with the Department any reports of failures caused by bends with excessive ovality.
>
> Based on all the comments to Notice 75-7, MTB now believes that a numerical restriction on ovality is not necessary to provide for the safety of a steel pipeline subjected to field bending. Rather, MTB believes that the performance standards involving smoothness, mechanical damage, and serviceability are sufficient to protect against material damage due to bending. In effect, these standards also limit ovality because excessive ovality would impair the serviceability of a pipeline or cause mechanical damage. It further appears that the ovality restriction now existing in 192.313(a)(4) is derived from a provision of the 1968 addition [sic] of the ANSI B31.8 Code which was based on an operating consideration, e.g., passage of internal cleaning and inspection equipment, rather than a strength of materials consideration. Consequently, the proposed ovality amendment to § 195.212 is not adopted.

Although a numerical restriction on ovality of field bends was shown to be unnecessary, further action was not taken due to the apparent absence of problems in meeting the requirement. Thus, the file remained inactive until receipt of a January 25, 1984, petition (P-25) from the Interstate Natural Gas Association of America (INGAA) for deletion of § 192.313(a)(2) (as the requirement has since been designated). The petition states that "The INGAA member companies request MTB amend Section 192.313, Part 192, Title 49 CFR to remove the numerical restriction on ovality in pipe due to bending." INGAA membership is described by the petitioning letters comprising most of the major interstate natural gas transmission companies in the United States. The letter provides the following summary:

> INGAA is not aware of ovality being a problem in construction, operation or safety; in fact, to the best of our knowledge ovality has not been connected with the cause of a single pipeline failure. Furthermore, with the retention of the requirements in Section 192.313(a)(1) and (a)(3), and we are not suggesting their elimination, it is our opinion the specific ovality limits contained in (a)(2) are unnecessary and do not contribute toward improving public safety.

Deletion is further supported by removal of the ovality limitation from the 1982 edition of the industry standard, ANSI B31.8. Although that edition contains new requirements on the maximum degree of bending on cold field bends. Whether or not the ovality limitation should be replaced by new bending requirements is not indicated to be a safety question for this rulemaking as far as MTB can determine. To the best of our knowledge, pipeline accident reports submitted to MTB over the past 14 years reveal no accident that might have been avoided by closer regulation of field pipe bends, whether by ovality limitation or by control of bending radius. MTB agrees with INGAA and believes that the ovality limitation does not enhance safety beyond that provided by the performance standards of § 192.313(a)(1) and (a)(3). Therefore, MTB proposes to delete the limitation.

Classification: Since this proposal will have a minimal effect on the economy by removal of an unnecessary but noncostly restriction on the industry, the economic impact has been found to be such that further evaluation is not needed. The proposal is considered to be nonmajor under Executive Order 12291 and not significant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Flexibility Act

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small

entities. Operators who are small entities normally do not engage in field bending of steel pipe and, therefore, would not be significantly affected by this rulemaking proposal.

List of Subjects in 49 CFR Part 192

Pipeline safety.

PART 192—[AMENDED]

In view of the foregoing, MTB proposes to amend 49 CFR 192.313(a) by removing paragraph (a)(2) and redesignating paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), respectively.

(49 U.S.C. 1672 and 1804; 49 CFR 1.53; Appendix A of Part 1, and Appendix A of Part 106)

Issued in Washington, D.C., on October 26, 1984.

Richard L. Bean,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 84-28655 Filed 10-30-84; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 49, No. 212
Wednesday, October 31, 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

Office of the Secretary

Forms Under Review by Office of Management and Budget

October 26, 1984.

The Department of Agriculture has submitted to OMB 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. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

- Agricultural Stabilization and Conservation Service

Peanut Warehouse Contracts, Applications for Approval, Examination Reports, Bond, Warehouse Receipts and Drafts
CCC-1028, 1028-A, 1032, 1032-1, 1033, 1036, 1041, 1041-VC, 1041-A
Monthly, Annually, Daily
Farms, Businesses or other for-profit; 76,572 responses, 13,040 hours; not applicable under 3404(h)
Bob Ray (202) 382-9106

- Farmers Home Administration

7 CFR 1965-B, Security Servicing for Multiple Housing Loans
On occasion
Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations; 790 responses, 1,537 hours; not applicable under 3504(h)
Dean R. Greenwalt (202) 382-1615

- Statistical Reporting Service

Farm Costs and Returns Survey
Annually
Farms; 44,700 responses, 20,558 hours; not applicable under 3504(h)
Lee Sandberg (202) 447-6820

Extension

- Statistical Reporting Service

Sugar Market Statistics
Quarterly
Businesses or other for-profit; 288 responses, 307 hours; not applicable under 3504(h)
Lee Sandberg (202) 447-6820

Reinstatement

- Statistical Reporting Service

Floriculture and Nursery Surveys
Annually
Farms, Businesses or other for-profit; 6,000 responses, 1,833 hours; not applicable under 3504(h)
Lee Sandberg (202) 447-6820

Larry K. Roberson,
Acting Departmental Clearance Officer.

[FR Doc. 84-28648 Filed 10-30-84; 8:45 am]
BILLING CODE 3410-01-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations; Week Ended October 19, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See, 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Oct. 16, 1984	42567	Air North America, Inc., c/o Richard D. Neumann, Box 40850, Pasadena, California 91105. Application of Air North America, Inc., pursuant to Section 401(d)(1) of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity to engage in scheduled foreign international air transportation between places in the United States of America and places in Europe, Africa, India, Southeast Asia, Asia, Central America, South America, Canada, Caribbean Sea and Mexico. Conforming Applications, Motions to Modify Scope and Answers may be filed by November 13, 1984.
Do	42569	Pacific Overseas Air Cargo, Inc., c/o Stephen L. Gelband, Hewes, Morella, Gelband & Lamberton, 1010 Wisconsin Avenue, N.W., Suite 640, Washington, D.C. 20007. Application of Pacific Overseas Air Cargo, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for a certificate of public convenience and necessary to provide scheduled interstate and oversees transportation of property and mail, and for a fitness determination. Conforming Applications, Motions to Modify Scope and Answers may be filed by November 13, 1984.

Date filed	Docket No.	Description
Do	42570	Bahamasair Holdings Limited, c/o George U. Carneal, Hogan & Hartson, 815 Connecticut Avenue, N.W., Washington, D.C. 20006. Application of Bahamasair Holdings Limited pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations for (1) renewal of the Foreign air carrier permit now held by Bahamasair and (2) amendment of that permit so as to authorize Bahamasair to engage in the foreign air transportation of mail, passengers, and property between any point or points in The Commonwealth of The Bahamas and the new coterminal point of Newark, as well as the presently authorized terminal points of Atlanta, Chicago, Detroit, Dallas, Miami, Palm Beach, Fort Lauderdale, and Tampa. Answers may be filed by November 13, 1984.
Oct. 17, 1984	42574	Quebecair, c/o Robert Reed Gray, Hale Russell & Gray, 1025 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036. Application of Quebecair pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations applies for the issuance of a foreign carrier permit authorizing Quebecair to provide regular route service in foreign air transportation carrying persons, property and mail between: Quebec, Canada and New York, New York; and Montreal, Canada and Boston, Massachusetts. Answers may be filed by November 17, 1984.
Oct. 15, 1984	42416	Soundair Corporation, c/o L. Harvey Poe, Jr., Poe & Noble, 1701 Pennsylvania Avenue, N.W., Washington, D.C. 20006. Amendment No. Two to the Application of Soundair Corporation for an Initial Foreign Air Carrier Permit.
Oct. 18, 1984	42356 42357	Ports Of Call Travel Club, Inc. c/o Larry Turrill, 2121 Valentia St., Denver, Colorado 80220. Amended Application of Ports Of Call Travel Club, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural regulations. (Additional information) Answers may be filed by November 15, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-28730 Filed 10-30-84; 8:45 am]
BILLING CODE 6320-01-M

[Order 84-9-74]

Application of Chisum Flying Service of Alaska, Inc. for Certificate Authority; Order to Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (84-9-74).

SUMMARY: The Board is proposing to find Chisum Flying Service of Alaska Inc. fit, willing, and able and to issue it a certificate of public convenience and necessity under section 401 of the Federal Aviation Act authorizing it to provide interstate and overseas scheduled air transportation of persons, property, and mail and all-cargo service between Cordova, Port San Juan, Falls Bay, Ellamar, Green Island, Main Bay and Cannery Creek, Alaska.

DATES: All interested persons wishing to respond to the Board's tentative fitness determination and proposed certificate award shall file, and serve upon all persons listed below no later than October 17, 1984, a statement of their response, together with a summary of testimony, statistical data, and other material expected to be relied upon to support any objections raised.

ADDRESS: Responses should be filed in Docket 42261 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon parties listed in the Attachment to the order.

FOR FURTHER INFORMATION CONTACT: John R. McCamant, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5328.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-74 is available from our Distribution Section, Room 10, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-74 to that address.

By the Civil Aeronautics Board: September 25, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-28732 Filed 10-30-84; 8:45 am]
BILLING CODE 6320-01-M

[Order 84-10-21; Docket 42321]

Application of Hawaii One Corp. for Certificate Authority Under Subpart Q; Order Instituting Fitness Investigation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting Fitness Investigation, Order 84-10-21 Docket 42321.

SUMMARY: The Board is instituting the *Hawaii One Corporation Fitness Investigation* to determine if Hawaii One is fit to provide interstate and overseas scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file requests for additional evidence and requests to intervene should do so in Docket 42321 by November 5, 1984.

ADDRESSES: Requests for additional evidence and requests to intervene should be filed in Docket 42321 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Nicholas R. Lowry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-10-21 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-10-21 to that address..

By the Civil Aeronautics Board: October 4, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-28731 Filed 10-30-84; 8:45 am]
BILLING CODE 6320-01-M

[Order 84-10-122]

Transporturile Aeriene Romane; Proposed Partial Approval of Application

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause.

SUMMARY: The Board proposes to approve in part and deny in part the following application:

Applicant: Transporturile Aeriene Romane (TAROM).

Application Date: September 27, 1976, as amended April 25, 1980, November 9, 1983, and February 7, 1984, Docket 29833

Request Cab Proposes to Approve: Authority to engage in scheduled foreign air transportation of persons, property,

and mail between a point or points in Romania; intermediate points in Czechoslovakia; the Federal Republic of Germany or France; Denmark; Belgium, The Netherlands; Montreal, Canada; and the terminal point New York, New York; authority to operate up to 30 charter trips in foreign air transportation without prior approval.

Request Cab Proposes to Deny: To serve Austria as an intermediate point; and authority to operate 40 charter trips in foreign air transportation without prior approval.

Objections: All interested persons having objections to the Board's tentative findings and conclusions that the request should be granted in part and denied in part as described in the order cited above, shall NO LATER THAN November 14, 1984, file a statement of such objections with the Civil Aeronuatics Board (20 copies) and mail copies to the applicant, the Departments of Transportation and State, and the Ambassador of the Socialist Republic of Romania in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

Addresses for Objections:

Docket: 29833, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Transporturile Aeriene Romane (TAROM) c/o John G. Adams, 3415 34th Place, N.W., Washington, D.C. 20016.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Chuck Hedges, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673–5878.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–28733 Filed 10–30–84; 8:45 am]

BILLING CODE 6320–01–M

Information Collection Requirements; Proposed Expansion

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed collection of Information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of extension of the submission of information by foreign air carriers pursuant to the reporting requirements contained in §§ 375.42, 375.45 and 375.70 of Part 375 of the Board's Special Regulations.

DATED: October 24, 1984.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION:

Agency Clearing Officer from Whom a Copy of the Collection of Information and Supporting Documents Is Available: Robin A. Caldwell (202) 673–5922.

How Often the Collection of Information Must Be Filed: Occasionally.

Who Is Asked or Required to Report: Foreign Air Carriers.

Estimate of Number of Annual Responses: 53.

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 13½.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–28739 Filed 10–30–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Survey of Retail Sales and Inventories; Notice of Consideration

Notice is hereby given that the Bureau of the Census is considering a proposal to conduct in 1985 the Annual Retail Trade Survey, which we have conducted each year since 1951 (except 1954) under Title 13, United States Code, Sections 182, 224, and 225. The Bureau conducts this survey of retail firms to collect data covering year-end inventories, accounts receivable balances, merchandise purchases, and annual sales. This survey will provide data for 1984 and is the only continuing source available on a comparable classification and timely basis for use as a benchmark for developing estimates of retail inventory, accounts receivable, merchandise purchases, and sales. We will begin this survey no earlier than December 31, 1984.

The Bureau of the Census has received information and recommendations showing that the data will have significant application to the needs of the public, the distributive trades, and governmental agencies, and that the data are not publicly available from nongovernmental or other governmental sources.

We will request reports from only a sample of firms operating retail establishments in the United States selected with probability bases on their sales size. The sample will provide, with measurable reliability, statistics on the subjects specified above.

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the data items covered in this proposed survey will receive consideration if submitted in writing to the Director of the Bureau of the Census on or before December 14, 1984.

Dated: October 25, 1984.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 84–28659 Filed 10–30–84; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–357–401]

Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina; Postponement of Final Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for the respondent in this investigation that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C 1673d(a)(2)(A); and, that we have determined to postpone our final determination as to whether sales of cold-rolled carbon steel flat-rolled products from Argentina have occurred at less than fair value, until not later than December 7, 1984.

EFFECTIVE DATE: October 31, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street

and Constitution Avenue, NW Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: On March 8, 1984, the Department of Commerce published notice in the Federal Register (49 FR 8973) that it was initiating under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether cold-rolled carbon steel flat-rolled products from Argentina were being, or were likely to be, sold at less than fair value. On July 25, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 29991). The notice stated that if these investigations proceeded normally we would make our final determination by October 2, 1984.

On August 14, 1984, counsel for Propulsora Siderurgica S.A.I.C. (Propulsora) a respondent in this case requested that we extend the period for the final determination until December 7, 1984, 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if an exporter who accounts for a significant proportion of the merchandise requests an extension after an affirmative preliminary determination. Propulsora is qualified to make such a request since it accounts for the majority of exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than December 7, 1984.

This notice is published pursuant to section 735(d) of the Act.

Dated: October 23, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-28867 Filed 10-30-84; 8:45 am]

BILLING CODE 3510-05-M

[A-602-401]

Galvanized Carbon Steel Sheet From Australia; Postponement of Final Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel from the respondent in this investigation that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) [19 U.S.C. 1673d(a)(2)(A)]; and, that we have determined to postpone our final determination as to whether sales of galvanized carbon steel sheet from Australia have occurred at less that fair value, until not later than December 7, 1984.

EFFECTIVE DATE: October 31, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, D.C. 20230; telephone (202) 377-2438.

SUPPLEMENTARY INFORMATION: On March 8, 1984, the Department of Commerce published notice in the Federal Register (49 FR 8973) that it was initiating under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether galvanized carbon steel sheet from Australia was being, or was likely to be, sold at less than fair value. On July 25, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 29993). The notice stated that if this investigation proceeded normally we would make our final determination by October 2, 1984.

On August 3, 1984, counsel for the respondent in this case requested that we extend the period for the final determination until December 7, 1984, 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if an exporter who accounts for a significant proportion of the merchandise requests an extension after an affirmative preliminary determination. The respondent is qualified to make such a request since it accounts for the majority of exports of the merchandise under investigation. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than December 7, 1984.

This notice is published pursuant to section 735(d) of the Act.

Dated: October 23, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-28868 Filed 10-30-84; 8:45 am]

BILLING CODE 3510-05-M

[A-427-098]

Anhydrous Sodium Metasilicate From France; Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping duty order.

SUMMARY: On August 5, 1983, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The review covers the one known exporter of this merchandise to the United States and the period January 1, 1982, through December 31, 1982.

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, we held a public hearing on November 9, 1983. Based on our analysis of the comments received, the final results of review remain the same as those presented in our preliminary results.

EFFECTIVE DATE: October 31, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 35684) the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate from France (46 FR

1667, January 7, 1981). In accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of anhydrous sodium metasilicate ("ASM"), a crystalline silicate (NA_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. ASM is currently classifiable under item 421.3400 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of French ASM to the United States, Rhone-Poulenc S.A., and the period January 1, 1982, through December 31, 1982.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of the petitioner, PQ Corporation, the Department held a public hearing on November 9, 1983.

Comment 1: The petitioner contends that the Department should have conducted a verification of Rhone-Poulenc's questionnaire response. As a general matter the petitioner believes that the failure to verify the accuracy and completeness of the response is contrary to the requirements of the law.

The petitioner further contends that the one U.S. sale was orchestrated for the sole purpose of eliminating the current 60 percent antidumping duties cash deposit requirement, and strongly believes that this sale should have been closely examined to determine whether the sale was tied to the sale of merchandise, other than ASM, at a lower price and was otherwise *bona fide*. In short, the Department should subject the sale to a careful verification.

The respondent argues that PQ Corporation's request that the Department verify the information contained in the questionnaire responses of Rhone-Poulenc S.A. and its U.S. subsidiary, Rhone-Poulenc Inc. ("RPI"), is based on unssubstantiated allegations and is, moreover, untimely.

Department's Postion: Because of the strength of the petitioner's allegations about the nature of the U.S. sale, the Department after the hearing conducted verifications of Rhone-Poulenc's responses on its U.S. and home market sales. After reviewing records available both at RPI and the U.S. customer, the Department is satisfied that the single sale of ASM to the U.S. customer was *bona fide*. The sale was consummated at a price lower than the comparable price from the single known U.S. supplier of Rhone-Poulenc's U.S. customer. In addition, our review shows that RPI made no sales of any merchandise other than ASM to that U.S. customer during the period.

Section 751 of the Tariff Act requires that we determine the foreign market value and U.S. price of each entry and any amount "by which the foreign market value of each such entry exceeds the United States price of the entry." That determination is then "the basis for assessment of antidumping duties * * * and for deposits of estimated duties." The rate set for deposits of esitmated duties is the weighted-average of the assessment amounts for those entries.

Comment 2: The petitioner contends that the use of purchase price is totally improper in this case. The responses indicate that Rhone-Poulenc S.A. sold the shipment of ASM to RPI which acted as the importer of record. In turn, RPI resold the ASM to the U.S. customer. Rhone-Poulenc S.A. had no dealings with the U.S. customer and the terms of sale to that custmer were not set until after importation. Further, the Department used exporter's sales price during the original fair value investigation. Use of exporter's sales price for comparison with a properly determined foreign market value would yield a far different result than that preliminarily reached by the Department.

Department's Position: While it is true the RPI placed its order with its parent on July 7, 1983, RPI sold the ASM to the unrelated U.S. customer and confirmed the order to Rhone-Pulenc S.A. on July 9, 1982. This shipment was imported on July 27, 1982, and delivered directly from the port to the customer. Although exporter's sales price was used to establish United States price during the original fair value investigation, the facts surrounding this sale differ materially from those considered in the original fair value investigation. In this review period the sales to the unrelated U.S. customer occurred prior to the date of importation. Therefore, purchase price is the proper basis for establishing the United States price. This is in accordance with section 353.10(b) of the Commerce Regulations.

Comment 3: The petitioner contends there is no restriction in the dumping law against using the price paid by RPI to its parent, or compelling our use of the resale price to the U.S. customer. However, if we use the sale to the U.S. customer to compute purchase price, rather than the price paid by RPI, we should consider RPI's mark-up as a commission to be deducted in computing the United States price.

Department's Position: We used the sales price paid by the unrelated U.S. customer to RPI because we do not consider the transfer price between related parties in detemining United States price. If RPI's mark-up constituted a commission, we consider commissions paid to related parties to be intra-company transfers of funds which do not consitute expenses to the corporate entity. We therefore do not make adjustments for commission to related parties.

Comment 4: The petitioner contends that palletization is another expense incurred by Rhone-Poulenc with respect to the sale to the unrelated U.S. customer. Although the questionnaire response reflects a small amount of pallets as part of packing costs, the petitioner believes the actual expense is much larger. The U.S. customer keeps the pallets; therefore their cost must be deducted in computing United States price.

Department's Position: We verified that the respondent's actual export packing costs, including palletization costs, were somewhat higher than those listed in the questionnaire response. We used the verified actual costs, rather than the petitioner's estimated costs, and added the difference between U.S. packing cost (including the cost of unreturned pallets) and domestic packing costs to the foreign market value.

Comment 5: The petitioner contends the Department erroneously ignored the only sale in the home market which could be fairly compared with the sale to the U.S. customer. There were five home market sales of identical merchandise on or just before the date of the U.S. sale. One of those sales (identified as number five in the response) was on the same day and of comparable tonnage to the U.S. sale. Further, sale number five was a spot sale, like the U.S. sale and unlike the other four, all of which were part of long-term contract obligations. While Rhone-Poulenc argues that sale number five was not appropriate because of level-of-trade differences, the U.S. customer in fact operates as both an end-user and a distributor, the latter being the same level of trade as the home market customer in sale number five.

Department's Position: All home market sales were listed in Rhone-Poulenc's questionnaire response by the date of invoice. Examination of the dates of order acceptance (also recorded

on the invoice) reveals that all sales invoiced in July 1982 (including the five sales discussed by the petitioner) were ordered in June 1982. When during a month, as here, there are numerous home market sales of identical merchandise at varying prices, it is appropriate to use the monthly weighted-average of those home market prices. Accordingly, we have based foreign market value on the weighted-average home market price of all sales of identical merchandise (*i.e.*, both SIMET AG and SIMET AN) sold in July 1982 and invoiced in August 1982. Further review indicates that the U.S. customer is an end-user and not a distributor of ASM. In any event, any level of trade problem with sale number five is mooted by our shifting to the use of July sales.

Final Results of the Review

Based on our analysis of the comments received, the final results of our review are the same as those presented in the preliminary results and we determine that no dumping margins exist for the period January 1, 1982, through December 31, 1982.

The Department shall instruct the Customs Service not to assess antidumping duties on appropriate entries. Further, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in section 353.48(b) of the Commerce Regulations, on shipments of French anhydrous sodium metasilicate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53)

Dated: October 22, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-28679 Filed 10-30-84; 8:45 am]
BILLING CODE 3510-DS-M

[C-201-003]

Ceramic Tile From Mexico; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on ceramic tile from Mexico. The review covers the period January 1, 1983, through June 30, 1983 and eight programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant to be zero for 19 firms and 2.10 percent *ad valorem* for all other firms. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 31, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 9919) the final results of its last administrative review of the countervailing duty order on ceramic tile from Mexico and announced its intent to conduct the next administrative review. As required by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Mexican ceramic tile, including non-mosaic, glazed and unglazed ceramic floor and wall tile. Such merchandise is currently classifiable under items 532.2400 and 532.2700 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1983, through June 30, 1983, and eight programs: CEDI, FOMEX, CEPROFI, FOGAIN, FONEI, state tax incentives, import duty reductions and exemptions, and National Development Plan ("NDP") preferential discounts.

Analysis of Programs

(1) CEDI

The Certificado de Devolucion de Impuesto ("CEDI") is a certificate issued by the Government of Mexico in an amount equal to a percentage of the value of exported goods. The CEDI certificates may be used to pay a wide range of federal tax liabilities (including payroll taxes, value added taxes, federal income taxes, and import duties). The CEDI rate was 15 percent for the period January 1, 1982, through August 25, 1982, and zero after the Mexican government suspended the CEDI program for all exports on or after August 26, 1982. Therefore, CEDI benefits were not available for exports during the period of review.

(2) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program since August 1, 1983. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters of goods for two purposes: pre-export (production) financing and export financing. We consider both export and pre-export FOMEX loans export subsidies since these loans are given only on merchandise destined for export. We found that the annual interest rate that financial institutions charged borrowers for FOMEX pre-export financing, given in Mexican pesos, was 8 percent during the period of review. The annual interest rate for FOMEX export financing, given in the currency of the country of importation, was 6 percent.

For peso loans, we used as a benchmark for the commercial interest rate in Mexico the nominal interest rates published monthly by the Banco de Mexico in the *Indicadores Economicos*. This benchmark rate was used first in the Department's Final Affirmative Countervailing Duty Determination on bricks from Mexico (49 FR 19564, May 8, 1984) and its use reflects our belief that it is the most appropriate benchmark available. For dollar-denominated loans, we used interest information obtained from the U.S. Federal Reserve Board. Based on this information, we preliminary determine that, during the period, comparable peso-denominated loans were available commercially at 61.63 percent, and comparable dollar-denominated loans were available at 12.79 percent. The resultant interest

differentials during the period are 53.63 percent for peso-denominated loans and 6.79 percent for dollar-denominated loans. For FOMEX export loans, the Government of Mexico was able to identify the loans applicable to exports destined for the U.S. We allocated the benefit from the export loans over the value of exports to the U.S. during the period. For FOMEX pre-export loans, the Mexican government was unable to identify the loans applicable to exports destined for the U.S., so it reported all pre-export loans. Since the Mexican government was not able to supply full information on the value of total exports, we allocated the benefit from the pre-export loans over the value of exports to the U.S. as the best information available.

On this basis, we preliminary determine the amount of bounty or grant from FOMEX pre-export loans to be 1.36 percent and from FOMEX export loans to be 0.26 percent, for a total bounty or grant under FOMEX during the period of 1.62 percent *ad valorem*.

(3) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries ("FOGAIN") is a program that provides long-term loans to all small and medium-size firms in Mexico. However, the interest rates vary under the program depending on whether a small or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth.

We determine this program to be countervailable, to the extent it provides financing on terms inconsistent with commercial considerations, because of the priority status granted to certain small and medium-size businesses based on the type of merchandise produced, and/or to those located in particular zones. Without these conditions which limit the availability of the benefits, FOGAIN would not be countervailable, because all small and medium-size firms in Mexico are at a minimum eligible to receive FOGAIN loans at the least beneficial interest rate available under the program. Thus the program is countervailable to the extent that the interest received by a small or medium-size firm is below the least beneficial rate which a firm can receive under FOGAIN.

The interest rates on these loans are also subject to change over the life of the loans, and we therefore treated these loans as a series of short-term loans. To determine the bounty or grant, we used as our benchmark the least beneficial interest rate that would have been available under FOGAIN.

We allocated the benefit amount over total sales for the period. On this basis, we preliminary determine that the amount of bounty or grant under FOGAIN during the period was 0.17 percent *ad valorem*.

(4) CEPROFI

Certificates of Fiscal Promotion ("CEPROFI") are tax certificates which are used to promote the goals of the NDP and are granted in conjunction with investments in designated industrial activities and geographic regions. CEPROFI certificates can be used to pay a wide range of federal tax liabilities.

Article 25 of the decree that established the basic authority for the issuance of CEPROFI's, published in the *Diario Official* on March 6, 1979, requires each recipient to pay a 4 percent supervision fee. The 4 percent supervision fee is "paid in order to qualify for, or to receive" the CEPROFI's. Therefore, it is an allowable offset, as defined by section 771(6)(A) of the Tariff Act, from the gross bounty or grant.

Ceramic tile firms received benefits under the "Category II" provision, which makes CEPROFI benefits available to particular industrial activities. We consider CEPROFI to be a domestic subsidy and we allocated the benefits under the Category II CEPROFI program, less the 4 percent supervision fee, to the total value of ceramic tile sales in all markets during the period. We preliminarily determine that the amount of bounty or grant under CEPROFI during the period was 0.31 percent *ad valorem*.

(5) Other Programs

We also examined the following programs and preliminary find that ceramic tile firms did not use them during the period of review:

(A) State tax incentives;

(B) Fund for Industrial Development ("FONEI");

(C) Import duty reductions and exemptions; and

(D) NDP preferential discounts.

Firms Not Receiving Any Benefits

In this case the Department has established a certification process that would allow a rate of assessment and of cash deposit of estimated countervailing duties of zero for those firms certified and verified as having neither applied for nor received countervailable benefits. We have received certificates from 19 firms stating that they neither applied for nor received benefits under the eight programs during the period of review and would not do so in the future. We have also received certificates from the Mexican government stating that the 19 firms did not receive benefits under these programs during the period of review. Those 19 firms are:

(1) Alfareria San Marcos, S.A. de C.V.;

(2) Arturo Carranza de la Pena;

(3) Ceramica Santa Fe;

(4) Ceramica Santa Julia;

(5) Ceramicas y Pisos Industriales de Culiacan, S.A. de C.V.;

(6) Corporacion Euromexicano Comercial, S.A.;

(7) Eduardo S. Garcia de la Pena;

(8) Francisco Heriber to Villa Vega;

(9) Impulsora Normax, S.A. de C.V.;

(10) Industrias AGE, S.A.;

(11) J. Garza Arocha, S.A.;

(12) Juan Rodriquez Benavides;

(13) Juana Maria Ramos Trevino;

(14) Luz Maria de le Pena Sanchez;

(15) Manuel Alvarez Ramon (Pisos de Barro);

(16) Pisos Coloniales de Mexico, S.A;

(17) Porcelanite;

(18) Prodiba, S.A.; and

(19) Reynaldo Gutierrez (Ladrillera la Casa).

Preliminary Results of the Review

As a result of our review, we preliminarily determine the total bounty or grant during the period of review to be zero for the 19 certified firms listed above, and 2.10 percent *ad valorem* for all other firms. The Department intends to instruct the Customs Service to assess no countervailing duties on shipments of this merchandise from the 19 certified firms and countervailing duties of 2.10 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1983, and on or before June 30, 1983.

The Department intends to instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 19 certified firms and to collect 2.10 percent of the entered value on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results with 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the

first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish in the final results of this administrative review including the results of its analysis of issues raised in such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: October 22, 1984.

Alan F. Holmer,

Import Administration.

[FR Doc. 84-28684 Filed 10-30-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-016]

Ferrite Cores (of the Type Used in Consumer Electronic Products) From Japan; Final Results of Administrative Review of Antidumping Finding and Revocation in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding and revocation in part.

SUMMARY: On August 6, 1984, the Department of Commerce published preliminary results of its administrative review, tentative determination to revoke in part, and intent to revoke in part the antidumping finding on ferrite cores (of the type used in consumer electronic products) from Japan. The review covers the 13 known manufacturers and/or exporters of this merchandise to the United States and generally the period March 1, 1982, through February 28, 1983.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results, tentative determination to revoke in part, and intent to revoke in part. We received no comments. Based on our analysis, the final results of our review are the same as the preliminary results, and we revoke the antidumping finding with regard to TDK Electronics Co., Ltd. (now TDK Corporation) and Mitsubishi Electric Co.

EFFECTIVE DATE: October 31, 1984.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 31311) the preliminary results of its administrative review, tentative determination to revoke in part, and intent to revoke in part the antidumping finding on ferrite cores (of the type used in consumer electronic products) from Japan (36 FR 4877, March 13, 1971). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are magnetically soft ferrite magnets which are usually wound with wire. The merchandise is magnetized with the induction of electric current and is of the type commonly used as components in consumer electronic products such as household television receivers, projection television sets, radios, stereos and high fidelity radio systems, automobile radios, electronic home computers, etc. Such ferrite cores are currently classifiable under item 535.1240 of the Tariff Schedules of the United States Annotated.

The review covers the 13 known manufacturers and/or exporters of Japanese ferrite cores to the United States and generally the period March 1, 1982, through February 28, 1983.

Final Results of Review and Revocation in Part

We invited interested parties to comment on the preliminary results, tentative determination to revoke in part, and intent to revoke in part. We received no comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review, and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Fuji Electrochemical Co., Ltd	03/01/82-02/28/83	0
Mitsubishi Electric Co	03/01/82-02/28/83	0
Mitsubishi Electric Co./ Sanyo Electric Trading Co., Ltd	03/01/82-02/28/83	
	03/01/83-09/15/83	[1] 0
Nippon Ferrite, Ltd	03/01/82-02/28/83	0.48
Nippon Ferrite, Ltd./Hasegawa Limited	03/01/82-02/28/83	[1] 0
Nippon Ferrite, Ltd./Nissei Sangyo, Ltd	03/01/82-02/28/83	[1] 0
Nippon Ferrite, Ltd./ Sanwa Musen Co., Ltd	03/01/82-02/28/83	0
Taiyo Yuden Co., Ltd	03/01/82-02/28/83	28.0
TDK Electronics Co., Ltd	03/01/82-02/28/8	
	03/01/83-09/15/83	0.29
		0
TDK Electronics Co., Ltd./ Matsushita Electric Trading Co., Ltd	03/01/82-02/28/83	0
TDK Electronics Co., Ltd./ Sanyo Electric Trading Co., Ltd	03/01/82-02/28/83	[1] 0
TDK Electronics Co., Ltd./ Sony Corporation	03/01/82-02/28/83	0
Tohoku Metal Industries	03/01/82-02/28/83	[1] 28.0
Tomita Electric Co., Ltd	03/01/82-02/28/83	[1] 28.0

[1] No shipments during the period.

For the reasons set forth in the preliminary results, we are satisified that there is no likelihood of resumption of sales at less than fair value by Mitsubishi Electric Co. or TDK Electronics Co., Ltd. (now TDK Corporation). Accordingly, we revoke the antidumping finding in part on ferrite cores (of the type used in consumer electronic products) from Japan. This revocation in part applies to all unliquidated entries of this merchandise manufactured and exported by TDK Electronics Co., Ltd. (now TDK Corporation) or Mitsubishi Electric Co. entered, or withdrawn from warehouse, for consumption on or after September 15, 1983.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms.

Since the margin for Nippon Ferrite, Ltd. is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall waive the cash deposit requirement for that firm. For future entries from a new exporter not covered in this or prior administrative reviews, whose first shipments of ferrite cores (of the type used in consumer electronic products) occurred after September 15, 1983, and who is unrelated to any reviewed firm, we shall not require a cash deposit. These deposit requirements and waiver are effective for all shipments of Japanese ferrite cores (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for

protective orders as early as possible after the Department's receipt of the requested information. The Department intends to begin immediately the next administrative review.

This administrative review, revocation in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: October 23, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-28677 Filed 10-30-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-061]

Precipitated Barium Carbonate From the Federal Republic of Germany; Preliminary Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany. The review covers the two known manufacturers and/or exporters of this merchandise to the United States and the period July 1, 1982, through June 30, 1983. The review indicates the existence of no dumping margins during the period.

As a result of the review, the Department has preliminarily determined not to assess dumping duties on sales during the period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 31, 1984.

FOR FURTHER INFORMATION CONTACT: John M. Andersen or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2923/1130.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 25651-2) the final results of its last administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany (46 FR 32864, June 25, 1981) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of precipitated barium carbonate, a chemical compound ($BaCO_3$), currently classifiable under item 472.0600 of the Tariff Schedules of the United States Annotated.

The review covers the two known manufacturers and/or exporters of West German precipitated barium carbonate to the United States, Kali-Chemie AG and E. Merck, and the period July 1, 1982, through June 30, 1983.

United States Price

In calculating United States price, the Department used purchase price or exporter's sales price, as defined in section 772 of the Tariff Act, as appropriate. Purchase price and exporter's sales price were based on the delivered, packed price to unrelated purchasers in the United States. Where applicable, we made deductions for foreign inland freight, ocean freight, marine insurance, U.S. duty, forwarding fees, U.S. clearance and brokerage charges, and the U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on either the delivered or ex-factory, packed price with adjustments, where applicable, for inland freight, rebates, discounts, credit expenses, and differences in packing costs. We denied claimed adjustments for indirect selling expenses, technical assistance, and certain inland freight expenses because they were not properly quantified. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that no dumping margins exist for kali-Chemie AG and E. Merck for the period July 1, 1982, through June 30, 1983.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall instruct the Customs Service not to assess antidumping duties on all appropriate entries.

Further, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, on any shipment of West German precipitated barium carbonate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: October 22, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-28678 Filed 10-30-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-077, A-427-078, A-428-082]

Sugar From France, Belgium, and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On August 30, 1984, the Department of Commerce published in the **Federal Register** (49 FR 34386) the preliminary results of its administrative review of the antidumping finding on sugar from France, Belgium, and the Federal Republic of Germany (44 FR 33878, June 13, 1979).

Imports covered by the review are shipments of sugar, both raw and refined, with the exception of specialty sugars, currently classifiable under items 155.2025, 155.2045, and 155.3000 of

the Tariff Schedules of the United States Annotated.

The review covers the thirteen known exporters and third-country resellers of this merchandise to the United States and two consecutive periods from June 1, 1982, through May 31, 1984. There were no known shipments of this merchandise to the United States during the periods and there are no known unliquidated entries.

We gave interested parties an opportunity to submit written or oral comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as the preliminary results and we determine that, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 102 percent, 103 percent, and 121 percent shall be required on all shipments of French, Belgian and West German sugar, respectively, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

EFFECTIVE DATE: October 31, 1984.

FOR FURTHER INFORMATION CONTACT: Edward Haley or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–3601.

Dated: October 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84–28680 Filed 10–30–84; 8:45 am]

BILLING CODE 3510–05–M

National Bureau of Standards

[Docket No. 4011–4111]

Approval of Federal Information Processing Standard 8–5, Metropolitan Statistical Areas (Including CMSAs, PMSAs, and NECMA's)

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secetary of Commerce has approved a revised standard, which will be published as FIPS Publication 8–5.

SUMMARY: This revised standard adopts revised definitions for Metropolitan Statistical Areas (MSA) that were announced by the Office of Management and Budget to take effect June 30, 1983. The MSA names, principal components, and identification codes provided in this revision are based on demographic data drawn from the 1980 census.

The document which was presented to the Secretary, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6622, Herbert C. Hoover Building, 14th Street between Constitution Avenue and E Street, N.W., Washington, DC 20230.

The approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the revised standard is provided in this notice.

ADDRESS: Interested parties may purchase copies of this revised standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this revised standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Saltman, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921–3491.

SUPPLEMENTARY INFORMATION: Under the provisions of Public Law 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards.

Responsibility of the National Bureau of Standards for the development, publication, and promulgation of data element and representation standards are defined in Part 6 of Title 15 of the Code of Federal Regulations.

Dated October 25, 1984.

Raymond G. Kammer,

Acting Director.

Federal Information Processing Standards Publication 8–5 Announcing the Standard for Metropolitan Statistical Areas (including CMSAs, PMSAs, and NECMAs)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated may 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard:* Metropolitan Statistical Areas (including CMSAs, PMSAs, and NECMAs), (FIPS PUB 8–5).

2. *Category of Standard:* Data Standards and Guidelines, Representations and Codes.

3. *Explanation:* This standard specifies names, principal components, and identification codes for the Metropolitan Statistical Areas (CMSs) of the United States and Puerto Rico, including units called Consolidated Metropolitan Statistical Areas (CMSAs) and Primary Metropolitan Statistical Areas (PMSAs), and related units called New England County Metropolitan Areas (NECMAs). The general underlying the definitions of MSAs and related units is that of a geographical area consisting of a large population nucleus together with adjacent communities having a high degree of economic and social integration with that nucleus. This revision supersedes FIPS PUB 8–4 in its entirety.

4. *Approving Authority:* Office of Management and Budget.

5. *Maintenance Agency:* Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

The maintenance agency is responsible for the content of the standard and will provide the National Bureau of Standards with information on adopted changes. Change notices to the standard will be issued by the National Bureau of Standards. Users of the standard who need to be notified of changes may complete the change notice request form included in this publication and return the form to the address indicated.

6. *Cross Index:*

a. FIPS PUB 5–1: States and Outlying Areas of the United States;

b. FIPS PUB 6–3: Counties and County Equivalents of the States of the United States and the District of Columbia.

c. FIPS PUB 55–1: Named Populated Places, Primary County Divisions and Other Locational Entities of the United States.

7. *Applicability:* This Federal general data element and representation standard is made available for data interchange among executive department s and independent agencies and for Federal data interchange with the non-Federal sector including industry, State, local, and other governments, and the public at large.

8. *Implementation Schedule:* The data in this standard became effective on June 30, 1983, as announced by the Office of Management and Budget. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency, or economy.

9. *Specifications:* Federal Information Processing Standard 8–5 (FIPS PUB 8–5), Metropolitan Statistical Areas (including CMSAs, PMSAs, and NECMAs), (affixed).

10. *Where to Obtain Copies of the Standard:* Copies of this publication, on mangnetic tape, microfiche, or hard copy, are available from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 8–5 (FIPSPUB8–5), title, and medium desired.

Inquires concerning FIPS data standards and guidelines may be directed to the Manager, Data Administration Group, Data Management and Programming Languages Division, National Bureau of Standards, Gaithersburg, MD 20899; telephone (301) 921–3491.

[FR Doc. 84–28665 Filed 10–31–84; 8:45 am]
BILLING CODE 3510–13–M

[Docket No. 40110–4110]

Approval of Federal Information Processing Standard 107, Local Area Networks: Baseband Carrier Sense Multiple Access With Collision Detection Access Method and Physical Layer Specifications and Link Layer Protocol

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 107.

SUMMARY: On September 8, 1983, notice was published in the **Federal Register** (48 FR 40540–40541) that a Federal Information Processing Standard for Local Area Networks: Baseband Carrier Sense Multiple Access With Collision Detection and Physical Layer Specifications and Link Layer Protocol was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6622, Main Commerce Building, 14th Street between Constitution Avenue and E Street, NW., Washington, DC 20230.

The approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

ADDRESS: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Dr. John Heafner, Chief, Systems and Network Architecture Division, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, Md 20899, (301) 921–3537.

SUPPLEMENTARY INFORMATION: Under the provisions of Public Law 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards.

Dated: October 25, 1984.

Raymond G. Kammer,

Acting Director.

Federal Information Processing Standard Publication 107 Announcing the Standard for Local Area Networks: Baseband Carrier Sense Multiple Access With Collision Detection Access Method and Physical Layer Specifications and Link Layer Protocol

Federal Information Processing Standard Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. Local Area Networks: Baseband Carrier Sense Multiple Access With Collision Detection Access Method and Physical Layer Specifications and Link Layer Protocol (FIPS PUB 107).

Category of Standard. Software and Hardware Standard; Subcategory: Computer Network Protocols.

Explanation. This standard provides the mechanical, electrical, functional and procedural specifications and the link protocol required to establish physical connections, to transmit bits and to send data link frames between nodes. The local area network spans a local area with a baseband coaxial cable of up to 2500 meters in length, transmitting at 10 megabits per second. This is one of a family of local area network standards that will make possible computer to computer and terminal to computer communications. This standard is based on national consensus.

In particular, it adopts the Institute of Electrical and Electronics Engineers (IELL) draft standard 802.2 Logical Link Control type 1 class 1 service, and draft standard 802.3, CSMA/CD Access Method and Physical Layer Specifications. To make this standard less restrictive, the implementation and transmission of XID and TEST in type 1 class 1 service is optional.

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology.)

Cross Index. Draft IEEE Standard 802.2, Logical Link Control. Draft IEEE Standard 802.3, CSMA/CD Access Method and Physical Layer Specifications.

Related Documents. None.

Applicability. This standard is made available to Federal departments and agencies which require compatibility with voluntary industry standards, which are evolving nationally and internationally according to the architecture of the ISO Reference Model for Open Systems Interconnection.

Implementation Schedule. This standard becomes effective upon publication in the **Federal Register** of an announcement by the National Bureau of Standards of approval by the Secretary of Commerce. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency, or economy.

Specifications. This standard adopts the Type 1, Class 1, Logical Link Control procedures of Draft IEEE Standard 802.2, Logical Link Control, and all of Draft IEEE standard 802.3, CSMA/CD Access Method and Physical Layer Specifications. The implementation and transmission of XID and TEST in type 1 class 1 is optional. Note that the specifications adopted by this standard appear in two volumes.

Where to Obtain Copies of the Standard. Copies of this publication are for sale by National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included technical specifications is by arrangement with The Institute of Electrical and Electronics Engineers, Incorporated.) When ordering, refer to Federal Information Processing Standards Publication 107 (FIPSPUB107), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 84-28664 Filed 10-30-84; 8:45 am]
BILLING CODE 3510-13-M

National Voluntary Laboratory Accreditation Program; Publication of Quarterly Report

AGENCY: National Bureau of Standards, Commerce.

ACTION: Publication of NVLAP Quarterly Report (July 1–September 30, 1984).

SUMMARY: The National Bureau of Standards (NBS) announces laboratory accreditation actions for the third quarter of 1984. The status of all NVLAP laboratory accreditation programs (LAPs) is summarized.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley I. Warshaw, Manager, Laboratory Accreditation, ADMIN A603, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921–3751.

SUPPLEMENTARY INFORMATION: This report has been prepared in accordance with sections 7a.17(a), 7b.17(a), 7c.17(a) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR 7a.17(a), 7b.17(a), and 7c.17(a)).

New Accreditations Granted

Twenty-three organizations were newly accredited during the third quarter of 1984. Pertinent information regarding each newly accredited organization, including the test methods or test categories for which they are accredited, are set out below. Accreditation is effective for all 23 organizations as of October 1, 1984. The accreditation period expires on September 30, 1986, for processors accredited in the Dosimetry LAP and September 30, 1985, for laboratories accredited in all other LAPs.

Acoustics LAP

Hufcor Acoustical Laboratory, Hough Manufacturing Corp.

P.O. Box 591, 1205 Norwood Road, Janesville, WI 53547; Stanley Kowalczyk, Phone: 608–756–1241

NVLAP Code, Designation, and Short Title

06/P06, ASTM E90–82—Airborne Sound Transmission Loss of Building Partitions

Carpet LAP

Underwriters Laboratories, Inc.

1285 Walt Whitman Road, Melville, NY 11747; R. W. Miller, Phone: 516–271–6200

NVLAP Code, Designation, and Short Title

03/F03, DoC FF1–82—Methenamine Pill Test
03/F04, ASTM E648—Radiant Panel (Carpet)

Concrete LAP

Western States Testing Division of U.S. Testing Company, Inc.

3536 Oakdale Road, Modesto, CA 95355; Harold Stevens, Phone: 209–527–2271

NVLAP Code, Designation, and Short Title

02/M01, ASTM C31—Making and Curing Concrete Test Specimens in the Field
02/M03, ASTM C172—Sampling Fresh Concrete
02/P01, ASTM C143—Slump of Portland Cement Concrete
02/W01, ASTM C138—Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01, ASTM C231—Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01, ASTM C39—Compressive Strength of Cylindrical Concrete Specimens
02/A02, ASTM C173—Air Content of Freshly Mixed Concrete by the Volumetric Method

Gifford-Hill and Company, Inc., Technical Services Division Laboratory

240 Singleton Blvd., P.O. Box 47127, Dallas, TX 75247; K. Stuart Pryor, II, Phone: 214–651–0066

NVLAP Code, Designation, and Short Title

02/M01, ASTM C31—Making and Curing Concrete Test Specimens in the Field
02/M03, ASTM C172—Sampling Fresh Concrete
02/P01, ASTM C143—Slump of Portland Cement Concrete
02/W01, ASTM C138—Unit Weight, Yield, and Air Content (Gravimetric) of Concrete
02/A01, ASTM C231—Air Content of Freshly Mixed Concrete by the Pressure Method
02/S01, ASTM C39—Compressive Strength of Cylindrical Concrete Specimens
02/A02, ASTM C173—Air Content of Freshly Mixed Concrete by the Volumetric Method

Commercial Products LAP

D/L Laboratories

116 East 16th Street, New York, NY 10003; Saul Spindel, Phone: 212–777–4410

Paints and Related Coatings and Materials

Measurements of Intrinsic Physical Properties

09/A01–09/A02
09/A04–09/A05
09/A07–09/A08
09/A10–09/A18
09/A20–09/A22
09/A25–09/A26
09/A28

Measurements of Performance and Performance Change

09/B01–09/B20
09/B23–09/B27
09/B29–09/B35
09/B37–09/B42

Measurement of Chemical Properties and Compositions

09/C09
09/C12
09/C26–09/C30
09/C37
09/C39–09/C40

Test Sample Conditioning and Preparation

09/D01–09/D06
09/D10–09/D11
09/D13–09/D14
09/D16

Chemray Coatings Corp.

150 Lincoln Blvd., Middlesex, NJ 08846; Frederick W. Armstrong, Jr., Phone: 201–469–1110

Paints and Related Coatings and Materials

Measurements of Intrinsic Physical Properties

09/A02–09/A05
09/A07–09/A14
09/A17–09/A22
09/A25–09/A28

Measurements of Performance and Performance Change

09/B02–09/B03
09/B05
09/B09–09/B11
09/B13–09/B18
09/B20
09/B23–09/B26
09/B29–09/B31
09/B34
09/B38

09/B41–09/B42

Measurement of Chemical Properties and Compositions

09/C01–09/C02
09/C04
09/C06–09/C15
09/C17
09/C19
09/C21–09/C22
09/C26
09/C28–09/C34
09/C39

Test Sample Conditioning and Preparation

09/D01–09/D04
09/D08–09/D09
09/D11
09/D13–09/D14
09/D16

Dosimetry LAP

The following facilities have been evaluated and deemed competent to provide specific personnel radiation dosimetry processing services in the ANSI–N13.11 categories defined and listed below.

Category I X-ray, accident
Category II Gamma, accident
Category III X-ray, protection
Category IV Gamma, protection
Category V Beta, protection
Category VI X-ray plus gamma
Category VII Beta plus gamma
Category VIII Neutron plus gamma

New York Power Authority, James A. Fitzpatrick Nuclear Power Plant

P.O. Box 41, Lycoming, NY 13093; Dr. David A. Dooley, Phone: 315–342–3840

ANSI–N13.11 categories II, IV, VI, VII.

New York Power Authority, Indian Point Unit No. 3 Nuclear Power Plant

P.O. Box 215, Buchanan, NY 10511; Thomas Labenski, Phone: 914–739–8200

ANSI–N13.11 categories I, II, III, IV, V, VI, VII.

Naval Medical Command, National Capital Region, Radiation Safety Department

Bethesda, MD 20814; Eric E. Kearsley, Phone: 202–295–5414

ANSI–N13.11 categories II, III, IV, V, VI, VII, VIII.

Carolina Power & Light Company, Harris Energy & Environmental Center

Route 1, Box 327, New Hill, NC 27562; Stephen A. Browne, Phone: 919–362–3212

ANSI–N13.11 categories I, II, III, IV, V, VI, VII, VIII.

The following sites are included in the accreditation as sub-facilities of the above listed main facility.

Robinson Nuclear Plant, Hartsville, South Carolina
Brunswick Nuclear Plant, Southport, South Carolina

U.S. Environmental Protection Agency, Nuclear Radiation Assessment Division

P.O. Box 15027, Las Vegas, NV 89114; Jaci L. Hopper, Phone: 702–798–2320

ANSI–N13.11 categories II, IV.

Mallinckrodt Diagnostics, Inc.

2703 Wagner Place, Maryland Heights, MO 63043; Mark Doruff, Phone: 314–344–3981

ANSI–N13.11 category VII.

Eberline Services Division, Dosimetry Department

P.O. Box 2108, Santa Fe, NM 87501; Nels Johnson, Phone: 505–345–9931

ANSI–N13.11 categories I, II, III, IV, V, VI, VII, VIII.

Baltimore Gas & Electric Company, Calvert Cliffs Nuclear Power Plant, Nuclear Power Department, Dosimetry Unit, Radiation Safety Section

Lusby, MD 20657; Eugene T. Reimer, Phone: 301–269–4716

ANSI–N13.11 categories I, II, III, IV, V, VI, VII, VIII.

General Public Utilities Nuclear Corporation, Division of Radiological & Environmental Controls

Route 441 South, P.O. Box 480, Middletown, PA 17057; O. Ronald Perry, Phone: 717–948–8595

ANSI–N13.11 categories I, II, III, IV, V, VI, VII, VIII.

R.S. Landauer Jr. & Company,

Glenwood Science Park, 2 Science Park, Glenwood, IL 60425; Craig Yoder, Phone: 312–755–7000

ANSI–N13.11 categories I, II, III, IV, V, VI, VII, VIII.

The following sites are included in the accreditation as sub-facilities of the above listed main facility.

R.S. Landauer, Jr. & Company Nuclear Station System (NSS) sites at: Boston Edison Company, Pilgrim Station, Plymouth, Massachusetts; Alabama Power, Farley Nuclear Plant, Ashford, Alabama.

The following sub-facilities are accredited to perform limited volume, emergency response processing.

R.S. Landauer, Jr. & Company Offices: El Segundo, California; Houston, Texas; Burlington, Massachusetts; and East Brunswick, New Jersey.

Southern California Edison, San Onofre Nuclear Generating Station

P.O. Box 128, San Clemente, CA 92672; Kathryn H. Swoope, Phone: 714–492–7700

ANSI-N13.11 categories I, II, III, IV, V, VI, VII.

Radiation Detection Company

162 Wolfe Road, P.O. Box 1414, Sunnyvale, CA 94088; Richard H. Holden, Phone: 408–735–8700

ANSI–N13.11 categories I, II, III, IV, V, VI, VII.

Houston Lighting & Power Company, Managing Partner, South Texas Project Electric Generating Station

P.O. Box 1700, Houston, TX 77059; Gene R. Jarvela, Phone: 512–972–3651

ANSI–N13.11 category IV.

Consumers Power Company, Personnel Dosimetry Laboratory

1945 Parnall Road, Jackson, MI 49201; Alex Azima, Phone: 517–788–2340

ANSI–N13.11 categories II, IV, V, VII.

Virginia Electric and Power Company, North Anna Power Station

P.O. Box 402, Mineral, VA 23117; Russell R. Irwin, Phone: 703–894–5151

ANSI–N13.11 categories II, IV, V, VII.

Yankee Atomic Electric Company

1671 Worcester Road, Framingham, MA 01701; Stephen T. Bard, Phone: 617–872–8100

ANSI–N13.11 categories I, II, III, IV, V, VI, VII, and VIII.

Insulation LAP

The Upjohn Company, Donald S. Gilmore Research Laboratories

410 Sackett Point Road, North Haven, CT 06473; Herbert G. Nadeau, Phone: 203–281–2762

NVLAP Code, Designation, and Short Title

01/D21, ASTM D2126—Response to thermal and humid aging (proc. E); Rigid cellular plastics
01/D28, ASTM D2126—Response to thermal and humid aging (proc. G); Rigid cellular plastics
01/T06, ASTM C518—Thermal transmission properties; Heat flow meter

State of California, Bureau of Home Furnishings

3485 Orange Grove Avenue, North Highlands, CA 95660; John A. McCormack, Phone: 916–920–6952

NVLAP Code, Designation, and Short Title

01/F07, HH–I–515 (para. 4.8.7 in D version, Amendment 1)—Critical radiant flux; Radiant Panel (cellulosic fiber, loose-fill)
01/F08, HH–I–515 (para. 4.8.8 in D version, Amendment 1)—Smoldering combustion; Cellulosic fiber (loose-fill)

Renewed Accreditations

The following laboratories were reaccredited during the third quarter of 1984 for one or more test methods available under NVLAP. The reaccreditation of each laboratory is for a period of one year effective October 1, 1984. Each laboratory received a certificate of accreditation and a corresponding list of test methods for which each is accredited. Anyone wishing to know the test methods for which each of the named laboratories has been reaccredited should request

the listing from the laboratory directly or from Dr. Warshaw at the address given above. Note that laboratories may change the test methods for which they are accredited from year to year, so the user should secure the current list of accredited test methods.

Insulation LAP

Apache Building Products, Linden, New Jersey

Concrete LAP

Pittsburgh Testing Laboratory, Pittsburgh, Pennsylvania
STS Consultants, Fairfax, Virginia

Stove LAP

Pacific Inspection and Research, Redmond, Washington

Voluntary Terminations

The following laboratory voluntarily terminated its accreditation during the third quarter of 1984.

Concrete LAP

Eastcoast Testing and Engineering, Fort Lauderdale, Florida

Status of Existing LAPS

Insulation LAP—The LAP for thermal insulation materials has 62 test methods for which accreditation may be granted; 36 laboratories are currently accredited to perform one or more of these test methods.

Concrete LAP—The LAP for freshly mixed field concrete has two groups of test methods and one optional test method for which accreditation can be granted; 39 laboratories are currently accredited under the Concrete LAP.

Carpet LAP—The LAP for carpet has 12 test methods for which accreditation may be granted; 24 laboratories are currently accredited for one or more of these test methods.

Stove LAP—The LAP for solid fuel room heaters has 20 test methods under UL Standard 737 and UL Standard 1482 for which accreditation may be granted; 10 laboratories are currently accredited under the Stove LAP. Accreditation is now offered for 16 of those test methods under Canadian Standards Association Standard for Space Heaters for Use with Solid Fuels (CSA B 366.2–M1984 CULC S 627–M1984). Since this standard is similar to UL 1482 for Room Heaters, Solid Fuel Type, a laboratory presently accredited under the Stove LAP, may request accreditation under the Canadian standard. In order to become accredited under the Canadian standard a laboratory must complete a NVLAP questionnaire covering the differences between the two methods, provide proof of possession and a working knowledge of an infra-red thermometer, and pay a fee of $100.00. No additional on-site assessment will be required for currently accredited laboratories.

Acoustics LAP—The LAP for acoustical testing services has 51 test methods for which accreditations may be granted; eight laboratories are currently accredited under the Acoustics LAP. At the request of Wyle Laboratories, El Segundo, CA, a new test method has been added to the LAP. It is MIL–STD 810D (method 515.3) which specifies the procedures for subjecting equipment to intense acoustical noise to determine the effect of noise on performance.

Dosimetry LAP—The LAP for personnel dosimetry processors has eight radiation test categories for which accreditation may be granted; 15 processors are currently accredited under the Dosimetry LAP.

Commercial Products LAP—The LAP for commercial products testing has 127 test methods for paint coatings and related products, 54 test methods for paper and related products, and 6 test methods for mattresses for which accreditation may be granted. Two laboratories are currently accredited under the Commercial Products LAP.

Photographic Film LAP—The formal establishment of this LAP was announced in the **Federal Register** on August 31, 1984 (49 FR 34549–34552). Laboratories may now apply for accreditation for one or more of the following ANSI standards: PH 1.25–1984, PH 1.28–1971, PH 1.29–1981, PH 1.41–1981, and PH 1.60–1979.

Dated: October 24, 1984.

Raymond G. Kammer,

Acting Director, National Bureau of Standards.

[FR Doc. 84–28547 Filed 10–30–84, 8:45 am]

BILLING CODE 3510–13–M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Stanford University, having a place of business at Stanford, California, an exclusive right to practice the invention embodied in U.S. Patent Application Serial Number 6–585,333 "T Cell Receptor-Specific Polypeptides and Related Polynucleotides." The patent rights in this invention are being assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 84–28535 Filed 10–30–84; 8:45 am]

BILLING CODE 3510–04–M

Intent to Grant Exclusive Patent License; Bristol-Myers Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bristol-Myers Company, having a place of business in Syracuse, New York 13221–4755, an exclusive right to practice the invention embodied in U.S. Patent Application Serial Number 6–566,469, "Sesbanamide and the Use Thereof in Treating Leukemic Tumors." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 84–28636 Filed 10–30–84; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of the Republic of Indonesia to Review Trade in Category 631pt. (Work Gloves)

October 26, 1984.

On September 17 1984, the Government of the United States requested consultations with the Government of the Republic of Indonesia with respect to man-made fiber work gloves in Category 631pt. (only T.S.U.S.A. numbers 704.3215, 704.8525, 704.8550 and 704.9000). This request was made on the basis of the agreement, as amended, between the Governments of the United States and the Republic of Indonesia relating to trade in Cotton, Wook and Man-Made Fiber Textiles and Textile Products of October 13 and November 9, 1982.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the governments, CITA, pursuant to the agreement, as amended, may establish a prorated specific limit of 94,800 dozen pairs for the entry and withdrawal from warehouse for consumption of textile products in Category 631pt., produced or manufactured in Indonesia and exported to the United States during the period which began on September 17, 1984 and extends through the end of the agreement year, June 30, 1985. The limit may be adjusted to include prorates swing and carry forward.

The Government of the United States has decided, pending agreement on a mutually satisfactory solution, to control imports in this category during the 90-day consultation period (September 17-December 15, 1984) at a level of 35,000 dozen pairs. In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to the level established for the period which began on September 17, 1984 and extends through June 30, 1985.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1984 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 38754).

Anyone wishing to comment on provide data or information regarding the treatment of Category 631pt. under the Bilateral Cotton, Wook and Man-Made Fiber Textile Agreement with the Government of the Republic of Indonesia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultation is not yet certain, comment should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver for any respect of the exemption contained in 5 U.S.C. 53(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Effective Date: November 1, 1984.

Walter C. Lenahan

Chairman, Committee for the Implementation for Textile Agreements

Indonesia—Market Statement

Category 631pt.—Man-Made Fiber Work Gloves, (TSUSA Nos. 704.3215, 704.8525, 704.8550 and 704.9000)

August 1984.

Imports of Category 631pt. from Indonesia reached 473,587 dozen pairs during June and July 1984. There were no imports of man-made fiber work gloves from Indonesia prior to June 1984. In addition, over three-fourths of these imports from Indonesia entered in July and in that month Indonesia accounted for 56 percent of the total Category 631pt. imports. This is a sharp and substntial increase in imports which, if continued, creates a real threat of market disruption.

U.S. production of man-made fiber work globes declined steadily in the past three years while imports, including gloves from Indonesia, increased a dramatic 155 percent.

U.S. production of Category 631pt., work gloves, has declined 28 percent in the past three years, from 694,000 dozen pairs in 1981 to 502,000 dozen pairs in 1983. Imports, on the other hand, increased 155 percent from 1,070,000 dozen pairs in 1981 to 2,736,000 dozen pairs in 1983. Consequently, with an import to production ratio of 545.0 percent in 1983, compared with 154.2 percent in 1981, for every man-made fiber work glove produced domestically, nearly five and one-half were imported last year. This ratio will be even higher this year because imports during January-July 1984, at 2,541,154 dozen pairs were 67 percent higher than during the first seven months of 1983.

October 26, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 1, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 631pt.[1] produced or manufactured in Indonesia and exported during the ninety-day period which began on September 17, 1984 and extends through December 15, 1984, in excess of 35,000 dozen pairs.[2]

Textile products in Category 631pt. which have been exported to the United States prior to September 17, 1984 shall not be subject to this directive.

Textile products in Category 631pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Indonesia and with respect to imports of man-made fiber textile products from Indonesia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore,

[1] In Category 631, only T.S.U.S.A. numbers 704.3215, 704.8525, 704.8550 and 704.9000.

[2] The level has not been adjusted to reflect any imports exported after September 16, 1984.

these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-28666 Filed 10-30-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Exchange Proposal to Trade Commodity Options; Amex Commodities Corp.

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions and trading procedures for the application of the Amex Commodities Corporation for trading commodity options on gold bullion.

SUMMARY: The Amex Commodities Corporation ("ACC") has submitted an application to trade options on gold bullion under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public comment on the proposal is in the public interest and is consistent with its option regulations and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before December 17, 1984.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the ACC gold bullion option contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW Washington, D.C. 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Commission has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for options trading (46 FR 54500 (November 3, 1981)). Initially, the pilot program provided that each board of trade would be approved for trading in no more than one future option contract. These regulations were subsequently amended to permit domestic boards of trade to be designated as contract markets for up to five options on futures contracts or physical commodities, of which no more than two contracts may involve an option on a physical commodity (49 FR 33641 (August 24, 1984)).[1]

ACC has applied for contract market designation, pursuant to section 6 of the Commodity Exchange Act, 7 U.S.C. 8 (1982), ("Act") and Commission Regulation 17 CFR 33.5, to trade options on gold bullion. Under the rules of the proposed option on a physical commodity, gold bullion option exercises would be settled in cash, rather than by the transfer of physical gold. Cash settlement would be based on the afternoon gold fixing price of the London Gold Market (i.e., the p.m. London gold fix). The exchange stated that the cash settlement procedure is appropriate because London gold fixing prices are such reliable indicators of the market value of gold.

In addition, the gold bullion option contract would be traded under proposed rules which provide for a registered board broker. Among other duties, the board broker would maintain a book of market orders and limit orders left with such broker and would be responsible for execution of those orders. The board broker also would have the responsibility of "monitoring the market" and "maintaining orderlines in the trading crowd." The proposed trading rules also provide that, at an opening, all market orders (whether left with the board broker or represented by a floor member in the training crowd) shall be executed at one price.

The Commission is seeking public comment on the terms and conditions of the proposed option contract, including the appropriateness of the ACC's proposed cash settlement provisions. In particular, the Commission is requesting public comment on the reliability and acceptability of the p.m. London gold fix as a basis for cash settlement on the proposed gold bullion option contract. Further, the Commission seeks public comment on the potential for manipulation or distortion of the London p.m. gold fix.

The Commission also requests comment on the proposed trading rules for the gold bullion option contract. In particular, comments on the proposed board broker system of trading and the one-price opening procedure would be useful to the Commission in evaluating these proposals.

A copy of the terms and conditions of the proposed ACC gold bullion options contract and the proposed trading procedures will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of these materials can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by ACC in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquaters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or agruments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by ACC in support of its application, should send such comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by December 17, 1984. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on October 26, 1984.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-28683 Filed 10-30-84; 8:45 am]

BILLING CODE 6351-01-M

[1] In addition, the Commission has amended its regulations to permit each board of trade to be designated in up to two options on domestic agricultural futures contracts in addition to the five permissible option designations noted above (49 FR 2752 (January 23, 1984)).

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet November 15-16, 1984, from 9

a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda for the meeting will consist of discussions of key issues related to national security policy and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756–1205.

Dated: October 26, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–28661 Filed 10–30–84; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA84–2–20–009 and TA84–2–20–010]

Algonquin Gas Transmission Co.; Rate Reduction Filing Under Rate Schedule S–IS

October 25, 1984.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on October 19, 1984 tendered for filing Substitute Ninth Revised Sheet No. 213 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Substitute Ninth Revised Sheet No. 213 is being filed to reflect in Algonquin Gas' Rate Schedule S–IS Payment for Inventory Sale Gas a decrease in Consolidated Gas Transmission Corporation's ("Consolidated") underlying Rate Schedule E.

Algonquin Gas request that the Commission accept such tariff sheet, to be effective September 1, 1984, to coincide with the proposed effective date of Consolidated's Rate Schedule E rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 1, 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. 84–28690 Filed 10–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–8–000]

Canyon Creek Compression Co.; Proposed Changes in FERC Gas Tariff

October 25, 1984.

Take notice that Canyon Creek Compression Company (Canyon) on October 19, 1984, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. The proposed rate changes would increase revenues from its jurisdictional service by approximately $2.9 million based on the twelve month period ending July 31, 1984, as adjusted. An effective date of November 18, 1984, was requested.

In addition to the proposed rate changes, Canyon also proposed that it be allowed to adjust its rates monthly to (1) to recover the difference between actual electric power demand charges incurred and the electric power charges recovered through the demand charge component of the demand rate, and (2) recover the difference between actual interest expense incurred and interest charges recovered through the Base Interest Component of its Demand Rate.

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, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before November 1, 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. 84–28692 Filed 10–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF85–1–000]

Amoco Production Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 25, 1984.

On October 1, 1984, Amoco Production Company of P.O. Box 3092, Houston, Texas 77253, 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 proposed topping-cycle cogeneration facility to be located in Eddy County, New Mexico, will consist of a 3,267 kW natural gas fired combustion turbine generator and a waste heat recovery boiler. The useful thermal energy output will be in the form of steam for use in a gas processing plant.

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, NE., 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. 84–28691 Filed 10–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84-740-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

October 24, 1984.

Take notice that on September 26, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-740-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of U.S.S Chemicals, Acrylic Sheet Unit (U.S.S. Chemicals), 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 proposes to transport up to 850 million Btu of natural gas per day for U.S. Chemicals for a term through June 30, 1985. Columbia states that the gas to be transported would be purchased from Browning and Welch, Inc. (Browning), by U.S.S. Chemicals and would be used as boiler fuel in U.S.S. Chemicals' plant in Florence, Kentucky. It is indicated that Columbia would receive the gas at existing interconnections with Tennessee Gas Pipeline Company, a Division of Tenneco Inc., in Montgomery and Greenup Counties, Kentucky.

Columbia states that depending upon whether its gathering facilities are involved, it would charge either: (1) Its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent of gas, or (2) its average system-wide storage, transmission and gathering charge, currently 44.93 cents per dt, exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. Columbia states that it is charging the Gas Research Institute Funding Unit.

Columbia further requests flexible authority to add and/or delete sources of gas and/or receipt points. With respect to such flexible authority, Columbia states that it would undertake within 30 days of the addition or deletion of any gas supplies and/or receipt or delivery points, to file with the Commission the following information:

(1) A copy of the gas purchase contract between the seller and the end-user;

(2) A statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor, and if so, identification of the parties and specification of the current contract price;

(3) A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) A statement that the gas is not committed or dedicated within the meaning of the NGPA section (18);

(5) Location of the receipt/delivery points being added or deleted. For deletions provide the name of the producer/supplier;

(6) Where an intermediary participates in the transaction between the seller and end-user, the information required by § 157.209(c)(i)(ix) of the Commission's Regulations; and

(7) Identity of any other pipeline involved in the transportation.

Columbia submits that any changes made pursuant to such flexible authority would be on behalf of the same end-user at the same end-use location and would remain within the daily and annual volume levels proposed herein.

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 intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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. 84-28693 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST79-60-002, et al.]

Columbia Gas Transmission Corp., et al.; Extension Reports

October 25, 1984.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicated transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificates issued under § 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before November 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and Transport/seller	Recipient	Date filed	Part 284, subpart	Effective date
ST79-60-002 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	09/04/81
ST79-60-003 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	09/04/83
ST79-80-002 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	07/12/81
ST79-80-003 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	07/12/83
ST79-99-001 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	07/16/81
ST79-99-002 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	07/16/83
ST80-71-002 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	11/22/81
ST80-71-003 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	11/22/83
ST80-297-001 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	07/21/81
ST80-297-002 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	07/21/83
ST80-331-001 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	07/29/81
ST80-331-002 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	07/29/83
ST81-83-001 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Cincinnati Gas and Electric Co.	09/25/84	B	12/01/81
ST83-83-001 [1] Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Cincinnati Gas and Electric Co.	09/25/84	B	12/01/83
ST81-148-002 Natural Gas Pipeline Co. of America, 701 East 22d St., Lombard, IL 60148.	High Plains Natural Gas Co.	09/24/84	B	12/23/84
ST81-153-002 Natural Gas Pipeline Co. of America, 701 East 22d St., Lombard, IL 60148.	Transcontinental Gas Pipe Line Corp.	09/28/84	G	01/01/85
ST83-148-001 Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Public Service Electric and Gas Co.	09/17/84	B	12/15/84
ST83-150-001 Midwestern Gas Transmission Co., P.O. Box 2511, Houston, TX 77001.	Tennessee Gas Pipeline Co.	09/17/84	G	12/17/84
ST83-158-001 Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	National Fuel Gas Distribution Corp.	09/19/84	B	12/21/84
ST83-169-001 Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Florida Gas Transmission Co.	09/28/84	G	12/29/84
ST83-170-001 Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Florida Gas Transmission Co.	09/28/84	G	12/29/84
ST83-229-001 Sea Robin Pipeline Co., P.O. Box 1478, Houston TX 77001	United Gas Pipe Line Co.	09/24/84	G	12/22/84
ST84-1285-001 Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Transcontinental Gas Pipe Line Corp.	09/24/84	G	01/05/84
ST84-1292-001 Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	12/13/82
ST84-1292-002 Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Columbia Gas of Ohio, Inc.	09/25/84	B	12/13/84

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

Note: The noticing of these filings does not constitute a determination of whether the filings comply witha the Commission's Regulations.

[FR Doc. 84-28694 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-763-000]

Columbia Gas Transmission Corp., Complainant vs. Consolidated Gas Transmission Corp. Respondent; Complaint and Request for Hearing

October 26, 1984.

Take notice that on September 25, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP84-763-000 pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) a complaint and request for formal hearing with respect to the construction of certain natural gas facilities and the use thereof for the purpose of providing transportation services by Consolidated Gas Transmission Corporation (Consolidated) on behalf of one of Columbia's wholesale customers, Dayton Power & Light Company (Dayton), all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Columbia states that in August of this year, Columbia personnel observed the construction of facilities connecting Consolidated's system with Dayton's system at a point near the existing interconnection between the facilities of Consolidated and Texas Gas Transmission Corporation at Red Lion, Ohio. Columbia states that the facilities were being installed to permit Consolidated to deliver large quantities of natural gas to Dayton. Columbia is Dayton's sole pipeline supplier of natural gas, it is explained.

Columbia states that it has contacted Dayton concerning the new interconnection facility and was informed by Dayton that it was building a pipeline between Consolidated's line and an existing oil pipeline which Dayton planned to use to bring gas into its distribution system. Columbia states that it was further informed by Dayton that Consolidated was constructing the interconnection for the purpose of delivering up to 25,000 dt equivalent of natural gas per day to be purchased by Dayton from producers in the Appalachian region, and that Consolidated would transport the gas on an interruptible basis and under section 311(a) of the Natural Gas Policy Act of 1978 and Part 284 of the Commission's Regulations. Columbia states that the gas started flowing through the interconnection to Dayton on August 30, 1984.

Columbia states that, as a result of the transportation of this gas, Dayton has given notice that its requirements from Columbia would be reduced by over 7,300,000 dt equivalent of gas for the next two years.

Columbia states that through the use of these facilities Consolidated intends to transport up to 25,000 dt per day to one of Columbia's core market customers, which volumes would directly displace sales which otherwise would be made by Columbia. Further, Columbia states that the displacement of sales by Consolidated and Dayton would have a deleterious impact upon Columbia and its customers by

increasing the exposure of Columbia and its customers to take-or-pay and minimum bill payments and by increasing the cost of gas to all of its customers. It is stated that this type of activity reveals a major regulatory loophole that can be exploited at the expense of existing core markets. Columbia states that the loophole at issue is § 284.3(c) of the Commission's Regulations (18 CFR 284.3(c)) which appears to permit an interstate pipeline to construct facilities without prior Commission approval in order to connect with local distribution companies not previously served by the interstate pipeline. Columbia states that unless this loophole is closed, the way is clear for the invasion of core markets on a virtually unlimited basis.

Columbia requests that the Commission issue an order directing Consolidated to refrain from using these facilities until the Commission has had an opportunity to conduct a review of the transportation services referenced in Dayton's August 20, 1984, letter to Columbia. Columbia further requests that the Commission set this matter for expedited hearing.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before November 23, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-28704 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-39-002]

Equitable Gas Co. a division of Equitable Resources, Inc.; Petition To Amend

October 25, 1984.

Take notice that on October 15, 1984, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP83-39-002 pursuant to Section 7 of the Natural Gas Act a petition to amend the Commission's order issued November 30, 1982, in Docket No. CP83-39-000 so as to authorize Equitable to extend the term and modify certain conditions of the transportation of natural gas for Eastern American Energy Corporation (Eastern American), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Equitable states that a supplemental agreement entered into between it and Eastern American revises the parties' initial transportation agreement in two respects: (1) The supplemental agreement extends the term of the parties' initial agreement to December 1, 1994, and year to year thereafter and (2) the supplemental agreement proposes to increase the transportation capacity available to Eastern American to 5,000 Mcf of natural gas per day on a firm basis and 2,000 Mcf of natural gas per day on a best-efforts basis, provided that the existing capacity at Equitable's Glenville compressing station is increased through the addition of necessary gas and water cooling units.

Accordingly, Equitable requests authorization to increase its current transportation volumes by 2,000 Mcf per day on an interruptible basis and to extend the term of the original agreement to December 1, 1994.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Nov. 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-28695 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-746-000]

Granite State Gas Transmission, Inc.; Request Under Blanket Authorization

October 24, 1984.

Take notice that on September 26, 1984, Granite State Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, filed in Docket No. CP84-746-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point under the certificate issued in Docket No. CP82-515-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Granite State proposes to establish a new off-system delivery point for deliveries of natural gas to an affiliated distribution company customer, Bay State Gas Company (Bay State), at an interconnection with the facilities of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee). It is stated that Tennessee would be reimbursed by Granite State for the costs incurred by Tennessee for the construction of a meter station and related facilities to effectuate the delivery of gas at the new point. The cost of facilities is estimated to be $127,000. It is asserted that Tennessee would maintain and operate the delivery connection and would deliver gas to Granite State for redelivery to Bay State through the new delivery connection.

It is further stated that Bay State has three divisions which are not geographically contiguous and which each depend upon a single major interstate pipeline for the reliability of natural gas deliveries. It is explained that the Springfield and Lawrence divisions are served by Tennessee at four connections with Bay State's facilities, where gas is delivered for Granite State's account. This arrangement, it is asserted, allows for considerable flexibility in scheduling Granite State's delivery to Bay State for service in the two divisions. Further, it is stated that Bay State's Brockton division is presently served directly by Algonquin Gas Transmission Company. It is asserted that the linking of the Brockton division to the Granite State supply through the proposed off-system delivery point at Mendon would enable Bay State to increase its flexibility in the utilization of gas supplies to serve the Brockton division.

Granite State explains that the proposed new delivery point would be sized to allow the delivery by Tennessee for Granite State's account of up to 10,000 Mcf of gas per day on an interruptible basis.

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 intervene or notice of intervention and pursuant to § 157.205

of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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. 84-28696 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-1-000]

Greensboro Lumber Co. v. Rayle Electric Membership Corporation and Oglethrope Power Corp., Complaint

October 26, 1984.

Take notice that on October 9, 1984, Greensboro Lumber Co. (Greensboro) submitted for filing its complaint pursuant to Rules 203 and 206 of the Federal Energy Regulatory Commission, 18 CFR 385.203 and 385.206.

Greensboro seeks to have the Commission enforce Rayle EMC's and Oglethrope's obligations under 18 CFR 292.303(b) and 292.305 to sell electric energy and capacity to Greensboro at a price that is nondiscriminatory, just and reasonable, and to sell to Greensboro interruptible maintenance and back-up power.

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 November 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. 84-28705 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-3-000]

Gulf States Utilities Co.; Application

October 25, 1984.

Take notice that on October 17, 1984, Gulf States Utilities Company (Applicant) filed an application seeking an order under Section 204(a) of the Federal Power Act authorizing the Applicant to issue up to 6,000,000 Additional Shares of New Common Stock, without par value, pursuant to its Automatic Dividend Reinvestment and Stock Purchase Plan, and for exemption from competitive bidding requirements.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 19, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-28697 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2077-004, et al.]

Hydroelectric Applications (New England Power Co., et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: Change of Land Rights.

b. Project No: 2077-004.

c. Date Filed: February 2, 1984.

d. Applicant: New England Power Company.

e. Name of Project: Fifteen Mile Falls Project.

f. Location: On the Connecticut River in Grafton, and Coos Counties, New Hampshire and Caledonia Counties, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Robert O. Biglow, New England Power Company, 25 Research Drive, Westborough, Massachusetts 01581.

i. Comment Date: November 30, 1984.

j. Description of Project Change in Land Rights: The Applicant requests that it be allowed to grant rights-of-way to member utilities of the New England Power Company so that they can interconnect transmission facilities with Hydro Quebec at the 230-kV substation located on project lands.

k. This notice also consists of the following standard paragraphs: B, C and D2.

2a. Type of Application: Transfer of License (Minor).

b. Project No: 3155-003.

c. Date Filed: August 5, 1983.

d. Applicant: John M. Jordan and Cox Lake-Carbonton Associates.

e. Name of Project: Carbonton Dam Hydroelectric Project.

f. Location: Deep River, Lee County, North Carolina.

g. Filed Pursuant to: Section 9 of the Federal Power Act.

h. Contact Person: John M. Jordan, P.O. Box 128, Saxapahaw, North Carolina 27340.

i. Comment Date: November 29, 1984.

j. Description of Proposed Transfer: On July 9, 1982, a minor license was issued to John M. Jordan to construct, operate, and maintain the Carbonton Dam Hydroelectric Project No. 3155. John M. Jordan intends to sell the project to Cox Lake-Carbonton Associates, a limited partnership organized under the laws of New York State. For that reason, John M. Jordan and Cox Lake-Carbonton Associates have filed a request that the project license be transferred to Cox Lake-Carbonton Associates.

k. This notice also consists of the following standard paragraphs: B and C.

3a. Type of Application: Major License.

b. Project No: 3285-002.

c. Date Filed: November 23, 1983.

d. Applicant: Trinity River Authority of Texas.

e. Name of Project: Lake Livingston Hydroelectric.

f. Location: On the Trinity River at Lake Livingston in Polk, San Jacinto, Walker, and Trinity Counties, Texas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)—825 (r).

h. Contact Person: Danny F. Vance, Trinity River Authority of Texas, 5300 S. Collins Street, P.O. Box 60, Arlington, Texas 76010.

i. Comment Date: December 24, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing earthen dam, approximately 14,400-feet

long, with a maximum height of 90-feet; (2) an existing spillway, approximately 546 feet long, housing 12 Taintor gates, each 40-feet wide by 32-feet high; (3) an existing reservoir with a water surface area of approximately 82,600 acres and a gross storage capacity of about 1,750,000 acre-feet at normal water surface elevation of 131.0 feet, NGVD; (4) a proposed headrace channel, approximately 800-feet long and average bottom width of 250-feet; (5) a reinforced concrete intake structure; (6) a proposed earth embankment about 1,000-feet long having a top width of 24-feet which serves as the downstream closure for the headrace channel; (7) four proposed penstocks, each approximately 450-feet in length-two would be 19-feet in diameter and two would be 15.5-feet in diameter; (8) a proposed concrete powerhouse approximately 304-feet by 58-feet housing four turbine/generator units with a total rated capacity of 50,000 kW; (9) a proposed tailrace channel approximately 2,000-feet long and 135-feet wide; (10) a proposed 138 kV transmission line approximately 2 miles long; (11) about 2,200-feet of proposed access roads; (12) about 1,600-feet of State Highway 19 will be relocated about 250 feet to the east, smoothing the existing highway bend; and (13) appurtenant facilities Applicant estimates that the average annual energy would be 178,200,000 kWh. The dam is owned by the Trinity River Authority of Texas. This application was filed during the term of the Applicant's preliminary permit for Project No. 3285.

k. Purpose of Project: The applicant anticipates that project energy will be sold to the City of College Station, Texas, or to other municipalities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

4a. Type of Application: Transfer of Liense and Lease of Project Property.

b. Project No: 4796–002

c. Date Filed: September 4, 1984.

d. Applicant: Niagara Mohawk Power Corporation and Glen Park Associates.

e. Name of Project: Glen Park.

f. Location: Black River, Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Niagara Mohawk Power Corporation, John H. Terry, Esq., Senior Vice President, 300 Erie Boulevard West, Syracuse, New York 13202, and Mr. William Bantz, Glen Park Associates, c/o Mercer Company, Inc., 330 Broadway, Albany, New York 12207.

i. Comment Date: November 13, 1984.

j. Description of the Proposed Transfer of License and Lease of Project Property: The Applicants propose to transfer the license to Niagara Mohawk Power Corporation and Glen Park Associates, because it would be in the public interest since there would be a substantial annual cost savings to Niagara Mohawk's ratepayers. The Glen Park Project has not been constructed. Niagara Mohawk also proposes to lease approximately 136-acres of project property located in the towns of Brownville, Pamelia and Watertown and the Village of Glen Park, in Jefferson County, New York, to Glen Park Associates for the construction and operation of Project No. 4796. Transferee has proposed to construct, operate, and utilize the full output of the project in accordance with the license.

Transferee is an Electric Cooperative Corporation organized under the laws of New York.

k. This notice also consists of the following standard paragraphs: B and C.

5a. Type of Application: Minor License.

b. Project No: 7848–001.

c. Date Filed: May 9, 1984.

d. Applicant: Michiana Hydro-Electric Power Corporation.

e. Name of Project: Bainter Town Water Power.

f. Location: On the Elkhart River in Elkhart County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles S. Hayes, 1634 East Jefferson Boulevard, South Bend, Indiana 46617.

i. Comment Date: December 20, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing dam 4 feet high and 130 feet long; (2) an existing one mile section of the Elkhart River Hydraulic Canal, with a normal water surface elevation at 803.3 m.s.l.; (3) a refurbished powerhouse, approximately 24 feet square and containing one new turbine/generator unit rated at 200 kW; (4) a new 5–kV transmission line 150 feet long; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 981,000 kWh. Owner of the dam is the Elkhart County Park Board.

k. Purpose of Project: The applicant anticipates that project energy will be sold to the Northern Indiana Public service Company.

l. This notice also consists of the following standard paragraphs: A3, A9, b, C, and D1.

6a. Type of Application: Preliminary Permit.

b. Project No: 7902–000.

c. Date Filed: December 7, 1983.

d. Applicant: Clearwater Hydro.

e. Name of Project: Reddies River Power Project.

f. Location: Wilkes County, North Carolina, Reddies River.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Richard Gresham, Route 1 Box 555, Hiawatha Rd., Morristown, Tennessee 37814.

i. Comment Date: December 24, 1984.

j. Description of Project: The proposed project would be located at the Reddies River Dam which is owned by the City of North Wilkesboro, North Carolina, and would consist of: (1) the existing 190-foot-long and 20-foot-high concrete dam; (2) the existing reservoir with a surface area of 15 acres and with a storage capacity of 45 acre-feet; (3) the renovation of an existing 50-foot-long penstock and forebay; (4) the renovation of an existing powerhouse and the installation of two turbine/generator units operating at a hydraulic head of 19.5 feet, for a total installed capacity of 230 kW; (5) a proposed 200-foot-long, 13.8-kV transmission line; and (6) appurtenant facilities. Applicant estimates the average annual energy production to be 1.26 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Duke Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated and assessed to support an investment decision. The proposed studies will address whether or not the filing of a license application is warranted. The Applicant's estimated total cost for performing these studies is $12,610.

7a. Type of Application: Preliminary Permit.

b. Project No: 8314–000.

c. Date Filed: May 18, 1984.

d. Applicant: Town of Index.

e. Name of Project: Deer Creek.

f. Location: On Deer Creek, near the Town of Index, in Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 971(a)–825(r).

h. Contact Person: Wyatt Wood, P.O. Box 88, Index, Washington 98256.

i. Comment Date: November 29, 1984.

j. Competing Application: Project No. 7837, Date Filed: November 14, 1983.

k. Description of Project: The proposed project would consist of: (1) A 6-foot-high treated lumber diversion dam at elevation 1600 feet; (2) a 4,500-foot-long, 28-inch-diameter penstock; (3) a powerhouse containing a single generating unit with a capacity of 2600 kW and an average annual generation of 13.5 GWh; and (4) a 0.25-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $87,000. No new roads would be constructed during the feasibility study. Test borings would be conducted.

l. Purpose of Project: The project power would be sold.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C and D2.

8 a. Type of Application: Conduit Exemption.

b. Project No: 8319–000.

c. Date Filed: May 21, 1984.

d. Applicant: Deep Springs College.

e. Name of Project: Deep Springs Hydro.

f. Location: On Applicant's irrigation system, that gets its water from Wyman Creek, in Inyo County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Brandt Kehoe, Deep Springs College, Via Dyer, Nevada 89010.

i. Comment Date: December 10, 1984.

j. Description of Project: Applicant proposes to install a 12-inch-diameter steel pipe within its existing 13,500-foot-long irrigation ditch and reconstruct the existing sandtrap at the headworks. The proposed hydroelectric project would consist of a powerhouse, on the Applicant's land, containing a generating unit with a rated capacity of 90 kW operating under a head of 380 feet. A 3,000-foot-long, 2.4-kV transmission line would connect the project to an existing Southern California Edison Company's substation south of the powerhouse.

k. Purpose of Project: The estimated 508,000 kWh of annual generation will be used by the Applicant or sold to a local utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

9 a. Type of Application: Preliminary Permit.

b. Project No: 8392–000.

c. Date Filed: June 25, 1984.

d. Applicant: Rocky Mountain Hydro, Inc.

e. Name of Project: Humboldt Power Project.

f. Location: On Humboldt River, near Lovelock, in Pershing County, Nevada.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael L. Raisch, President, Rocky Mountain Hydro, Inc., 4065 South Roslyn Street, Denver, Colorado 80237.

i. Comment Date: December 24, 1984.

j. Description of Project: The proposed project to be located on U.S. Bureau of Reclamation's (USBR) existing Rye Patch Dam, would consist of: (1) Replacement of the existing 48-inch-diameter outlet pipe with a new penstock; (2) a powerhouse with a total installed capacity of 1,400 kW operating under a head of 54 feet; and (3) an approximately 2-mile-long, 69-kV transmission line to connect to an existing transmission line. The Applicant estimates the average annual energy generation at 5.5 GWh to be sold to the local utilities.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 24-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $250,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

10a. Type of Application: Preliminary Permit.

b. Project No: 8482–000.

c. Date Filed: August 1, 1984.

d. Applicant: Independence Electric Corporation.

e. Name of Project: Kentucky River Lock & Dam No. 11.

f. Location: On the Kentucky River in Madison & Estill Counties, Kentucky.

g. Filed Pusuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. G. William Miller, President, Independence Electric Corporation, 919–18th Street, NW., Suite 750, Washington, D.C. 20006.

i. Comment Date:

j. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed forebay; (2) a proposed powerhouse containing 3 generating units rated at 1,750 kW each for a total installed capacity of 5,250 kW; (3) a proposed tailrace; (4) a proposed 69–kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project is 13,000,000 kWh.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an applicant for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

11a. Type of Application: Preliminary Permit.

b. Project No: 8523–000.

c. Date Filed: August 15, 1984.

d. Applicant: Larry J. Hellhake.

e. Name of Project: Jug Creek.

f. Location: On Jug Creek, near the town of McCall, in Valley County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Larry J. Hellhake, 809 No. Liberty Road, Boise, Idaho 83704.

i. Comment Date: December 21, 1984.

j. Description of Project: The proposed project would consist of: (1) a 2-foot-high check dam at elevation 5,550 feet; (2) a 5,800-foot-long, 24-inch-diameter buried steel penstock; (3) a powerhouse containing a single generating unit with capacity of 1,500 kW and an average annual generation of 2,700 MWh; and (4) a 1-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $10,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The project power would be sold to the Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

12a. Type of Application: Preliminary Permit.

b. Project No: 8534–000.

c. Date Filed: August 16, 1984.

d. Applicant: Douglas Power Company.

e. Name of Project: East Fork Carson River.

f. Location: On East Fork Carson River near Gardnerville in Douglas County, Nevada.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bert Ramsay, President, Hydro Power Developer, Inc., 4651 Val Verde Road, Loomis, California 95650.

i. Comment Date: December 24, 1984.

j. Description of Project: The proposed project would consist of: (1) Applicant's existing 20-foot-high, 100-foot-long dam; (2) a 78-inch-diameter, 100-foot-long steel penstock; (3) a powerhouse with a total installed capacity of 700 kW; and (4) a 0.5-mile-long, 12.5-kV transmission line interconnecting with an existing Sierra Pacific Power Company (SPPC) transmission line. The proposed project would affect United States lands administered by the Bureau of Land Management. The estimated 4.3 millon kWh generated annually by the proposed project would be sold to SPPC.

k. Purpose of Project: A preliminary permit, if issued, does not authorize construction. The Applicant is seeking issuance of a preliminary permit for a period of 18 months during which it would conduct studies to determine feasibility of constructing and operating the project. These studies would not require construction of any new roads and are estimated to cost $50,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

13a. Type of Application: Preliminary Permit.

b. Project No: 8550–000.

c. Date Filed: August 24, 1984.

d. Applicant: Gardner O. Davis.

e. Name of Project: Lower Davis Hydroelectric Project.

f. Location: On Mill Seat Creek, near Shingletown, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Gardner O. Davis, P.O. Box 354, Singletown, California 96088.

i. Comment Date: December 20, 1984.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-wide, 24-foot-long inlet structure at elevation 3,534 feet; (2) a 36-inch-diameter, 2,000-foot-long diversion conduit; (3) a 36-inch-diameter, 100-foot-long penstock; (4) a powerhouse with a total installed capacity of 37 kW operating under a head of 14 feet; and (5) an approximately 2,100-foot-long, 12-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 0.22 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of an 18-month preliminary permit to conduct technical, environmental and economic stdies, and also prepare an FERC license application at an estimated cost of $50,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

14a. Type of Application: Conduit Exemption.

b. Project No: 8552–000.

c. Date Filed: August 27, 1984.

d. Applicant: Metropolitan Water District of Southern California.

e. Name of Project: Red Mountain Power Plant.

f. Location: On the Applicant's water distribution system, that gets its water from the Colorado River, in San Diego County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Carl Boronkay, General Manager, Metropolitan Water District of Southern California, P.O. Box 54153, Terminal Annex, Los Angeles, California 90054.

i. Comment Date: December 10, 1984.

j. Description of Project: The proposed project would be located on a proposed bypass pipeline to an existing pressure control structure on the Applicant's San Diego Pipeline No. 5 and would consist of a powerhouse containing a single generating unit with a rated capacity of 5,900 kW, operating under a head of 232 feet. A short tap would transmit power to a proposed Southern California Edison Company (SCE) transmission line at the site.

k. Purpose of Project: The estimated 37.9 million kWh of annual generation would be sold to SCE.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D3b.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectic exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption applicaton that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydoelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submision of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit applications, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (b).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either: (1) A preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 305.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: October 26, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-28689 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-513-000]

Meridian Braun; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 25, 1984.

On September 26, 1984, Meridian Braun of 1327 Jones Drive, Ann Arbor, Michigan 48105 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 proposed cogeneration facility is scheduled for construction to resume on or about December 1, 1984 and will be located in Monroe, Michigan. The facility will consist of two coal-fired steam boilers driving two (2) steam extraction turbine generators providing process steam and an electrical output of 50 MW. The process steam will be used to provide the essential radiant heat for the production of ethanol.

Any person desiring to be heard or to 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, NE., Washington, DC 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kennth F. Plumb,

Secretary.

[FR Doc. 84-28698 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-50-000]

Natural Gas Pipeline Company of America; Application

October 26, 1984.

Take notice that on October 19, 1984, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-50-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to render new firm and best-efforts exchange and transportation services to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and Transcontinental Gas Pipe Line Corporation (Transco) along with blanket authorization to add or delete delivery points of the Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the application is intented to be competitive with, and an alternative to, the applications filed by Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), in Docket No. CP83-218-000, and by ANR Pipeline Company (ANR) in Docket No. CP83-183-000 for authorization to transport the gas which Tennessee and Transco purchase from the Great Plains Coal Gasification Plant (Great Plains) and that, by granting the certificate authorization requested in the instant application, the Commission would obviate the need for the certificates requested by Northern and ANR.

Applicant avers that approval of its application would eliminate the need for Northern to expend approximately $37,000,000 and ANR to expend approximately $22,000,000 for facilities necessary solely to transport and redeliver Great Plains' gas for Tennessee and Transco.

Applicant proposes to receive on a firm basis up to 41,250 million Btu's of

natural gas per day from Tennessee at the existing point of interconnection between the systems of Northern and Applicant in Mills County, Iowa. In turn, Applicant would deliver, on a firm basis, up to 41,250 million Btu's of natural gas per day to Tennessee at an existing point of interconnection between the Tennessee system and the terminus of the Project SP77 facilities located in Plaquemines Parish, Louisiana. In the event the volumes received by the Applicant from Tennessee exceed the volumes received by Tennessee from Applicant, Applicant proposes to deliver additional gas as may be needed to keep the exchange in balance to Tennessee at an existing subsea interconnection between the pipeline facilities of Tennessee and Applicant in South Marsh Island Block 235, offshore Louisiana. Similarly, in the event volumes received by Tennessee from Applicant exceed the volumes received by Applicant from Tennessee, Applicant proposes that Tennessee would deliver the necessary additional volumes to Applicant at the existing point of interconnection between the facilities of Trailblazer Pipeline Company and Applicant's system located in Gage County, Nebraska.

Applicant also proposes to receive on a firm basis up to 34,375 million Btu's of natural gas per day from Transco at the existing point of interconnection between Northern and the Applicant in Mills County, Iowa. In turn, the Applicant proposes to deliver up to 34,375 million Btu's of natural gas per day to Transco at delivery points yet to be determined, since Applicant is in the process of attempting to purchase on Transco's system gas which would be used to effectuate this exchange. Until such supplies are obtained, Applicant proposes to deliver up to 34,375 million Btu's per day of natural gas to Transco at an existing point of interconnection between Applicant and Transco near Johnson's Bayou, Cameron Parish, Louisiana.

Applicant also proposes that if either Applicant and Tennessee or Applicant and Transco have supplies of gas available in excess of 41,250 or 34,375 million Btu's, respectively, on any day, the other party would receive such gas, on a best efforts basis, for exchange or transportation.

Applicant states that it has not entered into service agreements with Tennessee or Transco because of the company proposals already filed, but expects that such agreements would be signed after Commission certification of the instant proposal. Applicant proposes to continue the exchange and transportation service for a term of twenty-five years from the date of first delivery of gas and from year to year thereafter unless cancelled by either party upon one hundred eighty days' prior notice.

Applicant proposes to make gas for gas exchanges between the Applicant and Tennessee and Applicant and Transco at no charge to either party. If transportation by the Applicant becomes necessary, Applicant proposes to charge Tennessee an initial rate of 18.9 cents per million Btu of gas received at Mills County, Iowa, plus retention of 1½ percent of received volumes to cover fuel and losses, for redelivery to an existing point of interconnection between Applicant and Tennessee in Wharton County, Texas. Likewise, Applicant proposes to charge Transco an initial rate of 18.9 cents per million Btu of gas received at Mills County, Iowa, plus retention of 1½ percent of received volumes to cover fuel and losses, for redelivery to an existing point of interconnection between Applicant and Transco located near Johnson's Bayou, Cameron Parish, Louisiana.

It is asserted that Applicant requests blanket authorization to add and delete exchange gas delivery points to permit the timely connection of volumes of gas available to Applicant, to keep down costs which would otherwise be incurred by Tennessee and Transco for the transportation of gas by the Applicant, and to eliminate the need for seeking amendments to the certificate authorization requested in the instant application each time new delivery points are added.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-28708 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-51-000]

Pacific Gas and Electric Co.; Filing

October 26, 1984.

The filing Company submits the following:

Take notice that on October 17, 1984, Pacific Gas and Electric Company (PG&E) tendered for filing, amendments to the rate schedules of the Interconnection Agreement between PG&E and the Northern California Power Agency (NCPA) and its member customers.

The amendments are revised exhibits to the Appendix A of the Agreement. The amendments to be filed with the Commission are Exhibits A-1, A-4, and A-4A (Exhibits). PG&E states that those revised Exhibits are the result of an agreement between the parties to revise NCPA's required power purchases. Specifically, Exhibit A-1 reduces the Contract Demand that NCPA must purchase by 3.7 mw in 1984 and 12.5 mw in 1985. Exhibit A-4 includes revisions by NCPA of its transmission needs for Points of Receipt as well as Points of Delivery. Exhibit A-4A reflects NCPA's recent voltage upgrade at two of its delivery points.

PG&E states that these changes will not affect the rates currently charged. PG&E estimates that due to the decreased power purchases, the expected revenue from NCPA will decline.

Since the Agreement reached by the Parties to revise these exhibits has just recently occurred, PG&E respectfully requests, a waiver of the Commission's

notice requirements so as to permit an effective date for those revised Exhibits of January, 1, 1984.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the Northern California Power Agency, the Cities of Alameda, Biggs Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Roseville and Ukiah, California, and the Pulmas Sierra Electric Cooperative.

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 November 9, 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. 84-28707 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-622-000]

Pacific Power and Light Co.; Order Accepting Rate for Filing, Ordering Summary Disposition and Directing Adjustments and Refunds, Noting Intervention, and Terminating Docket

Issued: October 26, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Oliver G. Richard III and Charles D. Stalon.

On August 27, 1984, Pacific Power and Light Company (PP&L) submitted for filing a revised Appendix 1 for the State of Washington to Exhibit C of its Residential Purchase and Sale Agreement with the Bonneville Power Administration (BPA),[1] together with BPA's determination of PP&L's Average System Cost (ASC) pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)[2] and the Commission's implementing regulations. The filing, as adjusted by BPA in accordance with the final ASC methodology,[3] reflects an increase in PP&L's ASC for exchange sales in the State of Washington for the exchange period beginning on February 22, 1984. PP&L has contested several of BPA's adjustments to PP&L's proposed ASC rate including: the development of footnote 13 labor ratios, the functionalization of regulatory commission expense and stockholder expenses, and BPA's calculated reduction of the depreciation reserve and expense associated with exclusion of the Selah-Wenas 115 kV radial transmission line.

Notice of the company's filing was published in the **Federal Register** with comments due on or before September 24, 1984. 49 FR 36000. BPA filed a timely notice of intervention, which raises no specific issues.[4]

Discussion

Under Rule 214(a)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), BPA's timely notice of intervention serves to make it a party to this proceeding.

The company claims that BPA incorrectly adjusted its calculation of the functionlization ratio in footnote 13 by excluding general office labor expense. Our preliminary review indicates that BPA correctly implemented the ASC methodology. Footnote 13 specifies a functionalization methodology based on a ratio of the "* * * salary and wage data for production, transmission, and distribution/other functions." However, PP&L improperly introduced an intermediate step in the determination of the footnote 13 ratio by first assigning Administrative and General (A&G) labor costs to production, transmission, and distribution using footnote 24.[5] BPA has recalculated footnote 13 to include only those labor costs which are assigned directly to production, transmission, and distribution. Further, footnote 13 does not provide for an intermediate step to functionalize A&G wages and salaries to the operating functions prior to the determination of the overall wage and salary allocator. Accordingly, we shall deny PP&L's proposed adjustment to BPA's footnote 13 wage and salary allocator as ordered below.

With respect to the company's claim that BPA erred in its calculation of the depreciation reserve and depreciation expense reduction associated with the exclusion from rate base of PP&L's radial transmission line, we note that, although BPA developed a *pro rata* factor of 0.56% to reduce related depreciation expense and reserves,[6] BPA erroneously applied a factor of 5.6% in actually calculating the depreciation reduction. As a result of this error, BPA excluded $87,000 from the exchange. Consequently, we shall direct PP&L to revise its ASC to reflect the proper calculation, and, in accordance with the Commission's final ASC rule, we shall direct BPA to refund to PP&L the difference between the instant ASC rate and the revised ASC rate plus accrued interest.

PP&L also objects to BPA's functionalization of regulatory commission expense to distribution/other, asserting that this allocation of costs wrongfully excludes the majority of regulatory commission expenses incurred at the retail level which related to issues involving generation and transmission plant. When the company filed its ASC with BPA, it used a combination of direct analysis and footnote 13 (which uses labor ratios) to functionalize its regulatory commission expenses. However, in its objections to BPA's adjustment, PP&L advocates, for the first time, the use of footnote 24 to allocate these costs. The ASC methodolgy specifies that regulatory commission expense should be functionalized according to footnote 19 which functionalizes the cost entirely to distribution/other unless the utility demonstrates that a different treatment is appropriate. BPA determined that PP&L had failed to demonstrate an appropriate alternative functionalization method and, therefore, functionalized regulatory commission expenses to distribution/other, there by excluding these expenses from the exchange.

The issue of functionalization of regulatory commission expenses has been raised in several ASC proceedings pending before the Commission. Generally, we would set the issue for hearing. However, our review indicates that, even if this issue were resolved in PP&L's favor, no change in the ASC rate would result.[7] We note that, although

---

[1] *See* Attachment for rate schedule designation.

[2] 16 U.S.C. 839.

[3] Docket No. RM81-41-000, Sales of Electric Power to the Bonneville Power Administration; Methodology and Filing Requirements; Final Rule. 48 FR 46970 (1983), III FERC Statutes and Regulations § 30.506.

[4] Although not reiterated in BPA's notice of intervention, BPA's position is effectively reflected in its report on, and ajustments to, PP&L's proposed ASC rate.

[5] The functionalization formula in footnote 24 specifies an assignment of costs to the operating functions based on 50% on O&M expenses and 50% on plant ratios. Because footnote 24 is heavily weighted to the production function, the intermediate step introduced by PP&L would substantially increase the percentage of costs assigned to production and correspondingly increase PP&L's ASC rate.

[6] The 0.56% factor was developed by comparing the Selah-Wenas transmission investment to the total transmission investment.

[7] BPA reduced PP&L's exchange costs by $12,000, the equivalent of .004 mills/kWh. Even if we found BPA's adjustment to be incorrect, the ASC rate of 32.11 mills/kWh would not change.

PP&L alleges that BPA's proposed adjustment results in a $70,000 exclusion, this estimated dollar impact erroneously assumes that regulatory commission expenses may be functionalized on the basis of footnote 24, rather than the prescribed footnote 19. In view of the facts that the ASC methodology specifies functionalization according to footnote 19, that PP&L did not raise the issue of using footnote 24 to allocate regulatory commission expense when it filed its ASC with BPA, and that no change in the ASC rate would result, we shall deny PP&L's request with respect to regulatory commission expense, as ordered below. Indeed, the fact that PP&L failed to raise this issue with Bonneville would probably alone be sufficient cause to deny PP&L's requested adjustment, since we do not intend to permit utilities to raise arguments before this Commission that should have been raised before the Administrators.

Finally, PP&L contests BPA's exclusion of stockholder expenses on the basis that these expenses are not resource-related. PP&L states that stockholder expenses are incurred in keeping the investor informed concerning the company's financial condition, the current course of events, and the future prospects of the company. Therefore, PP&L contends that these expenditures insure that potential funds are available to build new plant and equipment and consequently are resource-related. BPA's report fails to explain its exclusion of stockholder expenses beyond its general statement that stockholder expenses are not resource-related. The Northwest Power Act and the ASC methodology requires the exclusion of certain types of costs (e.g. terminated plant costs). Additionally, since the Northwest Power Act provides for the recovery of the average system cost of a utility's resources, a finding that a cost is not resource-related would necessarily be ground for exclusion.

Bonneville has not, prior to this case, sought to eliminate stockholder expensesfrom PP&L's rates filed under its original ASC methodology. Further, such expenses are incurred in support of the traditional equity costs which are included in the ASC methodology under which these rates were filed. We believe that the prior methodology should be consistently applied, and we therefore reject BPA's determination to exclude stockholder expenses here. Our decision is without prejudice to a determination by the Administrator that stockholder expenses should be excluded under the revised ASC methodology effective October 1, 1984.

The Commission orders:

(A) PP&L's requests for adjustments of PBA's determination with respect to the development of footnote 13 labor ratios and functionalization of regulatory commission expense are hereby denied.

(B) PP&L is hereby ordered to revise its Average System Cost to reflect the correct depreciation reserve and depreciation expense and to functionalize stockholders expense pursuant to footnote 24, as discussed in the body of this order. PP&L shall file such revised ASC within thirty (30) days of the issuance of this order.

(C) BPA is hereby directed to reimburse PP&L for the difference between the filed ASC rate and the ASC rate as revised to reflect the summary disposition directed above plus accrued interest, as discussed in the body of this order, within thirty (30) days of the date on which PP&L files its revised ASC.

(D) PP&L's revised ASC rate is hereby accepted for filing, as adjusted by summary disposition, to become effective as of February 22, 1984.

(E) Docket No. ER84-622-000 is hereby terminated.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment—Rate Schedule Designation

Designation	Description
(1) Supplement No. 36 to Supplement No. 3 to Pacific Power & Light Company/ Bonneville Power Administration Service Agreement under Pacific Northwest Electric Power Planning and Conservation Act FERC Electric Tariff Original Volume No. 1 (Supersedes Supplement No. 32 to Supplement No. 3).	Revised ASC for Washington Jurisdiction with BPA Report.

[FR Doc 84-28709 Filed 10-30-84: 8:45 am]

BILLING CODE 6717-01-M

Pennzoil Co., Fifteenth Amendment to Application for Immediate Clarification or Abandonment Authorization

[Docket No. G-7004-029]

(October 24, 1984)

Take notice that on October 23, 1984 Pennzoil Company (Pennzoil), P. O. Box 2967, Houston, Texas, 77001, filed in Docket No. G-7004-029 an application for immediate clarification of Order dated November 24, 1980 in the above-referenced docket or abandonment authorization for as much gas as is required to allow sales of gas to twenty-three new applicants for residential service in West Virginia in addition to those applicants specified in Pennzoil's original application filed on October 25, 1982. In filing this Fifteenth Amendment to its original application, Pennzoil incorporates herein and renews each of the requests for clarification or abandonment authorization set forth in that application. Service to these applicants and existing customers would be provided from gas supplies that would otherwise be sold to Consolidated Gas Supply Corporation (Consolidated), an interstate pipeline.

Pennzoil states that immediate action is necessary to protect the health, welfare and property of the applicants and customers in West Virginia who depend upon Pennzoil for their gas supply needs. Pennzoil also states that immediate action also is required because, by order dated October 21, 1982, the Public Service Commission of West Virginia directed Pennzoil "to show cause, if any it can, why it should not be found to be in violation of its duty * * * to provide adequate gas service to all applicants * * * and why it should not be required to provide service to domestic customers in West Virginia when requests are received for same.

Consolidated has indicated that it has no objection to the requested authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said amendment to the original application should on or before, November 1, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition

to intervene in accordance with the Commission's Rules. Any person previously granted intervention in connnection with Pennzoil's original application in Docket No. G–7004–006 need not seek intervention herein. Each such person will be treated as having also intervened in Docket No. G–7004–029.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–28699 Filed 10–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI85–1–000, et al.]

Seagull Energy E&P, Inc., et al.; Application for Limited-Term Producer Certificate of Public Convenience and Necessity With Pre-Granted Abandonment, and Subsequent Producer Certificate of Public Convenience and Necessity

October 25, 1984.

Take notice that on October 1, 1984, Seagull Energy E&P Inc. (Seagull E&P), of 1100 Louisiana, Houston, Texas 77002, filed an application, pursuant to section 7(c) of the Natural Gas Act, as amended, for a producer certificate of public convenience and necessity authorizing a limited-term sale for resale in interstate commerce of natural gas, with pre-granted abandonment of such sale, and upon termination of the limited-term sale the subsequent sale for resale of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests that the Commission issue it (i) a limited-term certificate authorizing the sale to Neches Gas Distribution Company (Neches) for a period ending June 30, 1986, with pre-granted abandonment at the end of such period, and (ii) a certificate of public convenience and necessity authorizing it to sell natural gas to Northern Natural Gas Company, a division of InterNorth Inc. (Northern) commencing July 1, 1986, upon the termination of the limited-term sale to Neches and in accordance with the terms and conditions of the Gas Purchase Contract, as it is now written or as it subsequently may be amended by mutual agreement of the parties thereto.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before November 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–28700 Filed 10–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–744–000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Request Under Blanket Authorization

October 24, 1984.

Take notice that on September 26, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84–744–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish a new delivery point for and reassign gas volumes among delivery points to an existing customer under the certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to establish a new delivery point near Mendon, Massachusetts, for an existing customer, Granite State Gas Transmission, Inc. (Granite State). Tennessee states that all costs associated with the construction of the TGP-Brockton delivery point would be borne by Granite State.

Tennessee also proposes to reassign volumes of gas among delivery points to Granite State as a result of the new delivery point. The reassignment of gas volumes between delivery points would result in the following:

Delivery point	Daily volume limit
Northampton	4,567 Mcf at 14.73 psia.
Agawam	40,000 Mcf at 14.73 psia.
East Longmeadow	25,000 Mcf at 14.73 psia.
Lawrence	22,849 Mcf at 14.73 psia.
Pleasant Street	25,000 Mcf at 14.73 psia.
TGP-Brockton	0 Mcf at 14.73 psia.

It is stated that the daily volume limit for the TGP–Brockton delivery point would be increased by Tennessee from O Mcf per day up to such higher limit which Tennessee, in its sole opinion, determines it can operationally permit, but in no event would be daily volume limit exceed 10,000 Mcf per day. The additional delivery point, it is asserted, would provide Granite State greater flexibility of service to its customer, Bay State Gas Company. It is also asserted that the reassignment of gas volumes would not increase or decrease the sum total of the daily and/or annual volumes Granite State is entitled to purchase from Tennessee under the gas sales contract for CD–6 service.

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 intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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. 84–28701 Filed 10–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP 84–57–000]

Transcontinental Gas Pipeline Corp. v. Koch Industries, Inc.; Complaint

Issued October 26, 1984.

On September 28, 1984, Transcontinental Gas Pipeline Corporation (Transco) filed a complaint under Rules 206 and 207 of the Commission's Rules of Practice and Procedure [1] against Koch Industries, Inc.

[1] 18 CFR 385.206 and 385.207 (1983).

(Koch). The complaint concerns sales of gas Koch makes to Transco from High Island Area Block A-283 Field, offshore Texas [2] and whether the sales violate the provisions of the Natural Gas Policy Act of 1978 (NGPA).[3]

Transco's complaint arises from actions by Koch under its gas purchase agreement with Ransco dated October 4, 1978. Transco claims that this agreement contains a take-or-pay provision which obligates Transco to purchase and receive or pay for whether or not received, a minimum quantity of gas per day (one hundred percent (100%) during the first five (5) years and for the remainder of the term hereof ninety percent (90%) of the aggregate maximum delivery capacity of the wells to deliver gas at the delivery point(s)). Transco claims that, subject to certain exception listed in the contract, if it fails to purchase and receive any gas during any year, it must pay to Koch an amount which is the difference between the price for the minimum quantities of gas and the price for the quantities of gas actually purchased and received by Transco.

Transco further states that while it has the right to make up any deficiency payments by receiving, without charge, the quantities of gas it paid for but did not take, that these makeup volumes are not considered to be part of the minimum quantities of gas which Transco is required to buy under the Agreement. Furthermore, Transco's make-up rights terminate under the contract on January 17, 1985. Transco assets that soon after deliveries commenced under the Agreement, Transco began to experience difficulties in taking the full quantities of gas tendered to it by its producers on the High Islands Offshore System (HIOS), the system through which the subject gas is transported. This was principally the result of deliverability rates that were unreasonably disproportionate to prior estimates and historical norms, insufficient capacity in the HIOS pipeline system, and the inability to obtain timely authority from the Commission to expand HIOS' capacity. Koch has allegedly demanded payment from Transco in an amount in excess of $33,000,000.00, for the deficiencies so far. Transco has refused to pay. Transco claims that it may never be able to fully recover these payments. Koch has contested Transco's position, and on August 17, 1982, Koch notified Transco that it intended to submit the take or pay controversy to arbitration pursuant to article VII of the Agreement.

Transco alleges that receipt by Koch of the deficiency amount would violate the NGPA because: (1) Koch would receive payment in excess of the applicable maximum lawful price for those volumes of gas actually delivered due to the inability of Transco to fully recover the claimed deficiency payments and (2) Koch would receive an interest benefit attributable to the deficiency payments made up under the terms of the agreement, which interest would exceed the applicable maximum lawful prices for the gas when delivered. Transco therefore requests the Commission issue and order declaring that Koch's demand for deficiency payments under the gas purchase agreement constitute an unlawful demand for payment of a price in excess of the applicable maximum lawful prices under the NGPA, and that the Commission order Koch to cease and desist from making its demands for such payments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such petitions should be filed within 30 days following publication of this notice in the **Federal Register**. 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. 84-28708 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[2] The well is located in the High Island Area, East Addition, South Extension, Block A-283 F, Gulf of Mexico.

[3] 15 U.S.C. 3301-3432 (1982).

[Docket No. QF84-509-000]

University of San Diego; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 25, 1984.

On September 24, 1984, University of San Diego, (Applicant) located at 5730 Marian Way, Alcala Park, San Diego, California 92101, 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 at Alcala Park, San Diego, California 92101. The facility will consist of three 350 kW natural gas fired engine generator sets, and a waste heat recovery boiler. The low pressure steam will be utilized in the University's steam distribution system for space and water heating and also in the absorption chillers for air conditioning. The electrical power production capacity of the facility will be 1050 kW. The surplus power over the use at the University of San Diego will be sold to San Diego Gas & Electric Company. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

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, NE., 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. 84-28703 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2854-007]

City of Vidalia, LA; Application for Partial Transfer of License and Opportunity To File Competing Applications

October 25, 1984.

Take notice that the City of Vidalia, Louisiana, filed on September 20, 1984, an application under the Federal Power Act, 16 U.S.C. 791(a)-825(r), to transfer its license for the Old River Project No. 2854, to be constructed at the U.S. Army Corps of Engineers Old Control Complex on the Mississippi and Old

Rivers in Concordia Parish, Louisiana.[1] Vidalia proposes to transfer the license to the joint possession of itself and the Catalyst Old River Hydroelectric Limited Partnership (Partnership) as co-licensees.

Vidalis proposes the transfer to enable it to finance development of the project. Under the proposed arrangement, Vidalia will continue to own the site and any other real estate associated with the project, will operate the project, and will ultimately have title to and control over the entire project. The Partership will own all of the new improvements at the site in order to enable its investors to claim tax benefits with respect to those improvements. The Partnership will lease the real estate from Vidalia.

Vidalia is a municipality under the Federal Power Act, while the Partnership is a non-municipal entity. In *City of Fayetteville Public Works Commission*, 16 FERC ¶ 61,209 (1981), the Commission decided that an application filed jointly by a municipality and a non-municipal entity is not eligible for municipal preference under section 7(a) of the Federal Power Act, 16 U.S.C. *§ 800(a)*. Vidalia received its license for Project No. 2854 on January 27, 1982, some four months after the *Fayetteville* decision. In a variety of orders since the *Fayetteville* decision, the Commission has dealt with the problem of possible abuse of municipal preference by closely scrutinizing dealings between municipalities and non-municipalities when approving licenses and transfers of licenses.

By order issued September 14, 1984 (28 FERC ¶ 61,328), the Commission denied a previous request by Vidalia and the Partnership for the transfer of this license.

The denial was premised on the Commission's judgment that to approve the transfer of license from a municipality to a nonmunicipal entity without entertaining competition would conflict with the Commission's policy on abuse of municipal preference. Vidalia employed its municipal status in filing a license application, and the Commission cannot ignore the likelihood that there were other prospective candidates who were prejudiced in that they were dissuaded from filing by the municipality's statutory preference. The Commission stated, however, that it would entertain a new request by the parties if Vidalia would agree to a competitive transfer proceeding. In its September 20, 1984, application, Vidalia has stated its full agreement to voluntarily and unconditionally transfer its license to any transferee selected by the Commission.

Therefore, by this notice, the Commission offers opportunity to compete to qualified license applicants who are interested in receiving the license for Project No. 2854 under the terms and conditions stated in the order issuing license and amendments thereto. Any such applicant shall file—by the end of the comment period set out below—a notice of its intent to compete for the license. No later than ninety days after the close of the comment period, the applicant shall file an application that contains: a clear statement of its willingness to accept this license as now in effect; a showing of its ability to proceed with development of the project in a timely manner; [2] identification of its prospective power purchaser and evidence of that purchaser's interest in the project power; its plans for project financing; and any other information it believes would be helpful in making a decision on this application. In accordance with § 9.2 of the Commission's regulations, 18 CFR 9.2 (1984), the potential transferee shall also set forth in appropriate detail its qualifications to hold the license and to operate the project. Any applications submitted shall be subscribed and verified in accordance with Rule 20005, 18 CFR 385.2005 (1984), and be otherwise in compliance with Subpart T. Vidalia may respond to any such applications within 30 days of the filing of such applications. The Commission emphasizes that it is not entertaining proposals by applicants who seek to become a new partner for Vidalia, but rather those who wish to be designated as a wholly new licensee.

Anyone desiring to be heard otherwise or to make any protests about this application should file a motion to intervene or a protest with the Commission in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. Comments not in the nature of a protest may also be submitted by conforming to the procedures specified for a protest.

In determining the appropriate action to take, the Commission will consider all comments and protests filed; but a person who merely files comments or a protest does not become a party to the proceeding. To become a party or to participate in any hearings or subsequent rehearing of the Commission action, a person must file a motion to intervene in accordance with the Commission's Rules. Any comments, protests, or motions to intervene must be received on or before December 3, 1984. The Commission's address is: 825 N. Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection. A copy of any filing made in response to this notice shall be served on Vidalia (c/o: Sam Randazzo, Mayor, 409 Texas Street, P.O. Box 2010, Vidalia, Louisiana 71372).

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-28606 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

[1] Vidalia was issued a license for Project No. 2854 on January 27, 1982. 18 FERC ¶ 62,083 (1982). That license was amended by order issued March 8, 1983. 22 FERC ¶ 62,296 (1983).

[2] Since the issuance of the license on January 27, 1982, the one extension of time to begin construction permitted under Section 13 of the Act has been granted. Construction must therefore commence by December 31, 1985.

[Docket No. CP85-58-000]

Texas Eastern Transmission Co.; Application

October 29, 1984.

Take notice that on October 25, 1984, Texas Eastern Transmission Corporation (Applicant), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP85-58-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to increase the quantities of natural gas sold and delivered to certain of its Small General Service (SGS) customers pursuant to Applicant's Rate Schedule SGS, FERC Gas Tariff, Fourth Revised Volume No. 1, all as more fully set forth in the appendix hereto and in the application on file with the Commission and open to public inspection.

Applicant proposes to increase maximum daily quantities (MDQ) of gas by a total of 8,000 dt equivalent and to increase annual contract quantities (ACQ) and annual quantity entitlements (AQE) of gas by a total of 2,920,000 dt equivalent presently sold to meet increases in demand for new gas supplies from sixty-eight SGS customers, located in Applicant's Zones A, B and C market area.

Applicant states that it has entered into precedent agreements filed as Exhibit I to its application with expand its firm sales service under Applicant's Rate Schedule SGS. Applicant, also states that the SGS customers have indicated that these increases are necessary to accommodate past and future growth in their respective residential and commercial loads, and in some cases, small industry loads and to

continue adequately to serve their existing and future customers on peak-days without incurring penalities due to contract over-runs. Further, it is indicated that the proposed increases would have no significant impact on Applicant's system capacity or gas supply because the additional aggregate of 8,000 dt per day can be accommodated through Applicant's existing facilities and, in terms of gas supply, the 2,920,000 dt annual increase represents less than 3/10 of 1 percent or all of Applicant's customer's annual entitlements of 1,046 million dt.

Applicant states that the proposed increase in service is needed for the 1984–85 winter season to serve high priority markets on the SGS customers' systems, particularly during peak periods, and would provide immediate and significant savings to SGS customers and their end-users.

In conjunction with the proposed increase in service, Applicant has filed pro-forma tariff sheets (set forth in Exhibit P) consisting of Second Revised Sheet No. 28; Third Revised Sheet No. 29; Third Revised Sheet No. 99; Fourth Revised Sheet No. 100; and Sixth Revised Sheet No. 101 which reflect (1) changes in annual entitlements under its currently effective curtailment plan, and (2) revision of Paragraph 1(b) "Availability" of its Rate Schedule SGS to increase the maximum daily quantity from 5,190 dt to 5,538 dt, and Paragraph 5. "Unauthorized Overrun Gas" to modify over-run levels.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Prosedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Appendix

Customer	MDQ increase (Dthd)	ACQ and AQE increase (Dth)
Zone A:		
Gas Util. Dist., Pt. Coupee	84	30,660
Miss. Gas-Reeves	15	5,475
Miss. Gas-LeBlanc	92	33,580
Morganza, La	39	14,235
New Roads, La	184	67,160
Starks Water & Gas	30	10,950
Subtotal	444	162,060
Zone B:		
Anna, IL	191	69,715
Arkla.-Beebe & Cabot	139	50,735
Arkla.-McCrory	70	25,550
Arkla.-Paragould	348	125,020
Belmont, MS	45	16,425
Bernie, MO	66	24,090
Bude, MS	33	12,045
Cobden, IL	39	14,235
Consumers Gas-Albion	264	96,360
Consumers Gas-Carmi	348	127,020
Consumers Gas-Omaha	83	30,295
Creal Springs, IL	41	14,965
Crossville, IL	56	20,440
Enfield, IL	52	18,980
Flora, MS	69	25,185
Franklin, TN	343	125,195
Fulton, MS	101	36,865
Gloster, MS	41	14,965
Grayville, IL	112	40,880
Harrisburg, AR	111	40,515
Hartsville Gas	105	38,325
Horton Hwy. Util. Dist	91	33,215
Jonesboro, IL	104	37,960
Lafayette, TN	93	33,945
Lawrenceburg, TN	348	127,020
Lebanon, TN	348	127,020
Loretto, TN	22	8,030
Mantachie Nat. Gas Dist	120	43,800
Meadville, MS	23	8,395
Miss. Valley Gas-Ethel	12	4,380
Miss. Valley Gas-McCool	7	2,555
Mt. Carmel Pub. Util.	327	119,355
New Harmony, IN	56	20,440
Norris City, IL	79	28,835
Osage Natural Gas	27	9,855
Pulaski, TN	299	109,135
Red Bay, AL	70	25,550
Smyra, TN	208	75,920
Tamms, IL	71	25,915
Tenn. River Development	19	6,935
Thebes, IL	19	6,935
Utica, MS	40	14,600
Weir, MS	13	4,745
Subtotal	5,053	1,844,345
Zone C:		
Batesville, IN	279	101,835
Columbia, KY	130	47,450
Community Natural Gas	65	23,725
Edmonton, KY	35	12,775
Huntingburg, IN	185	67,525
Ind. Nat. Gas-French Lick	112	40,880
Ind. Nat. Gas-Dub. & Hays	42	15,330
Jasper, IN	329	120,085
Lawrenceburg Gas	124	45,260
Liberty, KY	36	30,295
Midwest Nat. Gas-N. Vernon	271	98,915
Midwest Nat. Gas-B. & M.	114	41,610
Napoleon, IN	11	4,015
Osgood, IN	78	28,470
Oxford Natural Gas	329	120,085
Poseyville, IN	48	17,520
So. Indiana Gas & Elec	131	47,815
Tompkinsville, KY	96	35,040
Westport Natural Gas	41	14,965
Subtotal	2,503	913,595
Grand total	8,000	2,920,000

[FR Doc. 85-28831 Filed 10-30-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-250022D; FRL-2707-2]

Closed System Packaging; Industry Plan for Standardization of Containers and Closures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Voluntary Packaging Standardization Scheme for Liquidation Agricultural Pesticide Formulations.

SUMMARY: The concept of standardized packaging for agricultural pesticides has been advanced as a means of promoting safer handling of these materials. EPA is issuing a revised industry plan for closure standards for containers used for liquid agricultural pesticide formulations. A proposal published previously received generally favorable comments. The revised plan has incorporated certain changes suggested by those responding to the earlier proposal. The Agency believes that this scheme provides a suitable framework for standardizing containers of all liquid agricultural formulations and, therefore, supports this plan as a non-regulatory alternative to an EPA regulation for packaging of pesticides restricted to use in closed mixing and transfer systems. If adequate standardization does not result from this approach, the Agency will develop the regulations necessary to achieve this end.

FOR FURTHER INFORMATION CONTACT: William W. Jacobs, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 225, Crystal Mall #2, 1921 Jefferson

Davis Highway, Arlington, VA. (703)–557–2783).

SUPPLEMENTARY INFORMATION: Under the authority of section 25(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136 et seq.), EPA issued an Advance Notice of Proposed Rulemaking (ANPR) for Closed System Packaging. This notice, which was published in the Federal Register of September 20, 1979 (44 FR 54508), stated that if closed systems are to be effective in minimizing exposure to pesticides during transfer and mixing operations, pesticide packaging must be compatible with mixing equipment. The ANPR stated that EPA was considering issuing a rule to standardize packaging used for pesticides restricted to closed systems. Among other issues, the ANPR asked respondents to address the necessity for regulation in this area, specifically mentioning the possibility of "an effective non-regulatory alternative."

In commenting upon the ANPR, several parties including the National Agricultural Chemicals Association (NACA) had expressed a belief that problems associated with packaging and closed systems could be resolved by the affected industries without regulation. No specific proposals were offered.

EPA then began to study the closed system packaging issue in detail. A questionnaire completed by pesticide user groups and closed system manufacturers indicated that certain containers in common use were generally considered to be easy to use and compatible with closed system equipment. Since compliance costs would be relatively low if the amount of change-over in packaging was limited, these containers formed the basis for a draft rule which the Agency developed for closed system packaging.

In the spring of 1981, the National Agricultural Chemicals Association (NACA) expressed interest in pursuing a voluntary scheme for standardizing packaging of liquid agricultural pesticide formulations. EPA provided NACA with an outline of the standardization scheme that it had developed and the pesticide users' survey on which it was based. NACA then polled its members regarding the desirability and possible content of an industry-based voluntary standard.

On January 11, 1982, NACA submitted to the Agency a proposal for voluntary closure standardization. NACA proposed these standards to promote safer handling of pesticides. The major features of the proposal were: (1) Standardization of pesticide container and closure combinations currently in common use; (2) application of the standards to virtually all liquid agricultural pesticides (EPA's regulation would have applied only to pesticides restricted to use in closed systems); and (3) reliance upon voluntary compliance (as opposed to enforced compliance under a regulation).

NACA's proposal for standardization of container and closure combinations was published in the Federal Register of September 8, 1982 (47 FR 39538). In issuing this notice, EPA asked for public comments on the plan. Comments were received from 15 parties. The voluntary approach was favored by 12 of 13 respondents expressing opinions which could be classified as "pro" or "con." Nine of these twelve suggested slight modifications in the proposal. The one party opposing the plan favored mandatory standardization.

Both NACA and EPA reviewed these comments. NACA's Good Environmental and Operating Practices (GEOP) Committee modified the proposal to accommodate certain of the suggested changes. After polling its membership again, NACA submitted its "final recommendations for the Industry Voluntary Container Closure Standards for Agricultural Chemicals." This submission (published below) includes explanations for changes made and not made by NACA in response to public comments.

EPA believes that the voluntary standardization scheme proposed by NACA should be adopted immediately by the agricultural pesticide industry. Most respondents to the initial proposal strongly favored the voluntary approach and all appeared to favor standardization. A standard which applies to all liquid formulations has great potential for improving the safety and efficiency of pesticide transfer. EPA's research has indicated that hand-pouring is still the most commonly used method of loading liquid agricultural pesticides. By eliminating the smallest diameter openings from the assortment of smaller containers used, the proposed standard reduces a major source of frustration and potential hazard to persons pouring pesticides.

EPA's research also identified closure variety as the chief problem facing those attempting to use and develop closed mixing and transfer systems. This variety has led to the use of "compromise" designs and to frustration with the closed system concept. By providing thread and diameter specifications, the proposed standard gives closed system designers a finite number of fixed targets toward which to work.

The Agency does not believe that all of the closures now available which are consistent with NACA's specifications provide for the optimum degree of sealing that is possible. EPA believes, however, that improved closure/system linkage is possible within the context of these specifications. The specifications should not, in most instances, inhibit innovation which provides for tighter connections. The allowance for built-in probes or other closed-system oriented mechanisms provides room for such improvements.

The text of the NACA transmittal letter and the voluntary standardization plan follow:

NACA is pleased to submit its final recommendations for the Industry Voluntary Container Closure Standards for Agricultural Chemicals. These recommendations have been modified slightly from the proposed recommendations submitted to you on January 11, 1982. The basis for these modifications is a result of comments received from the EPA Federal Register publication (47 FR 39358, dated September 8, 1982).

NACA is pleased that EPA has afforded industry this opportunity and we will endeavor to promote the objectives of the closure standardization recommendations among NACA member companies, container manufacturers, closed system manufacturers and applicators. To assist in the widest possible dissemination of the recommendations, we would like to request that EPA provide for their publication in the Federal Register.

Attachment A presents the NACA recommended Voluntary Container Closure Standards as revised according to comments received in response to the EPA Federal Register notice. Attachment B identifies what specific revisions were made to the proposed recommendations and what comments were received but not included for reasons explained.

Attachment A—NACA Voluntary Industry Standard for Closure for Plastic and Steel Agricultural Chemical Containers

CLOSURES

Container and Material	A	B	C	D	E	F	G	H
55-gallon tighthead drum:								
Steel	X	X						X
PE Lined Steel	X	X	X					X
Plastic	X	X	X					X
30-gallon tighthead drum:								
Steel	X	X						X
PE Lined Steel	X	X	X					X
Plastic	X	X	X					X
5-gallon tighthead pail:								
Steel	X			X				X
Plastic				X	X			X
2, 2½-gallon tighthead pail/jug:								
Steel	X			X				X
Plastic				X	X			X
1-gallon tighthead pail/jug:								
Steel	X			X				X
Plastic				X	X			X

CLOSURES—Continued

Container and Material	A	B	C	D	E	F	G	H
1-gallon Rectangular can: Steel.						X	X	X

Closure Definitions

A. 2" (50mm) bung, external threading, 11½ threads/inch NPT standard.

B. ¾" (19mm) bung, external threading, 14 threads/inch NPT standard.

C. 2" (50mm) bung, external threading, 5 threads/inch (buttress/acid thread).

D. 38mm screw cap (at least one thread revolution at six threads/inch). Cap to fit on separate rigid spout or on flexible pull-out plastic spout designed to crimp-on container with 63mm orifice.

E. 63mm screw cap (at least one thread revolution at 6 threads/inch).

F. 1¼" (32mm) screw nozzle, 6 threads/inch.

G. 1¾" (44mm) screw nozzle, 6 threads/inch.

H. Built-in probe or other closed emptying systems which fit one of the other recommended closure openings.

Attachment B—NACA Voluntary Industry Standard for Closures, Plastic and Steel Agricultural Chemical Containers

A. Specific revisions made in response to public comment received to EPA **Federal Register** publication:

1. Closure B, a ¾" bung, has been added to both the 30- and 55-gallon plastic drums.

2. The types of material to be used in making a cap or nozzle have been deleted since the standards are only intended to specify closure size, not material of construction. Eliminated are the words "plastic" preceding screw cap on Closures D and E, and the words "solder type" preceding screw nozzle on Closures F and G.

3. The manufacturers of flexible pullout spout specified under Closure D have been eliminated since there are multiple manufacturers all making the same type of spout.

4. The phrase "* * * or other closed emptying systems * * *" is added to Closure H to provide for options other than built-in probes.

B. Specific comments received and reasoning for *not* including in revised standard:

1. "Add 70mm closure for 5-gallon plastic tighthead pail."

This was recommended by the plastic pail manufacturers as being a common closure used in the chemical industry but *not* in the agrichemical industry. No NACA member suggested that this be included since it is *not* a common pesticide container.

2. "Add 48mm closure for 1-gallon plastic jugs."

3. "Add 45mm closure for 1-gallon plastic jugs."

These were submitted by only one manufacturer for each size respectively. Since the intent of the closure standards is to standardize on commonly used closures, it was felt that including closures used by only a few manufacturers would defeat the intent of the standards. It is recognized that some manufacturers could incur some expense in converting to the commonly used closures. For this reason, the standards are voluntary and compliance, at the option of the manufacturer, could occur over several years.

Although the plan lists alternative closures for all container types, EPA anticipates that certain sizes from this list of possible closures will become prevalent. Thus, the apparent amount of closure variety retained in this list is probably greater than the actual amount that would be found several years after a complete adoption of the proposed standards.

Since the standards are voluntary, there is a danger that they would not be adopted universally. Less than full compliance could, depending upon its scope, result in continued use of a large variety of oddly sized closures and containers.

This situation would not be likely to produce safer handling of pesticides. EPA is, therefore, developing a monitoring strategy to assess the degree of compliance achieved and the success of the program in achieving safer mixing and loading of agricultural pesticides. If, by December 31, 1988, the Agency discovers that the voluntary standardization scheme is not being adopted, it may determine that regulation under section 25(c)(3) of FIFRA is necessary.

Dated: October 24, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-28672 Filed 10-30-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-211014; FRL 2684-8]

Investigation and Rulemaking Action Concerning Southeast Chicago; Denial of Citizens' Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Denial of citizens' petition.

SUMMARY: This notice announces the response of the Administrator of the Environmental Protection Agency (EPA or the Agency) to a citizens' petition filed under section 21 of the Toxic Substances Control Act (TSCA). Two groups, Citizens for a Better Environment and Irondalers Against the Chemical Threat, have petitioned EPA to initiate an investigation and rulemaking under TSCA to remedy alleged unreasonable risk of injury to health and the environment in Southeast Chicago. While EPA shares the petitioners' concerns, the Agency is denying the petition, because other authorities administered by the Agency can adequately address the problems raised by the petitioners.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Officer (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll-free: (800-424-9065). In Washington, D.C.: (544-1404). Outside the USA: (Operator-202-554-1404).

In EPA Region V, contact: Mitchell J. Wrich, Chief, Toxic Materials Branch (5HT-16), Environmental Services Division, U.S. Environmental Protection Agency, Rm. 1680, 230 South Dearborn St., Chicago, Illinois 60604, (312) 353-2192.

ADDRESS: A copy of the petition and all related information, under docket number OPTS-211014, is located in: Rm. E-107, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

This material is available for viewing and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The record is also available in Rm. 1680 at the EPA Region V office at the address given above.

SUPPLEMENTARY INFORMATION:

I. Background

Section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620 (a) and (b), provides that any person may petition the Administrator of EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under various sections of the Act. The administrator may hold a public hearing or may conduct such investigation or preceeding as he deems appropriate in order to determine whether or not the petition should be granted. If the Administrator grants the petition, the Agency must promptly commence an appropriate proceeding. If the Administrator denies the petition, the reasons for denial must be published in

the Federal Register. The petitioner may commence a civil action in a district court of the United States to compel the Administrator to initiate a rulemaking proceeding as requested in the petition. Any such civil action shall be filed within 60 days after the Administrator's denial of the petition or, if the Administrator fails to grant or deny the petition within 90 days after the petition is filed, within 60 days following expiration of the 90-day response period.

On July 17, 1984, EPA received a document entitled "Citizens' Petition for an Investigation and Rulemaking Action," submitted pursuant to section 21 of TSCA by Robert Ginsburg, Ph.D. (representing Citizens for a Better Environment) and Mary Ellen Montes (representing Irondalers Against the Chemical Threat). The petition presented three specific requests:

1. The petitioners requested that the Administrator issue a rule to remedy the unreasonable risk of injury to health and the environment in the Southeast portion of the City of Chicago—specifically the area bounded on the north by 95th Street, on the east by the Illinois/Indiana border, on the south by Sibley Boulevard and the west by Halsted Street ("Southeast Chicago"). The petitioners specified that the rule should be issued under section 4(f)(2) or/and section 6(a) of TSCA, "to eliminate or reduce the disposal and emission of numerous toxic substances into the air, land, and water of Southeast Chicago from multiple sources * * *."

2. The petitioners requested that the Administrator, prior to issuing a rule, "conduct a full field investigation" pursuant to section 21(b)(2) of TSCA. According to the petition, that investigation, in conjunction with the information provided with the petition, would be performed to determine the immediate and cumulative health and environmental effects of multiple toxic substances from multiple sources through the air, land, and water. The investigation would also further identify the nature and sources of the toxic substances to which the public is exposed in the Southeast Chicago area.

3. The petitioners also requested that the Administrator "use the full field investigation and rulemaking to assess and remedy the overall impact on public health and safety from the combined effects of exposure to the different pollutants." The petitioners specifically requested that the Administrator take action under the authorities of TSCA to remedy the exposure to toxic substances in the area and to coordinate actions under other statutes. In support of their request, the petitioners stated:

> A piecemeal enforcement policy based on individual pollutants misses the cumulative significance of the public health threat from the staggering number of environment contaminants. Furthermore, piecemeal enforcement and regulatory actions taken under other Federal statutes such as the Clean Air Act (CAA) (42 U.S.C. 7401, *et seq.*), the Clean Water Act (CWA) (33 U.S.C. 1251, *et seq.*), and the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*) can not eliminate or reduce to a sufficient extent the cumulative and chronic effect of public exposure to multiple toxic substances. Furthermore, each law taken alone is insufficient to evaluate public exposure to toxic pollution from several media (i.e., air, land and water) nor are they used to evaluate the contribution to pollution of one media from another (e.g., the contribution of water pollution and wastewater treatment to air pollution or the disposal of hazardous wastes in sewers on water pollution).

The petitioners requested full participation in decisions made concerning any studies performed relevant to the petition or rulemakings which relate to the petition.

In support of their allegation of unreasonable risk to health and the environment, the petitioners submitted as an appendix to the petition an April 1984 draft report of the Illinois Environmental Protection Agency (IEPA), entitled "The Southeast Chicago Study: An Assessment of Environmental Pollution and Public Health Impacts." The Southeast Chicago Study was conducted by IEPA at the request of one of the petitioners, Irondalers Against the Chemical Threat. The report is currently being amended by IEPA, following comments received at a public meeting held in Chicago on September 20, 1984, to discuss the study's findings and recommendations. The petitioners stated that although they have strong disagreements with the data analysis and conclusions contained in the Southeast Chicago Study, they included the draft report as an appendix to the petition to simplify data presentation.

II. The Administrator's Decision

EPA is denying this petition under section 21 of TSCA for the following reasons.

The petitioners requested that EPA issue a rule under section 6(a) of TSCA, to protect public health and the environment adequately against unreasonable risks posed by toxic chemicals in the Southeast Chicago area. The petitioners claimed that "any actions taken solely under other environmental statutes would not be sufficient to eliminate or reduce to a sufficient extent the exposure to such chemicals or mixtures and consequently to the risk of injury to health and the environment." The Agency believes that the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act can adequately address the issues raised by the petition and that these other acts are more appropriate than TSCA to address the majority of the environmental pollution problems caused by toxic chemicals in the Southeast Chicago area. In fact, Congress specifically directed EPA, in section 9 of TSCA, to use other statutes instead of TSCA if they could be used to eliminate or sufficiently reduce unreasonable risk. In this case, TSCA does not appear to be a more effective remedy than the other available statutes. As indicated in the administrative record of this proceeding, the Agency will continue to use the most appropriate environmental statutes to minimize health and environmental risks from toxic chemicals. Such risks are not unique to the Southeast Chicago area and are most effectively minimized through the well-coordinated use of the multiple statutory authorities granted to EPA by Congress.

The petitioners requested that EPA issue a rule under section 4(f)(2) of TSCA, based on their assertion that the petition contains sufficient information to provide a reasonable basis to conclude that a chemical substance or mixture presents or will present a "significant risk of serious or widespread harm" from cancer, gene mutations, or birth defects in the Southeast Chicago area. Section 4(f)(2) of TSCA is not subject to petition under section 21 since the former provides no direct authority for issuing, amending, or repealing of a rule.

Regardless of the applicability of section 21, EPA believes that, because the Agency is taking a number of actions to deal with the problems in Southeast Chicago, it is not necessary to invoke the priority-setting mechanisms of section 4(f). However, EPA did conduct a review of the information provided by the petitioners in the context of the criteria contained in section 4(f) and has concluded that the information submitted would not trigger the section 4(f) mechanisms. As indicated in the administrative record, the evidence presented in the IDPH study is not adequate to provide a meaningful assessment of the association between cancer incidence and environmental hazards in Southeast Chicago. Also, the evidence presented by the petitioners on

the individual chemicals of benzene, cadmium, chromium, nickel, and arsenic does not appear to trigger section 4(f). In order for section 4(f) to be triggered, EPA must consider evidence on both toxicity and magnitude of human exposure. All these chemicals have been characterized as suspect carcinogens for a number of years, and no new evidence is presented in the Southeast Chicago petition to increase concern over their potential carcinogenicity. In addition, the current evidence on the magnitude of exposure to those chemicals in Southeast Chicago indicates potential health risks smaller than what the Agency has previously considered sufficient for initiating section 4(f) review. To date, section 4(f) reviews have been considered to be justified for 4,4'-methylenedianaline (48 FR 19078, April 27, 1983), 1,3-butadiene (49 FR 845, January 5, 1984), and formaldehyde in certain exposure situations (49 FR 21870, May 23, 1984).

Finally, the petitioners requested that EPA conduct a full field investigation under section 21(b)(2) of TSCA, prior to issuing a rule under section 4(f) or/and section 6(a). Under section 21(b)(2), "[t]he Administrator may hold a public hearing or may conduct such investigation or proceeding as the Administrator deems appropriate in order to determine whether or not [the] petition should be granted." Since EPA has decided not to grant this petition, a public hearing in accordance with section 21(b)2) will not be held. The purpose of the petitioners' request, however, will be served by the various environmental investigations EPA is undertaking, as indicated in the administrative record.

(15 U.S.C. 2620)

Dated: October 23, 1984.

Alvin L. Alm,

Acting Administrator.

[Fr Doc. 84-28670 Filed 10-30-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240051; FRL-2706-8]

State Registration of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from 22 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Sandra English, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. Office location and telephone number: Rm. 718, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2126).

SUPPLEMENTARY INFORMATION: Most of the registrations listed below were received by the EPA in March 1984. Receipts of State registrations will be published periodically. Except as indicated by (CUP) in 33 registrations listed below, there is no change in use pattern in any of these registrations.

California

EPA SLN No. CA 84 0007. Mobay Chem. Corp. Registration is for Sencor DF 75% Dry Flowable to be used on fall fallow fields to be planted with corn to control common chickweed, London rocket, shepherdspurse, wild mustard, fiddleneck, and malva. March 13, 1984.

EPA SLN No. CA 84 0008. Riverside County Agriculture Dept. Registration is for Lorsban 4E to be used on citrus to control wooly whiteflies. February 28, 1984.

EPA SLN No. CA 84 0009. Lassen County Dept. of Agriculture. Registration is for Pocket Gopher Bait Strychnine Treated Grain (2.63%) to be used on burrows and fields to control pocket gophers. March 1, 1984.

EPA SLN No. CA 84 0016. Riverside County Agricultural Commissioner. Registration is for house finch (linnet) bait to be used on cropland to control house finch (linnet). March 9, 1984.

EPA SLN No. CA 84 0017. Riverside County Agricultural Commissioner. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 9, 1984.

EPA SLN No. CA 84 0018. Riverside County Agricultural Commissioner. Registration is for sparrow bait to be used on cropland and structures to control house sparrows and white-crowned sparrows. March 9, 1984.

EPA SLN No. CA 84 0019. Riverside County Agricultural Commissioner. Registration is for kangaroo rat bait to be used on rangeland, pasture, and cropland to control kangaroo rats. March 9, 1984.

EPA SLN No. CA 84 0020. Riverside County Agricultural Commissioner. Registration is for horned lark bait to be used on cropland to control horned larks. March 9, 1984.

EPA SLN No. CA 84 0021. Riverside County Agricultural Commissioner. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens (manure piles) to control blackbirds and cowbirds. March 9, 1984.

EPA SLN No. CA 84 0022. Riverside County Agricultural Commissioner. Registration is for jackrabbit bait to be used on rangeland, pasture, and cropland to control jackrabbits. March 9, 1984.

EPA SLN No. CA 84 0023. Riverside County Agricultural Commissioner. Registration is for kangaroo rat bait to be used on rangeland, pasture, and cropland to control kangaroo rats. March 9, 1984.

EPA SLN No. CA 84 0024. Yolo County Dept. of Agriculture. Registration is for marmot and squirrel bait to be used on nonagricultural areas to control marmots and woodchucks. March 9, 1984.

EPA SLN No. CA 84 0025. Yolo County Dept. of Agriculture. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 9, 1984.

EPA SLN No. CA 84 0026. Yolo County Dept. of Agriculture. Registration is for house finch (linnet) bait to be used on cropland to control house finches (linnet). March 9, 1984.

EPA SLN No. CA 84 0027. Yolo County Dept. of Agriculture. Registration is for blackbird and cowbird bait to be used on alleyways and adjacent fences, feed bunkers, and in pens (manure piles) to control blackbirds and cowbirds. March 9, 1984.

EPA SLN No. CA 84 0028. Yolo County Dept. of Agriculture. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 9, 1984.

EPA SLN No. CA 84 0029. Yolo County Dept. of Agriculture. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 9, 1984.

EPA SLN No. CA 84 0030. Yolo County Dept. of Agriculture. Registration is for horned lark bait to be used on cropland to control horned larks. March 9, 1984.

EPA SLN No. CA 84 0031. Mendocino County Dept. of Agriculture. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 9, 1984.

EPA SLN No. CA 84 0032. Mendocino County Dept. of Agriculture. Registration is for house finch (linnet) bait to be used on cropland to control house finches. March 9, 1984.

EPA SLN No. CA 84 0033. Mendocino County Dept. of Agriculture. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control jackrabbits. March 9, 1984.

EPA SLN No. CA 84 0034. Mendocino County Dept. of Agriculture. Registration is for pocket gopher bait strychnine-treated grain to be used on main runways to control pocket gophers. (CUP). March 9, 1984.

EPA SLN No. CA 84 0035. Mendocino County Dept. of Agriculture. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens (manure piles) to control blackbirds. March 9, 1984.

EPA SLN No. CA 84 0036. Mendocino County Dept. of Agriculture. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 9, 1984.

EPA SLN No. CA 84 0043. Santa Clara Agricultural Commissioner. Registration is for house finch (linnet) bait to be used on cropland to control house finches (linnets). March 12, 1984.

EPA SLN No. CA 84 0044. Santa Clara Agricultural Commissioner. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 12, 1984.

EPA SLN No. CA 84 0045. Santa Cruz County Agricultural Commissioner. Registration is for house finch (linnet) bait to be used on cropland to control house finches (linnets). March 12, 1984.

EPA SLN No. CA 84 0061. Fresno County Dept. Of Agriculture. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens (manure piles) to control blackbirds and cowbirds. March 13, 1984.

EPA SLN No. CA 84 0062. Fresno County Dept. Of Agriculture. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 13, 1984.

EPA SLN No. CA 84 0063. El Dorado County Dept. of Agriculture. Registration is for house finch (linnet) bait to be used on cropland to control house finches. March 15, 1984.

EPA SLN No. CA 84 0064. El Dorado County Dept. of Agriculture. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 15, 1984.

EPA SLN No. CA 84 0065. El Dorado County Dept. of Agriculture. Registration is for ground squirrel bait to be used on rangeland, pastures, croplands, and nonagricultural areas (around airports only) to control ground squirrels. March 15, 1984.

EPA SLN No. CA 84 0066. El Dorado County Dept. of Agriculture. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 15, 1984.

EPA SLN No. CA 84 0067. County of Alameda Dept. of Agriculture. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 14, 1984.

EPA SLN No. CA 84 0068. County of Alameda Dept. of Agriculture. Registration is for house finch (linnet) bait to be used on cropland to control house finches. March 14, 1984.

EPA SLN No. CA 84 0069. Napa County Agricultural Commissioner. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 16, 1984.

EPA SLN No. CA 84 0070. Napa County Agricultural Commissioner. Registration is for house finch (linnet) bait to be used on cropland to control house finches (linnets). March 16, 1984.

EPA SLN No. CA 84 0071. Napa County Agricultural Commissioner. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 16, 1984.

EPA SLN No. CA 84 0072. Napa County Agricultural Commissioner. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 16, 1984.

EPA SLN No. CA 84 0073. Napa County Agricultural Commissioner. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 16, 1984.

EPA SLN No. CA 84 0074. Modoc County Dept. of Agriculture. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 16, 1984.

EPA SLN No. CA 84 0075. Modoc County Dept. of Agriculture. Registration is for marmot and squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control marmots and squirrels. March 16, 1984.

EPA SLN No. CA 84 0076. Modoc County Dept. of Agriculture. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 16, 1984.

EPA SLN No. CA 84 0077. Modoc County Dept. of Agriculture. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 16, 1984.

EPA SLN No. CA 84 0078. Modoc County Dept. of Agriculture. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens (manure piles) to control blackbirds and cowbirds. March 16, 1984.

EPA SLN No. CA 84 0079. Tulare County Agricultural Commissioner. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 13, 1984.

EPA SLN No. CA 84 0080. Ventura County Dept. of Agriculture. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 16, 1984.

EPA SLN No. CA 84 0081. Ventura County Dept. of Agriculture. Registration is for horned lark bait to be used on cropland to control horned larks. March 16, 1984.

EPA SLN No. CA 84 0082. Ventura County Dept. of Agriculture. Registration is for house finch (linnet) bait to be used on cropland to control house finches (linnets). March 16, 1984.

EPA SLN No. CA 84 0083. Ventura County Dept. of Agriculture. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 16, 1984.

EPA SLN No. CA 84 0084. Ventura County Dept. of Agriculture. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens (manure piles) to control blackbird and cowbird bait. March 16, 1984.

EPA SLN No. CA 84 0085. Ventura County Dept. of Agriculture. Registration is for jack rabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 16, 1984.

EPA SLN No. CA 84 0086. Placer County Dept. of Agriculture. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 16, 1984.

EPA SLN No. CA 84 0087. Placer County Dept. of Agriculture. Registration is for house finch (linnet bait) to be used on cropland to control house finches (linnets). March 16, 1984.

EPA SLN No. CA 84 0088. Placer County Dept. of Agriculture. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens (manure piles) to control black birds and cowbirds. March 16, 1984.

EPA SLN No. CA 84 0089. Placer County Dept. of Agriculture. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 16, 1984.

EPA SLN No. CA 84 0090. San Joaquin County Agricultural Commissioner. Registration is for horned lark bait to be used on cropland to control horned larks. March 14, 1984.

EPA SLN No. CA 84 0091. San Joaquin County Agricultural Commissioner. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 14, 1984.

EPA SLN No. CA 84 0092. San Joaquin County Agricultural Commissioner. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 14, 1984.

EPA SLN No. CA 84 0093. San Joaquin County Agricultural Commissioner. Registration is for house finch (linnet) bait to be used on cropland to control house finches. March 14, 1984.

EPA SLN No. CA 84 0094. San Joaquin County Agricultural Commissioner. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 14, 1984.

EPA SLN No. CA 84 0095. Sonoma County Agricultural Commissioner. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 16, 1984.

EPA SLN No. CA 84 0096. Sonoma County Agricultural Commissioner. Registration is for house finch (linnet) bait to be used on cropland to control house finches (linnets). March 16, 1984.

EPA SLN No. CA 84 0097. Sonoma County Agricultural Commissioner. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 16, 1984.

EPA SLN No. CA 84 0098. Sonoma County Agricultural Commissioner. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 16, 1984.

EPA SLN No. CA 84 0099. Sonoma County Agricultural Commissioner. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens (manure piles) to control blackbirds and cowbirds. March 16, 1984.

EPA SLN No. CA 84 0106. County of San Luis Obispo Dept. of Agriculture. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens (manure piles) to control blackbirds and cowbirds. March 13, 1984.

EPA SLN No. CA 84 0107. County of San Luis Obispo Dept. of Agriculture. Registration is for horned lark bait to be used on cropland to control horned larks. March 13, 1984.

EPA SLN No. CA 84 0108. County of San Luis Obispo Dept. of Agriculture. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 13, 1984.

EPA SLN No. CA 84 0109. County of San Luis Obispo Dept. of Agriculture. Registration is for kangaroo rat bait to be used on rangeland, pasture, and cropland to control kangaroo rats. March 13, 1984

EPA SLN No. CA 84 0110. County of San Luis Obispo Dept. of Agriculture. Registration is for house finch (linnet) bait to be used on cropland to control house finches (linnets). March 13, 1984.

EPA SLN No. CA 84 0111. Los Angeles County Agricultural Commissioner. Registration is for kangaroo rat bait to be used on rangeland, pasture, and cropland to control kangaroo rats. March 13, 1984.

EPA SLN No. CA 84 0112. Los Angeles County Agricultural Commissioner. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 13, 1984.

EPA SLN No. CA 84 0113. Los Angeles County Agricultural Commissioner. Registration is for house finch (linnet) bait to be used on cropland to control house finches (linnets). March 13, 1984.

EPA SLN No. CA 84 0114. Los Angeles County Agricultural Commissioner. Registration is for horned lark bait to be used on cropland to control horned larks. March 13, 1984.

EPA SLN No. CA 84 0115. Los Angeles County Agricultural Commissioner. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 13, 1984.

EPA SLN No. CA 84 0116. Los Angeles County Agricultural Commissioner. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 13, 1984.

EPA SLN No. CA 84 0118. Fresno County Dept. of Agriculture. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 13, 1984.

EPA SLN No. CA 84 0119. Fresno County Dept. of Agriculture. Registration is for house finch (linnet) bait to be used on cropland to control house finches (linnets). March 13, 1984.

EPA SLN No. CA 84 0120. Stanislaus County Dept. of Agriculture. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 13, 1984.

EPA SLN No. CA 84 0121. Stanislaus County Dept. of Agriculture. Registration is for house finch (linnet) bait to be used on cropland to control house finches (linnets).

EPA SLN No. CA 84 0122. Lassen County Dept. of Agriculture. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 13, 1984.

EPA SLN No. CA 0123. Lassen County Dept. of Agriculture. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 13, 1984.

EPA SLN No. CA 0124. Lassen County Dept. of Agriculture. Registration is for marmot and squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control Oregon or Belding ground squirrels. March 13, 1984.

EPA SLN No. CA 84 0125. Monterey County Agricultural Commissioner. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens (manure piles) to control blackbirds and cowbirds. March 14, 1984.

EPA SLN No. CA 84 0126. Monterey County Agricultural Commissioner. Registration is for house finch (linnet) bait to be used on cropland to control house finches (linnets). March 14, 1984.

EPA SLN No. CA 84 0127. Monterey County Agricultural Commissioner. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 14, 1984.

EPA SLN No. CA 84 0128. Monterey County Agricultural Commissioner. Registration is for horned lark bait to be used on cropland to control horned larks. March 14, 1984.

EPA SLN No. CA 84 0129. Merced County Agricultural Commissioner. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 14, 1984.

EPA SLN No. CA 84 0130. Merced County Agricultural Commissioner. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 14, 1984.

EPA SLN No. CA 84 0131. Merced County Agricultural Commissioner. Registration is for horned lark bait to be used on cropland to control horned larks. March 14, 1984.

EPA SLN No. CA 84 0132. Merced County Agricultural Commissioner. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 14, 1984.

EPA SLN No. CA 84 0133. Merced County Agricultural Commissioner. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens (manure piles) to control blackbirds and cowbirds. March 14, 1984.

EPA SLN No. CA 84 0134. Merced County Agricultural Commissioner. Registration is for house finch (linnet) bait to be used on cropland to control house finches (linnets). March 14, 1984.

EPA SLN No. CA 84 0135. Calaveras County Dept. of Agriculture Government Center. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 14, 1984.

EPA SLN No. CA 84 0136. Calaveras County Dept. of Agriculture Government Center. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 14, 1984.

EPA SLN No. CA 84 0137. Kings County Agricultural Commissioner. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 14, 1984.

EPA SLN No. CA 84 0138. Kings County Agricultural Commissioner. Registration is for house finch (linnet) bait to be used on cropland to control house finches. March 14, 1984.

EPA SLN No. CA 84 0139. Kings County Agricultural Commissioner. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens to control blackbirds and cowbirds. March 14, 1984.

EPA SLN No. CA 84 0140. Kings County Agricultural Commissioner. Registration is for horned lark bait to be used on cropland to control horned larks.

EPA SLN No. CA 84 0141. Kings County Agricultural Commissioner. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 14, 1984.

EPA SLN No. CA 84 0142. Tehama County Dept. of Agriculture. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 14, 1984.

EPA SLN No. CA 84 0143. Riverside County Agricultural Commissioner. Registration is for rodent bait diphacinone-treated grain (0.005%) to be used on corners, runways, and burrows and along walls to control Norway rats, house mice, ground squirrels, golden-mantled ground squirrels, and muskrats. March 14, 1984.

EPA SLN No. CA 84 0144. San Diego County Agricultural Commissioner. Registration is for house finch (linnet) bait to be used on cropland to control house finches. March 14, 1984.

EPA SLN No. CA 84 0145. San Diego County Agricultural Commissioner. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 14, 1984.

EPA SLN No. CA 84 0146. San Diego County Agricultural Commissioner. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens to control blackbirds and cowbirds. March 14, 1984.

EPA SLN No. CA 84 0147. San Diego County Agricultural Commissioner. Registration is for horned lark bait to be used on cropland to control horned larks. March 14, 1984.

EPA SLN No. CA 84 0148. San Diego County Agricultural Commissioner. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 14, 1984.

EPA SLN No. CA 84 0149. San Diego County Agriculture Commissioner. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas. March 14, 1984.

EPA SLN No. CA 84 0150. San Bernardino County Dept. of Agriculture. Registration is for sparrow bait to be used on cropland and structures to control house sparrows, white-crowned sparrows, and golden-crowned sparrows. March 14, 1984.

EPA SLN No. CA 84 0151. San Bernardino County Dept. of Agriculture. Registration is for blackbird and cowbird bait to be used on alleyways adjacent to fences, feed bunkers, and in pens to control blackbirds and cowbirds. March 14, 1984.

EPA SLN No. CA 84 0152. San Bernardino County Dept. of Agriculture. Registration is for ground squirrel bait to be used on rangeland, pasture, cropland, and nonagricultural areas to control ground squirrels. March 14, 1984.

EPA SLN No. CA 84 0153. San Bernardino County Dept. of Agriculture. Registration is for kangaroo rat bait to be used on rangeland, pasture, and cropland to control kangaroo rats. March 14, 1984.

EPA SLN No. CA 84 0154. San Bernardino County Dept. of Agriculture. Registration is for horned lark bait to be used on cropland to control horned larks. March 14, 1984.

EPA SLN No. CA 84 0155. San Bernardino County Dept. of Agriculture. Registration is for house finch (linnet) bait to be used on cropland to control house finches. March 14, 1984.

EPA SLN No. CA 84 0156. San Bernardino County Dept. of Agriculture. Registration is for jackrabbit bait to be used on rangeland, pasture, cropland, and nonagricultural areas (around airports only) to control jackrabbits. March 14, 1984.

Florida

EPA SLN No. FL 84 0003. American Hoechst Corp. Registration is for Hoelon 3EC Herbicide to be used on wheat to control annual ryegrass. March 2, 1984.

EPA SLN No. FL 84 0004. Dow Chemical U.S.A. Registration is for Lorsban 15G Granular Insecticide to be used on peanuts to control cutworms, lesser cornstalk borers, and southern corn rootworm larvae and to suppress white mold. March 16, 1984.

EPA SLN No. FL 84 0005. Chevron Chem. Co. Registration is for Difolatoan 80 Sprills to be used on citrus to control greasy spot and foot rot. (CUP) March 16, 1984.

EPA SLN No. FL 84 0006. Chevron Chem. Co. Registration is for Difolatan 80 Sprills to be used on citrus to control greasy spot. (CUP) March 16, 1984.

Hawaii

EPA SLN No. HI 84 0001. Merch & Co., Inc. Registration is for Agri-Strep Type D to be used on anthuriums to control bacterial blight *(Xanthomonas campestris).* (CUP) March 13, 1984.

EPA SLN No. HI 84 0004. Union Carbide Agricultural Products Co. Registration is for Ethrel Pineapple with Regulator to be used on macadamia nuts as a growth regulator and for harvest aid. (CUP) March 19, 1984.

Idaho

EPA SLN No. ID 84 0003. Platte Chemical Co. Registration is for Clean Crop Dinitro 3 Herbicide to be used on lentils to control broadleaf weeds. March 15, 1984.

EPA SLN No. ID 84 0004. J.R. Simplot Co. Registration is for Metam to be used as a preemergence treatment to soil for Irish potatoes to control nematodes and *verticilliam dahliae.* (CUP) March 30, 1984.

EPA SLN No. ID 84 0005. USDA Forest Service. Registration is for MCH–#10 CRF to be used on wind-felled Douglas fir trees to control infestation of wind-felled Douglas fir beetles. March 27, 1984.

Louisiana

EPA SLN No. LA 84 0004. Drexel Chem. Co. Registration is for Drexel Ancrack to be used on soybeans and peanuts to control seedling grasses and weeds. (CUP) March 8, 1984.

EPA SLN No. LA 84 0005. Ciba-Geigy Corp. Registration is for Cotoran 80W to be used postemergence on cotton to control broadleaf weeds. (CUP) March 19, 1984.

EPA SLN No. LA 84 0006. Dow Chemical Co. Registration is for Dowpon M Grass Killer to be used on sugarcane to control Bermudagrass, Johnsongrass, and itchgrass (Royalgrass). (CUP) March 22, 1984.

EPA SLN No. LA 84 0007. Monsanto Co. Registration is for Roundup Herbicide to be used on annual crops using aerial application to control rhizome and Johnsongrass. (CUP) March 22, 1984.

Maine

EPA SLN No. ME 84 0001. FMC Corp. Registration is for Funginex 1.6 EC to be used on low bush blueberries to control mummyberry disease. (CUP) March 9, 1984.

Massachusetts

EPA SLN No. MA 84 0001. Union Carbide Agricultural Products Co., Inc. Registration is for Temik 15G Aldicarb pesticide to be used on potatoes to control Colorado potato leafhoppers and aphids. March 8, 1984.

Michigan

EPA SLN No. MI 84 0001. Degesch America, Inc. Registration is for Degesch Magtoxin Pellet Prepac to be used on bins, silos, holding tanks, food and feed processing equipment, conveyers, and related equipment to control confused flour beetles and red flour beetles. March 26, 1984.

EPA SLN No. MI 84 0002. Dow Chemical USA. Registration is for Lorsban 4E Insecticide to be used on grapes to control climbing cutworms. March 26, 1984.

Minnesota

EPA SLN No. MN 84 0001. E.I. du Pont de Nemours & Co. Registration is for Du Pont Lorox Weed Killer to be used on asparagus for preemergence and postemergence weed control. (CUP) March 14, 1984.

EPA SLN No. MN 84 0002. E.I. du Pont de Nemours & Co. Registration is for Du Pont Lorox L Weed Killer to be used on direct-seeded newly planted and established asparagus for preemergence and postemergence weed control. (CUP) March 15, 1984.

Mississippi

EPA SLN No. MS 84 0003. Ciba-Geigy Corp. Registration is for Aatrex Nine-O to be used on Bermuda grass pastures to control cheatgrass (downy brome, chess), common (annual) broamweed, little barley, medusahead, sagewort, and tumble mustard. (CUP) March 2, 1984.

EPA SLN No. MS 84 0004. Dow Chemical U.S.A. Registration is for Lorsban 4E Insecticide to be used on cotton to control larvae of wireworms and cutworms. March 2, 1984.

EPA SLN No. MS 84 0005. Ciba-Geigy Corp. Registration is for Aatrex 80W to be used on Bermuda grass pastures to control cheatgrass (downy brome, chess), common (annual) broomweed, little barley, medusahead, sagewort, and tumble mustard. (CUP) March 2, 1984.

EPA SLN No. MS 84 0006. Ciba-Geigy Corp. Registration is for Aatrex 4L Herbicide to be used on Bermuda grass pastures to control cheatgrass (downy brome, chess), common (annual) broomweed, little barley, medusahead, sagewort, and tumble mustard. (CUP) March 2, 1984.

EPA SLN No. MS 84 0007. Southern Mill Creek Products Co. Registration is for Lindane 1–E to be used on existing structures to control wood-infesting beetles. March 9, 1984.

Montana

EPA SLN No. MT 84 0001. Monsanto Co. Registration is for Granular Far-Go to be used on durum and spring wheat to control wild oats. January 31, 1984.

EPA SLN No. MT 84 0002. Monsanto Co. Registration is for Far-Go to be used on durum and spring wheat to control wild oats. March 20, 1984.

Nebraska

EPA SLN No. NE 84 0003. Monsanto Co. Registration is for Roundup to be used on fallow and reduced-tillage systems to control volunteer wheat and for preemergence control of annual weeds. (CUP) March 22, 1984.

New Jersey

EPA SLN No. NJ 84 0002. Great Lakes Chemical Corp. Registration is for Meth-O-Gas 100 to be used on blueberries to control blueberry fruit flies, plum curculio, Japanese beetles, and leafrollers. March 5, 1984.

EPA SLN No. NJ 84 0003. Penick Corp. Registration is for SBP–1382 Insecticide Emulsifiable Concentrate 26% Formula I to be used on agricultural, resort, and recreational areas to control deer flies. March 12, 1984.

North Dakota

EPA SLN No. ND 84 0001. Degesch America, Inc. Registration is for Degesch Magtoxin Pellet-Prepac to be used on bins, silos, holding tanks, food and feed processing equipment, conveyers, and related equipment to control confused flour beetles and red flour beetles. March 20, 1984.

EPA SLN No. ND 84 0002. SDS Biotech Corp. Registration is for Bravo 500 to be used on beans (dry) to control rust anthracnose, downy mildew, and cercospora leafspot (blackeye only) disease. (CUP) March 21, 1984.

Ohio

EPA SLN No. OH 84 0001. Union Agricultural Products Co., Inc. Registration is for Sevin 4 Oil to be used on soybeans to control bean leaf beetles, blister beetles, cucumber beetles, grape colaspis, corn earworms, alfalfa, caterpillars, cutworms, etc. March 13, 1984.

Oklahoma

EPA SLN No. OK 84 0003. Mobay Chemical Corp. Registration is for Sencor DF 75% Dry Flowable to be used on soybeans grown in coarse tectured to control sicklepod. (CUP) March 28, 1984.

EPA SLN No. OK 84 0003. Mobay Chemical Corp. Registration is for Sencor 4 Flowable to be used on soybeans grown in coarse tectured to control sicklepod. (CUP) March 28, 1984.

Oregon

EPA SLN No. OR 84 0007. Dow Chemical U.S.A. Registration is for Lorsban 4E Insecticide to be used on apples to control climbing cutworms, rosy apply aphids, and San Jose scale; on pears to control climbing cutworms, San Jose scale, and pear psylla adults; on plums and prunes to control climbing cutworms, San Jose scale, and mealy plum aphids; on nectarines and peaches to control peach twig borers, climbing cutworms, and San Jose scale. March 7, 1984.

EPA SLN No. OR 84 0008. PPG Industries, Inc. Registration is for Genep EPTC 7E Treflan Tank Mix to be used on green beans and sugar beets to control weeds. (CUP) March 6, 1984.

EPA SLN No. OR 84 0009. Rhone-Poulenc, Inc. Registration is for Mocap EC to be used on potatoes to control Columbia root-knot nematodes. March 7, 1984.

EPA SLN No. OR 84 0010. Rhone-Poulenc, Inc. Registration is for Mocap 10% Granular to be used on potatoes to control Columbia root-knot nematodes. March 7, 1984.

EPA SLN No. OR 84 0011. J.R. Simplot Co. Registration is for Metam to be used on Irish potatoes to control verticilium dahilae. (CUP) March 9, 1984.

EPA SLN No. OR 84 0012. American Cyanamid Co. Registration is for Thimet 20-G Soil & Systemic Insecticide to be used on potatoes to control wireworms. March 26, 1984.

EPA SLN No. OR 84 0013. Pennwalt Corp. Registration is for Ziram F-4 to be used on D'Anjou pears to control fruit rots caused by *Botrytis penicillium* and *mucor* spp. (CUP) March 21, 1984.

EPA SLN No. OR 84 0014. ICI Americas, Inc. Registration is for Fusilade to be used on creeping red, chewings and hard fescue varieties grown for seed to control downy brome (*Bromus tectorum*) and cheatgrass (*Bromus secalinus*). March 26, 1984.

EPA SLN No. OR 84 0015. Rhone-Poulenc, Inc. Registration is for Buctril Herbicide to be used on peppermint and spearmint to control weeds. (CUP) March 28, 1984.

EPA SLN No. OR 84 0016. Rhone-Poulenc, Inc. Registration is for Buctril to be used on field and silage corn to control weeds. (CUP) March 28, 1984.

EPA SLN No. OR 84 0017. Monsanto Co. Registration is for Roundup Herbicide to be used on fallow and reduced-tillage systems to control annual weeds. (CUP) March 28, 1984.

EPA SLN No. OR 84 0018. Velsicol Chemical Corp. Registration is for Weedmaster Herbicide to be used on cropland rotated to wheat between cropping to control broadleaf weeds. (CUP) March 29, 1984.

Tennessee

EPA SLN No. TN 84 0002. The Upjohn Co. Registration is for Sok-BT LC Biological Insecticide to be used on tobacco to control cabbage loopers, tobacco budworms, and tobacco hornworm. March 15, 1984.

Texas

EPA SLN No. TX 84 0002. Ciba-Geigy Corp. Registration is for Aatrex 80W Herbicide to be used on established rangeland to control weeds. (CUP) March 14, 1984.

EPA SLN No. TX 84 0003. Ciba-Geigy Corp. Registration is for Aatrex 4L Herbicide to be used on established rangeland to control weeds. (CUP) March 14, 1984.

EPA SLN No. TX 84 0004. Ciba-Geigy Corp. Registration is for Aatrex Nine-O Herbicide to be used on established rangeland to control weeds. (CUP) March 14, 1984.

EPA SLN No. TX 84 0005. Mobay Chemical Corp. Registration is for Guthion 2L to be used on cotton to control boll weevils. March 16, 1984.

EPA SLN No. TX 84 0006. Voluntary Purchasing Groups, Inc. Registration is for Hi-Yield 4LB Methyl Parathion to be used on cotton, small grains, alfalfa, and vetch to control aphids, boll weevils, cotton leafworms, fleahoppers, red spiders, mites and thrips, and spotted alfalfa aphids. March 20, 1984.

Utah

EPA SLN No. UT 84 0001. Monsanto Co. Registration is for Roundup Herbicide to be used on fallow and reduced-tillage systems to control annual weeds. (CUP) March 1, 1984.

EPA SLN No. UT 84 0002. Velsicol Chemical Corp. Registration is for Weedmaster Herbicide to be used on cropland rotated to wheat to control broadleaf weeds. (CUP) March 16, 1984.

EPA SLN No. UT 84 0003. Degesch America, Inc. Registration is for Degesch Magtoxin Pellets Prepac to be used on bins, silos, holding tanks, food and feed processing equipment, conveyers, and related equipment to control confused flour beetles and red flour beetles. (CUP) March 16, 1984.

EPA SLN No. UT 84 0004. Dow Chemical Co. Registration is for Tordon 22K Weed Killer to be used on rangeland, forest and permanent grass pastures, spring barley and oats, and spring and winter wheat to control broadleaf weeds. March 26, 1984.

Washington

EPA SLN No. WA 84 0015. Chevron Chemical Co. Registration is for Ortho Paraquat Plus to be used on dormant mint to control weeds. February 8, 1984.

EPA SLN No. WA 84 0017. Rhone-Poulenc, Inc. Registration is for Mocap 10% Granular to be used on potatoes to control Columbia root-knot nematodes. February 22, 1984.

EPA SLN No. WA 84 0018. Rhone-Poulenc, Inc. Registration is for Mocap EC to be used on potatoes to control Columbia root-knot nematodes. February 21, 1984.

EPA SLN No. WA 84 0019. Dow Chemical Co. Registration is for Lorsban 4F Insecticide to be used on apples to control climbing cutworms, rosy apple aphids, and San Jose scale; on pears to control adult psylla; on plums and prunes to control climbing cutworms, San Jose scale, and mealy plum aphids; on nectarines to control peach twig borers; on peaches to control climbing cutworms, San Jose scale, and peach twig borers. March 13, 1984.

EPA SLN No. WA 84 0020. The ArChem Corp. Registration is for Roban II to be used on tree fruit orchards to control orchard mice. March 13, 1984.

EPA SLN No. WA 84 0021. Farmers Union Central Exchange, Inc. Registration is for Cenex Dinex III to be used on lentils to control broadleaf weeds. March 20, 1984.

Wyoming

EPA SLN No. WY 84 0001. Dow Chemical Co. Registration is for Torbon 22K Weed Killer to used on rangeland, forest and permanent grass pastures, spring barley and oats, and spring and winter wheat to control broadleaf weeds. March 20, 1984.

Dated: October 22, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-28669 Filed 10-30-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-41001; PH-FRL 2709-1]

Creosote, Pentachlorophenol, and Inorganic Arsenicals; Decision To Postpone Effective Dates of Restricted Use Classification and Procedures To Certify Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA issued a Notice of Intent to Cancel registrations of pesticide products containing creosote, pentachlorophenol, and inorganic arsenicals (hereafter referred to collectively as "wood preservatives") which was published in the **Federal Register** of July 13, 1984 (49 FR 28666). The notice, among other things, classified for restricted use wood preservative uses of creosote, pentachlorophenol and inorganic arsenicals. The notice established November 1, 1984, as the date all affected products in the care, custody, or control of the registrant must be labeled for restricted use prior to being released for shipment. This deadline does not pertain to those products for which a proper hearing request has been filed. Pending the outcome of the hearing, the classification of the products for which a hearing has been requested, remains unchanged. To ensure a more efficient implementation of this program, and to eliminate the unfair competitive disadvantage on the registrant who voluntarily accepts EPA's registration changes, EPA has decided to postpone the November 1, 1984 effective date set forth in the July 13, 1984 Notice. This action also responds to questions raised by States, Indian tribes, Federal agencies, and interested parties, concerning the implementation of a program to certify wood preservatives applicators, by establishing a procedure to certify wood preservative applicators.

EFFECTIVE DATE: October 31, 1984.

FOR FURTHER INFORMATION CONTACT:

1. For restricted use labeling and other label changes: By mail:

Paul R. Lapsley, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 711, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7420).

2. For certification procedures:

John MacDonald, Compliance Monitoring Staff (EN-342), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. M-2510, 401 M St., SW., Washington, D.C. 20460 (202-382-7846).

SUPPLEMENTARY INFORMATION:

I. Restricted Use Labeling and Other Label Changes

Since the publication of the July 13, 1984 notice, several problems have come to the attention of EPA concerning dates by which restricted use labeling will be required. Fifty-nine registrants, who would have been required to implement the label changes, have challenged the changes specified by the notice, including the change in classification of approximately 425 products. Products for which challenges have been filed may continue to be sold with their current labeling. Another 25 registrants have made applications to amend the registrations of about 50 products to include, among other things, the classification for restricted use. Therefore, unless some change is made in the dates by which revised labeling must be attached to products for which a hearing has not been requested, similar products will be classified as both general use and restricted use and may bear considerably different use instructions. Such a situation will result only in confusion to applicators and the public and will place an unfair competitive disadvantage on the registrant who voluntarily accepts EPA's registration changes.

For these reasons, EPA is postponing the date product labels must be revised to include restricted use and the other required changes for those products for which an amendment has been sought to comply with the requirements of the July 13, 1984 notice. At least 90 days before EPA will require these products to bear the new amended labels, notice of the new effective date of the requirements will be published in the **Federal Register.** The effective dates for all products other than those for which an amendment has been sought remain unchanged from those specified in the July 13, 1984 notice.

II. Certification Procedures

A. Background

Certification of applicators of restricted use pesticides is generally provided by States or Federal agencies with programs approved by EPA. In States without approved certification programs, currently Colorado and Nebraska, EPA certifies applicators of restricted use pesticides. At this time, EPA and most States and Federal agencies have no procedures specifically to certify wood preservatives applicators. The major users of wood preservatives are expected to be commercial applicators. However, there are some registered farm uses of wood preservatives. For a private applicator to apply wood preservatives he must be acting in the capacity of a private applicator as defined by FIFRA section 2(e)(2). Section 2(e)(2) requires the applicator to use wood preservatives for purposes of producing an agricultural commodity. This would include treatment of structures, equipment and other items used to support production of an agricultural commodity.

B. State and Federal Agency Certification Programs

The time available for applicators to become certified prior to the labeling of these products for restricted use is limited. For these reasons, States and Federal agencies which have not amended their certification plans to provide for certification of wood preservatives applicators are encouraged to do so as soon as possible. States or Federal agencies that have procedures to certify wood preservatives applicators should review these provisions against the labeling requirements of the July 13, 1984 Notice of Intent to Cancel and make modifications as requried. Wood preservatives applicators may be certified under a new category or one or more existing categories. For instance, certification plans may allow ornamental and turf and right-of-way applicators to apply nonpressure products under their existing certification, while establishing a separate category addressing certification of all wood preservative uses including pressure treatment. The EPA Regional Offices will assist States in the development or modification of wood preservative certification procedures. The EPA Regional Offices will review existing or newly developed State certification plan procedures for wood preservatives applicators and provide written notification to States with procedures that meet the labeling requirements of the July 13, 1984 Notice of Intent to Cancel. EPA headquarters staff will assist Federal agencies in development and review of procedures for certification of wood preservatives applicators. If further guidance is necessary, it will be jointly developed

by EPA, States, and Federal agencies using wood preservatives. States and Federal agencies that certified wood preservative applicators under prior existing procedures may continue to recognize the applicator's certification. States and Federal agencies that establish new wood preservatives procedures will have to certify applicators under those new procedures. However, no State or Federal agency procedures to certify wood preservatives applicators will be final until the procedures have been reviewed and approved by EPA.

C. Report to EPA on Program Status

States and Federal Agencies are requested to report to EPA within 60 days of publication of this notice on the status of their program or plans to certify wood preservatives applicators. This report may take several forms including:

1. A description of existing wood preservatives certification programs with accompanying examinations and training materials used for certification and recertification.

2. An amendment to add wood preservatives to their certification plan, which is undergoing EPA review.

3. A schedule of actions to develop a wood preservatives amendment, for example, holding of hearings, promulgation of regulations or enactment of legislation, establishment or revision of training and examination procedures.

D. Certification Plans Developed by Indian Tribes

At present, Indian tribes are developing certification plans, but none have been approved by EPA. Indian tribes that intend to certify wood preservatives applicators should review and modify their draft certification plans as needed. The EPA regional offices will provide assistance to Indian tribes in the review and modification of draft Indian certification plans.

E. EPA-Administered Certification Programs

EPA will establish a wood preservatives commercial applicator subcategory in certification programs administered by EPA. EPA will also review its existing programs to determine if it is possible to allow some types of wood preservatives application under existing commercial categories.

Initial certification in the commercial wood preservatives category will be based on the passing of a written examination as required by 40 CFR 171.4(a). Recertification for commercial applicators in EPA-administered programs is every 3 years as required by 40 CFR 171.11. An applicator can qualify for recertification by passing a written examination or by successful completion of an EPA-approved training program. EPA does not conduct training, and the availability of the recertification by training option is dependent upon training conducted by State Cooperative Extension Services, industry groups, associations or others. Before any training can be used as the basis for commercial applicator recertification, it must be evaluated and approved by EPA in accordance with the Statement of Policy published in the **Federal Register** of August 31, 1979 (44 FR 51320).

The existing competency requirements for private applicators in EPA-administered programs have been reviewed and deemed adequate to assure proper farm use of wood preservatives. As noted earlier in this notice, the circumstances where a private applicator can use wood preservatives are limited. Therefore, private applicators presently certified in EPA-administered programs will not require additional certification to use wood preservatives.

EPA is prohibited by FIFRA section 4(a)(1) from requiring the passing of an examination for a private applicator to be certified or recertified. For this reason, EPA utilizes a training or self study program for certification and recertification of private applicators. The training and self study programs will be reviewed and modified as needed to emphasize private applicator use of wood preservatives. Recertification for private applicators in EPA-administered programs is every 4 years as required by 40 CFR 171.11.

At present EPA conducts certification programs in Colorado and Nebraska. Colorado has submitted a certification plan covering commercial applicators for EPA approval.

(7 U.S.C. 136)

Dated: October 29, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84-28705 Filed 10-30-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Albert City Bankshares, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 21, 1984.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Albert City Bankshares Inc.*, Albert City, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Albert City Savings Bank, Albert City, Iowa.

2. *Auburn Financial Corp.*, Auburn, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Auburn State Bank, Auburn, Indiana.

3. *Lincolnshire Bancshares, Inc.*, Lincolnshire, Illinois; to become a bank holding company by acquiring 57 percent of the voting shares of First National Bank of Lincolnshire, Lincolnshire, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Financial Savings Corporation*, Papillion, Nebraska; to become a bank holding company by acquiring 99 percent of the voting shares of Brentwood Bank, Lavista, Nebraska.

2. *J & M Bancshares, Inc.*, Walton, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Walton State Bank, Walton, Kansas.

3. *Mayfield Bancshares, Inc.*, Mayfield, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Mayfield State Bank, Mayfield, Kansas.

4. *Republic Financial Corporation,* Wichita, Kansas; to become a bank holding company by acquiring 99 percent of the voting shares of Twin Lakes State Bank, Wichita, Kansas.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *BancCentral Bancorp., Inc.,* Amarillo, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of BancCentral, Amarillo, Texas.

2. *Citizens Bancorp, Inc.,* Crockett, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens National Bank, Crockett, Texas.

3. *First Union Bancorporation, Inc.,* Laredo, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Union National Bank of Laredo, Laredo, Texas.

4. *Sealy State Bancshares, Inc.,* Sealy, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens State Bank, Sealy, Texas.

Board of Governors of the Federal Reserve System, October 25, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-28656 Filed 10-30-84; 8:45 am]

BILLING CODE 6210-01-M

Applications to Engage de Novo in Permissible Nonbanking Activities; Chemical New York Corp., et al.

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 November 20, 1984.

A. **Federal Reserve Bank of New York** (A Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical New York Corporation,* New York, New York; to engage *de novo* through its subsidiary, Chemical Futures, Inc., in soliciting, executing and clearing, for nonaffiliated persons on The Singapore International Monetary Exchange, through a futures trading link with The Chicago Mercantile Exchange, futures contracts and options on futures contracts with respect to U.S. government securities, certificates of deposit and other money market instruments that a bank may buy and sell in the cash market, foreign exchange, and bullion.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Stret, Chicago, Illinois 60690:

1. *Whitley Financial Corporation,* Marion, Indiana; to engage *de novo* in making, acquiring, or servicing 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, such would be made, for example, by a consumer finance, credit card, mortgage, or commercial finance company; acting as insurance agent or broker in offices at which its subsidiaries are otherwise engaged in business with respect to any insurance that is directly related to an extension of credit by a financial institution; the issuance and sale at retail of money orders and similar consumer type payment instruments having a face value of not more than $1,000, the sale of U.S. Savings Bonds, and the issuance and sale of travelers cheques; and leasing personal or real property or acting as a agent, broker, or advisor in leasing such property.

Board of Governors of the Federal Reserve System, October 25, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-28657 Filed 10-30-84; 8:45 am]

BILLING CODE 6210-01-M

Commercial Bancshares, et al.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 84-27261), published at page 40447 of the issue for Tuesday, October 16, 1984.

The comment date previously published was incorrect. Comments regarding any of the applications in the notice must be received not later than November 5, 1984.

Board of Governors of the Federal Reserve System, October 25, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-28658 Filed 10-30-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Region IX, San Francisco, CA; Office of Public Buildings and Real Property; Intent To Prepare an Environmental Impact Statement; Civic Center, Los Angeles, CA

Pursuant to Council on Environmental Quality Regulations, notice is hereby given that GSA is preparing an Environmental Impact Statement (EIS) to cover three projects proposed for construction on the property located behind the Federal Building, 300 North Los Angeles Street, Los Angeles, California, known as the Hadley Warehouse property.

Three Federal agencies are participating in the proposed site development. GSA is the lead agency for coordinating the projects and joint EIS. The proposed site development includes construction of a Metropolitan Detention Center (MDC) by the Department of Justice-Bureau of Prisons, a Veterans Administration Outpatient Clinic (VA Clinic) by the Veterans Administration, and Federal Building-Courthouse (FB-

CT) and an underground parking facility by GSA.

The MDC, approximately 155,000 occupiable square feet, will contain a 550-bed facility, in single cells, for short term detention of Federal prisoners. The VA Clinic will house general medical and surgical clinics, eye clinic, rehabilitation medicine, prosthetics, and other outpatient medical and clinic related services in 240,000 square feet of space. The projected workload for the clinic is estimated at 204,000 outpatient visits per annum. The VA Clinic will include a parking garage for 500 cars.

The proposed FB–CT will contain 560,000 occupiable square feeet—approximately 54,000 will be courtrooms and adjunct space; 46,000 square feet of space will be reserved for future courtrooms and adjunct space and will be used in the interim as office space; the remaining 460,000 square feet will be general purpose office and related space. Approximately 2,600 employees could be housed in the FB–CT. In addition, subterranean parking will be provided for approximately 1,200 vehicles. Completion and occupancy of this building will allow for the cancellation of several leases and permit agency realignment, expansion and collocation in Los Angeles.

The EIS will address the individual and cumulative impact of the proposed three project development of the Hadley site. The site is bounded by the Federal Building, 300 North Los Angeles Street, on the west; Alisio Street on the north; Alameda Street on the east; and Temple Street on the South.

Public scoping meetings will be held at the Department of Water and Power, 111 North Hope Street, Room 1555H, Los Angeles, California, at two (2) P.M. and seven (7) P.M., on November 7, 1984.

Written comments on information that should be considered during the assessment of environmental and socioeconomic impacts for the EIS should be directed to Miss Mary E. Brant, Regional Facilities Planner, Planning Staff, Real Estate Division, General Services Administration, 525 Market Street-9PEP, San Francisco, California 94105, or to Miss Veronica Holland of her staff, telephone number (415) 974–7624 (FTS 454–7624).

Dated: October 22, 1984.

Ross A. Biatek,

Acting Regional Administrator.

[FR Doc. 84-28632 Filed 10-30-84; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Cost-of-Living Increase in Benefits Under Titles II and XVI for 1985; Average of the Total Wages for 1983; Contribution and Benefit Base, Quarter of Coverage Amount, Retirement Earnings Test Exempt Amounts, and Formulas for Computing Benefits for 1985; Old-Age, Survivors, and Disability Insurance (OASDI) Fund Ratio for 1984; and Tables of Benefit Amounts for 1985

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) A 3.5 percent cost-of-living increase in benefits under title II (section 215(i)) of the Social Security Act (the Act);

(2) An increase in Federal SSI (title XVI) benefits for 1985 to $3,900 for an eligible individual, $5,856 for an eligible individual with an eligible spouse, and $1,956 for an essential person (section 1617 of the Act);

(3) The average of the total wages for 1983 to be $15,239.24;

(4) The Social Security contribution and benefit base to be $39,600 for remuneration paid in 1985 and self-employment income earned in taxable years beginning in 1985;

(5) The amount of earnings a person must have to be credited with a quarter of coverage in 1985 to be $410; and

(6) The monthly exempt amount under the Social Security retirement earnings test for taxable years ending in calendar year 1985 to be $610 for beneficiaries age 65 through 69 and $450 for beneficiaries under age 65.

We also describe the computation of benefits for a worker and the worker's family who first become eligible for benefits in 1985, and the computation of the OASDI fund ratio used in the determination of an automatic increase of benefits under titles II and XVI.

Finally, we are publishing two tables of OASDI benefit amounts. The first table reflects: (a) The automatic benefit increase, and (b) the new higher average monthly wage and related benefit amounts made possible by the higher contribution and benefit base. This table will be used primarily to compute the retirement benefits of workers who attained age 62, became disabled or died before 1979, and to compute the related maximum family benefit increase. The second table provides the range of primary insurance amounts and the corresponding maximum family benefits under the "special minimum benefit" provision, as revised to reflect the automatic benefit increase. These benefits are payable to certain individuals with long periods of relatively low earnings.

FOR FURTHER INFORMATION CONTACT: Clare M. Albrecht, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–3882.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Act to publish within 45 days after the close of the third calendar quarter of 1984 the benefit increase percentage and the tables of benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1983 (section 215(i)(2)(C)(iii)) and the OASDI fund ratio for 1984 (section 215(i)(2)(C)(iii)). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1985 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1985 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1985 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1985 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1985 (section 203(a)(2)(C))

Cost-of-Living Increases

General

The cost-of-living increase is 3.5 percent for benefits under titles II and XVI of the Social Security Act.

Under title II, old-age survivors, and disability insurance benefits will increase by 3.5 percent beginning with the December 1984 benefits, which are payable on January 3, 1985. The kinds of benefits payable to individuals entitled under this program are old-age, disability, wife's, husband's, child's, widow's, widower's, mother's, father's, and parent's insurance benefits. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)), as amended by section 201 of Pub. L. 95–216 enacted December 20, 1977, and sections 111 and 112 of Pub. L. 98–21 enacted April 20, 1983.

Under title XVI, Federal SSI payment levels will also increase by 3.5 percent effective for payments made for the month of January 1985 but paid on December 31, 1984. This is based on the

authority contained in section 1617 of the Act (42 U.S.C. 1382f), as amended by section 182 of Pub. L. 97–248 enacted September 3, 1982, and as further amended by section 401 of Pub. L. 98–21, enacted April 20, 1983. The percentage increase effective January 1985 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 1984 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is therefore required to increase benefits, effective with December 1984, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For 1984, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the third quarter of 1984 over the index for the third quarter of 1983. Automatic benefit increases may be modified by a "stabilizer" provision under certain adverse financial conditions that are described in the section on the OASDI fund ratio. The December 1984 benefit increase is not affected by this provision.

Section 215 (i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of this index for the 3 months in that quarter. The Department of Labor's revised Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1983, was: for July 1983, 298.2; for August 1983, 299.5; and for September 1983, 300.8. The arithmetical mean for this calendar quarter is 299.5. The corresponding Consumer Price Index for each month in the quarter ending September 30, 1984, was for July 1984, 307.5; for August 1984, 310.3; and for September 1984, 312.1. The arithmetical mean for this calendar quarter is 310.0. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1984 exceeds that for the calendar quarter ending September 30, 1983 by 3.5 percent, a cost-of-living benefit increase of 3.5 percent is effective for benefits under title II of the Act beginning December 1984.

Title II Benefit Amounts

In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in columns IV and V of the revised benefit table (table 1) were obtained by increasing by 3.5 percent the corrresponding amounts established by: (1) The last cost-of-living increase; (2) the extension of the benefit table made under section 215(i)(4) and published on November 1, 1983 at 48 FR 50414; and by extending the table due to the increase in the contribution and benefit base for 1985, as described below. The table applies only to those persons who attained age 62, became disabled or died before January 1979 and is deemed to appear in section 215(a) of the Act. Note that this table does not apply to those individuals who become eligible (i.e., reach age 62, or become disabled) or die after 1978; their benefits will generally be determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described below. For persons who first become eligible for benefits or who die before age 62 in the period 1979–1984, the 3.5 percent increase will apply beginning with benefits for December 1984 and will be included in checks received in January 1985; but the 3.5 percent increase will not apply for persons who first become eligible for benefits or die after 1984.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum benefits" and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the attached table 2 shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 3.5 percent benefit increase.

Section 227 of the Act as amended by section 304 of Pub. L. 98–21 provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act (also as amended by Pub. L. 98–21) provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $129.90 for an individual under sections 227 and 228 of the Act is increased by 3.5 percent to obtain the new amount of $134.40. The present monthly benefit amount of $65.20 for a spouse under section 227 is increased by 3.5 percent to $67.40.

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, Federal benefit rates for the aged, blind, and disabled are increased by 3.5 percent effective January 1985. Therefore, the yearly Federal SSI rates of $3,768.00 for an eligible individual, $5,664.00 for an eligible individual with an eligible spouse and $1,884.00 for an essential person, which are effective January 1984, are increased, effective with January 1985, to $3,900.00, $5,856.00, and $1,956.00 respectively after rounding. The monthly payment amount is determined by dividing the yearly guarantee by 12, and subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Average of the Total Wages for 1983

The determination of the average wage figure for 1983 is based on the 1982 average wage figure of $14,531.34 announced in the **Federal Register** on November 1, 1983 (48 FR 50414), along with the percentage increase in average wages from 1982 to 1983 measured by annual wage data tabulated by the Internal Revenue Service (IRS). The average amounts of wages calculated directly from IRS data were $14,923.19 and $15,650.18 for 1982 and 1983, respectively. To determine an average wage figure for 1983 at a level that is consistent with the series of average wages for 1951–1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1982 average wage figure of $14,531.34 by the percentage increase in average wages from 1982 to 1983 (based on IRS data) as follows (with the result rounded to the nearest cent): Average wage for 1983 = $14,531.34 × $15,650.18 ÷ $14,923.19 = $15,239.24. Therefore, the average wage for 1983 is determined to be $15,239.24.

Contribution and Benefit Base

General

The contribution and benefit base is $39,600 for remuneration paid in 1985 and self-employment income earned in taxable years beginning in 1985.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in figuring a person's Social Security benefits.

Computation

Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula, the contribution and benefit base for 1985 shall be equal to the 1984 base of $37,800 multiplied by the ratio of: (1) The average amount, per employee, of total wages for the calendar year 1983 to (2) the average amount of those wages for the calendar year 1982. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1982 was previously determined to be $14,531.34. The average wage for calendar year 1983 has been determined to be $15,239.24, as stated herein.

Amount

The ratio of the average wage for 1983, $15,239.24, compared to that for 1982, $14,531.34, is 1.0487154. Multiplying the 1984 contribution and benefit base of $37,800 by the ratio 1.0487154 produces the amount of $39,641.44 which must then be rounded to $39,600. Accordingly, the contribution and benefit based is determined to be $39,600 for 1985.

Quarter of Coverage Amount

General

The 1985 amount of earnings required for a quarter of coverage is $410. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or for which $100 or more of self-employment income were credited, to the individual. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95-216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year). Section 213(d) also provides that this amount shall be redetermined each year and any change published in the **Federal Register** no later than November 1 of the year preceding the year for which the change is effective.

Computation

Under the prescribed formula, the quarter of coverage amount for 1985 shall be equal to the 1978 amount of $250 multiplied by the ratio of : (1) The average amount, per employee, of total wages for calendar year 1983 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be founded to the nearest multiple of $10.

Average Wages

The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1983 has been determined to be $15,239.24 as stated herein.

Quarter of Coverage Amount

The ratio of the average wage for 1983, $15,239.24, compared to that for 1976, $9,226.48 is 1.651685. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 1.651685 produces the amount of $412.92 which must then be rounded to $410. Accordingly, the quarter of coverage amount is determined to be $410 for 1985.

Retirement Earnings Test Exempt Amounts

(a) Beneficiaries Aged 70 or Over

Beginning with months after December 1982, there is no limit on the amount an individual aged 70 or over may earn and still receive Social Security benefits. The age at which the retirement test ceases to apply is reduced from age 72 to age 70 by Pub. L. 97-35, which amended section 203(c)(1) of the Act.

(b) *Beneficiaries Aged 65 through 69.*—The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1984 was determined by this formula to be $580. Under the formula, the exempt amount for 1985 shall be the 1984 exempt amount multiplied by the ratio of: (1) The average amount, per employee, of the total wages for calendar year 1983 to (2) the average amount of those wages for calendar year 1982. This section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages for 1983, $15,239.24 compared to that for 1982, $14,531.34, is 1.0487154.

Exempt Amount for Beneficiaries Aged 65 Through 69

Multiplying the 1984 retirement earnings test monthly exempt amount of $580 by the ratio of 1.0487154 produces the amount of $608.25. This must then be rounded to $610. The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $610 for 1985. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $7,320.

(c) Beneficiaries Under Age 65

Section 203 of the Act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount that those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly exempt amount for beneficiaries under age 65 is $430 for 1984. The formula provides that the exempt amount for 1985 shall be the 1984 exempt amount for beneficiaries under age 65 multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1983 to (2) the average amount of those wages for calendar year 1982. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages for 1983, $15,239.24, compared to that of 1982, $14,531.34, is 1.0487154.

Exempt Amount for Beneficiaries Under Age 65.

Multiplying the 1984 retirement earnings test monthly exempt amount of $430 by the ratio 1.0487154 produces the amount of $450.95. This must then be rounded to $450. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is determined to be $450 for 1985. The

corresponding retirement earnings test annual exempt amount for these beneficiaries is $5,400.

Computing Benefits After 1978

The Social Security Amendments of 1977 changed the formula for determining an individual's primary insurance amount after 1978. This basic new formula is based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978 (43 FR 60877) and July 15, 1982 (47 FR 30731) respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. This formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determines the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's "average indexed monthly earnings." The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings

To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1985, we divide the average of the total wages for 1983, $15,239.24, by the average of the total wages for each year prior to 1983 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1985.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1985 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1983, $15,239.24, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1985, the ratio is 1.558294. Multiplying the 1979 amounts of $180 and $1,085 by 1.558294 produces the amounts of $280.49 and $1,690.75. These must then be rounded to $280 and $1,691. Accordingly, the portions of the average indexed monthly earnings to be used in 1985 are determined to be the first $280, the amount between $280 and $1,691, and the amount over $1,691.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1985, or who die in 1985 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $280 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $280 and through $1,691, plus

(c) 15 percent of the average indexed monthly earnings over $1,691.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)) as amended by Pub. L. 97–35.

Maximum Benefits Payable to a Family

The 1977 Amendments continued the long established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The 1980 Amendments (Pub. L. 96–265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a Final Rule published in the **Federal Register** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The amounts for 1985 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1983, $15,239.24, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1985, the ratio is 1.558294. Multiplying the amounts of $230, $332, and $433 by 1.558294 produces the amounts of $358.41, $517.35, and $674.74. These amounts are then rounded to $358, $517, and $675. Accordingly, the portions of the primary insurance amounts to be used in 1985 are determined to be the first $358, the amount between $358 and $517, the amount between $517 and $675 and the amount over $675.

Consequently, for the family of a worker who becomes age 62 or dies in 1985, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $358 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $358 through $517, plus

(c) 134 percent of the worker's primary insurance amount over $517 through $675, plus

(d) 175 percent of the worker's primary insurance amount over $675.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)) as amended by Pub. L. 97–35.

Extension of Benefit Table Effective January 1985

Table 1 includes an extension of the Table for Determining Primary

Insurance Amount and Maximum Family Benefits provided in section 215(a)(5) of the Act. This extension reflects the higher average monthly wage and related benefit amounts now possible under the increased contribution and benefit base published by this Notice effective January 1985 in accordance with section 215(i) of the Act. Table 1 will apply primarily to benefits based on earnings of workers who reached age 62 before 1979.

OASDI Fund Ratio

General

Section 215(i) of the Act was amended by section 112 of Pub. L. 98–21, the Social Security Amendments of 1983, to include a "stabilizer" provision that modifies the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified level, automatic benefit increases are limited to the lesser of the increases in wages or prices. The minimum level specified for the OASDI fund ratio is 15.0 percent for benefit increases for December of 1984 through December 1988, and 20.0 percent thereafter. The amendments also provide for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation

The 1983 Amendments specify the computation and application of the OASDI fund ration beginning with the December 1984 benefit increase. The OASDI fund ratio for 1984 is defined as the ratio of (1) the estimated combined assets of the OASI and DI Trust Funds at the end of 1984 (not excluding amounts owed to the Hospital Insurance (HI) Trust Fund), plus advance tax transfers for January 1985, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1984, excluding payments of interest and principal to the HI Trust Fund and transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio

The combined assets of the OASI and DI Trust Funds at the end of 1984 (including amounts owed to the HI Trust Fund and advance tax transfers for January 1985) are estimated to be $45,245 million, and the expenditures are estimated to be $180,875 million. Thus, the OASDI fund ratio for 1984 is 25.0 percent, which exceeds the applicable threshold of 15.0 percent. As a result, the "stabilizer" provision is not effective for December 1984.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–13.805, and 13,807 Social Security Programs.)

Dated: October 29, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

BILLING CODE 4190–11–M

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
	16.20	189.30		76	195.90	293.90
16.21	16.84	192.30	77	78	199.00	298.50
16.85	17.60	196.80	79	80	203.60	305.50
17.61	18.40	200.20	81	81	207.20	311.10
18.41	19.24	203.70	82	83	210.80	316.50
19.25	20.00	208.10	84	85	215.30	323.30
20.01	20.64	212.10	86	87	219.50	329.30
20.65	21.28	215.30	88	89	222.80	334.40
21.29	21.88	219.70	90	90	227.30	341.10
21.89	22.28	223.40	91	92	231.20	347.00
22.29	22.68	227.00	93	94	234.90	352.50
22.69	23.08	230.80	95	96	238.80	358.40
23.09	23.44	234.90	97	97	243.10	364.80
23.45	23.76	238.80	98	99	247.10	370.80
23.77	24.20	243.50	100	101	252.00	378.00
24.21	24.60	246.80	102	102	255.40	383.30
24.61	25.00	250.90	103	104	259.60	389.50
25.01	25.48	255.60	105	106	264.50	396.90
25.49	25.92	259.80	107	107	268.80	403.40
25.93	26.40	263.80	108	109	273.00	409.50
26.41	26.94	267.90	110	113	277.20	415.90
26.95	27.46	271.60	114	118	281.10	421.80
27.47	28.00	275.80	119	122	285.40	428.10
28.01	28.68	280.10	123	127	289.90	435.00
28.69	29.25	284.30	128	132	294.20	441.30
29.26	29.68	288.10	133	136	298.10	447.40
29.69	30.36	292.00	137	141	302.20	453.50
30.37	30.92	296.30	142	146	306.60	459.90
30.93	31.36	300.70	147	150	311.20	466.80
31.37	32.00	304.10	151	155	314.70	472.20
32.01	32.60	308.60	156	160	319.40	479.20
32.61	33.20	312.70	161	164	323.60	485.50
33.21	33.88	316.60	165	169	327.60	491.60
33.89	34.50	320.90	170	174	332.10	498.30

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
34.51	35.00	324.80	175	178	336.10	504.30
35.01	35.80	329.20	179	183	340.70	511.00
35.81	36.40	333.00	184	188	344.60	517.00
36.41	37.08	337.40	189	193	349.20	524.00
37.09	37.60	341.50	194	197	353.40	530.30
37.61	38.20	345.50	198	202	357.50	536.50
38.21	39.12	350.10	203	207	362.30	543.40
39.13	39.68	354.00	208	211	366.30	549.70
39.69	40.33	357.20	212	216	369.70	554.70
40.34	41.12	361.80	217	221	374.40	561.70
41.13	41.76	365.90	222	225	378.70	568.20
41.77	42.44	370.40	226	230	383.30	575.10
42.45	43.20	374.40	231	235	387.50	581.50
43.21	43.76	379.00	236	239	392.20	588.50
43.77	44.44	382.50	240	244	395.80	596.40
44.45	44.88	386.20	245	249	399.70	608.80
44.89	45.60	391.10	250	253	404.70	618.80
		394.80	254	258	408.60	630.80
		398.30	259	263	412.20	642.80
		403.30	264	267	417.40	652.50
		406.90	268	272	421.10	664.90
		411.40	273	277	425.70	676.80
		415.30	278	281	429.80	686.60
		419.40	282	286	434.00	698.90
		423.90	287	291	438.70	711.30
		427.30	292	295	442.20	720.80
		432.00	296	300	447.10	732.90
		436.00	301	305	451.20	745.50
		439.70	306	309	455.00	755.10
		444.20	310	314	459.70	767.20
		447.80	315	319	463.40	779.60
		451.90	320	323	467.70	789.20
		456.20	324	328	472.10	801.40
		460.00	329	333	476.10	813.60

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		464.90	334	337	481.10	823.70
		468.10	338	342	484.40	835.60
		472.50	343	347	489.00	847.90
		477.00	348	351	493.60	857.60
		480.50	352	356	497.30	869.80
		485.30	357	361	502.20	882.10
		489.00	362	365	506.10	891.80
		492.80	366	370	510.00	904.00
		497.30	371	375	514.70	915.90
		501.40	376	379	518.90	926.10
		505.70	380	384	523.30	938.40
		509.40	385	389	527.20	950.40
		513.30	390	393	531.20	960.00
		517.90	394	398	536.00	972.50
		521.80	399	403	540.00	984.60
		526.20	404	407	544.60	994.20
		529.80	408	412	548.30	1006.60
		533.50	413	417	552.10	1018.60
		537.20	418	421	556.00	1028.40
		541.60	422	426	560.50	1040.70
		545.30	427	431	564.30	1052.90
		548.60	432	436	567.80	1065.20
		553.20	437	440	572.50	1069.90
		556.60	441	445	576.00	1076.40
		560.40	446	450	580.00	1082.20
		564.40	451	454	584.10	1086.90
		568.30	455	459	588.10	1093.00
		571.90	460	464	591.90	1098.90
		575.50	465	468	595.60	1104.20
		580.10	469	473	600.40	1110.10
		583.30	474	478	603.70	1116.30
		587.00	479	482	607.50	1121.30
		591.10	483	487	611.70	1127.60
		595.10	488	492	615.90	1133.70

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		598.60	493	496	619.50	1138.60
		602.90	497	501	624.00	1144.30
		606.40	502	506	627.60	1150.40
		610.10	507	510	631.40	1155.40
		613.90	511	515	635.30	1161.50
		618.20	516	520	639.80	1167.90
		621.70	521	524	643.40	1172.50
		625.30	525	529	647.10	1178.70
		629.90	530	534	651.90	1184.70
		633.10	535	538	655.20	1189.60
		637.10	539	543	659.30	1195.80
		640.90	544	548	663.30	1201.90
		645.00	549	553	667.50	1208.00
		648.50	554	556	671.10	1211.50
		651.60	557	560	674.40	1216.50
		655.20	561	563	678.10	1220.20
		658.50	564	567	681.50	1225.20
		662.50	568	570	685.60	1228.60
		665.60	571	574	688.80	1233.50
		668.90	575	577	692.30	1237.50
		672.00	578	581	695.50	1242.00
		675.50	582	584	699.10	1245.90
		678.40	585	588	702.10	1250.70
		682.50	589	591	706.30	1254.30
		685.80	592	595	709.80	1259.20
		689.20	596	598	713.30	1262.50
		692.60	599	602	716.80	1267.90
		695.90	603	605	720.20	1271.40
		699.20	606	609	723.60	1276.00
		702.80	610	612	727.30	1280.00
		706.10	613	616	730.80	1284.80
		709.40	617	620	734.20	1289.80
		713.00	621	623	737.90	1293.30

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		716.10	624	627	741.10	1298.40
		719.70	628	630	744.80	1302.90
		723.00	631	634	748.30	1309.30
		726.50	635	637	751.90	1315.40
		730.00	638	641	755.50	1321.70
		733.20	642	644	758.80	1327.60
		736.70	645	648	762.40	1334.00
		739.90	649	652	765.70	1339.90
		742.10	653	656	768.00	1343.80
		744.20	657	660	770.20	1347.40
		746.80	661	665	772.90	1352.50
		749.40	666	670	775.60	1357.40
		752.20	671	675	778.50	1361.80
		755.00	676	680	781.40	1366.80
		757.50	681	685	784.00	1371.60
		760.50	686	690	787.10	1376.20
		762.80	691	695	789.40	1381.60
		765.30	696	700	792.00	1386.10
		768.20	701	705	795.00	1391.00
		770.90	706	710	797.80	1396.00
		773.80	711	715	800.80	1400.50
		776.30	716	720	803.40	1405.60
		779.00	721	725	806.20	1410.30
		781.80	726	730	809.10	1415.40
		784.40	731	735	811.80	1420.30
		787.20	736	740	814.70	1424.90
		789.70	741	745	817.30	1430.10
		792.00	746	750	819.70	1434.50
		794.70	751	755	822.50	1439.00
		797.00	756	760	824.80	1442.80
		799.30	761	765	827.20	1447.00
		801.10	766	770	829.10	1451.20
		803.60	771	775	831.70	1455.00

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		805.80	776	780	834.00	1459.00
		808.20	781	785	836.40	1463.10
		810.10	786	790	838.40	1467.10
		812.30	791	795	840.70	1471.10
		814.70	796	800	843.20	1475.20
		817.00	801	805	845.50	1479.40
		819.30	806	810	847.90	1483.30
		821.40	811	815	850.10	1487.60
		823.70	816	820	852.50	1491.40
		825.90	821	825	854.80	1495.60
		828.20	826	830	857.10	1499.50
		830.30	831	835	859.30	1503.80
		832.50	836	840	861.60	1507.50
		834.80	841	845	864.00	1512.00
		836.90	846	850	866.10	1515.50
		839.30	851	855	868.60	1519.80
		841.50	856	860	870.90	1523.80
		843.70	861	865	873.20	1527.90
		846.10	866	870	875.70	1532.00
		848.20	871	875	877.80	1536.00
		850.40	876	880	880.10	1539.90
		852.70	881	885	882.50	1544.20
		854.80	886	890	884.70	1547.90
		857.00	891	895	886.90	1552.60
		859.30	896	900	889.30	1556.10
		861.70	901	905	891.80	1560.30
		863.90	906	910	894.10	1564.50
		866.10	911	915	896.40	1568.50
		868.60	916	920	899.00	1572.20
		870.50	921	925	900.90	1576.70
		872.60	926	930	903.10	1580.40
		874.80	931	935	905.40	1584.50
		877.20	936	940	907.90	1588.60

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		879.40	941	945	910.10	1592.70
		881.60	946	950	912.40	1596.60
		884.00	951	955	914.90	1600.90
		886.50	956	960	917.50	1604.90
		888.70	961	965	919.80	1608.70
		890.40	966	970	921.50	1613.00
		892.70	971	975	923.90	1617.10
		894.90	976	980	926.20	1620.90
		897.50	981	985	928.90	1624.90
		899.50	986	990	930.90	1629.00
		901.70	991	995	933.20	1633.20
		904.10	996	1000	935.70	1637.00
		906.20	1001	1005	937.90	1640.50
		907.70	1006	1010	939.40	1644.40
		910.00	1011	1015	941.80	1647.80
		912.20	1016	1020	944.10	1651.80
		914.10	1021	1025	946.00	1655.10
		915.70	1026	1030	947.70	1659.00
		918.10	1031	1035	950.20	1662.60
		920.00	1036	1040	952.20	1666.10
		922.00	1041	1045	954.20	1670.00
		924.30	1046	1050	956.60	1673.40
		925.90	1051	1055	958.30	1676.70
		927.90	1056	1060	960.30	1680.90
		930.20	1061	1065	962.70	1684.30
		932.20	1066	1070	964.80	1688.00
		934.10	1071	1075	966.70	1691.80
		936.10	1076	1080	968.80	1695.30
		938.30	1081	1085	971.10	1698.90
		940.00	1086	1090	972.90	1702.50
		942.20	1091	1095	975.10	1706.30
		944.40	1096	1100	977.40	1710.10
		946.00	1101	1105	979.10	1713.40

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		948.20	1106	1110	981.30	1717.20
		950.30	1111	1115	983.50	1720.60
		952.20	1116	1120	985.50	1724.60
		954.30	1121	1125	987.70	1728.00
		956.20	1126	1130	989.60	1731.70
		958.20	1131	1135	991.70	1735.10
		960.30	1136	1140	993.90	1739.20
		962.50	1141	1145	996.10	1742.80
		964.50	1146	1150	998.20	1746.30
		966.10	1151	1155	999.90	1749.70
		968.40	1156	1160	1002.20	1753.40
		970.50	1161	1165	1004.40	1757.30
		972.40	1166	1170	1006.40	1761.00
		974.50	1171	1175	1008.60	1764.60
		976.40	1176	1180	1010.50	1768.20
		978.10	1181	1185	1012.30	1771.40
		980.10	1186	1190	1014.40	1774.70
		981.80	1191	1195	1016.10	1778.30
		983.70	1196	1200	1018.10	1781.70
		985.70	1201	1205	1020.10	1784.90
		987.50	1206	1210	1022.00	1788.50
		989.30	1211	1215	1023.90	1791.70
		991.20	1216	1220	1025.80	1795.10
		993.10	1221	1225	1027.80	1798.30
		995.10	1226	1230	1029.90	1801.90
		996.80	1231	1235	1031.60	1805.10
		998.50	1236	1240	1033.40	1808.60
		1000.60	1241	1245	1035.60	1812.10
		1002.50	1246	1250	1037.50	1815.40
		1004.20	1251	1255	1039.30	1818.70
		1006.10	1256	1260	1041.30	1822.20
		1008.10	1261	1265	1043.30	1825.60
		1009.90	1266	1270	1045.20	1828.90
		1011.60	1271	1275	1047.00	1832.00
		1013.50	1276	1280	1048.90	1835.60

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1015.10	1281	1285	1050.60	1838.60
		1017.00	1286	1290	1052.50	1841.80
		1018.90	1291	1295	1054.50	1844.90
		1020.50	1296	1300	1056.20	1848.10
		1022.20	1301	1305	1057.90	1851.30
		1023.90	1306	1310	1059.70	1854.50
		1025.70	1311	1315	1061.50	1857.60
		1027.70	1316	1320	1063.60	1861.00
		1029.30	1321	1325	1065.30	1863.90
		1031.10	1326	1330	1067.10	1867.40
		1032.70	1331	1335	1068.80	1870.50
		1034.50	1336	1340	1070.70	1873.70
		1036.30	1341	1345	1072.50	1876.80
		1038.00	1346	1350	1074.30	1879.90
		1039.80	1351	1355	1076.10	1883.00
		1041.50	1356	1360	1077.90	1886.20
		1043.40	1361	1365	1079.90	1889.30
		1044.90	1366	1370	1081.40	1892.60
		1046.70	1371	1375	1083.30	1895.70
		1048.60	1376	1380	1085.30	1898.90
		1050.10	1381	1385	1086.80	1901.80
		1051.80	1386	1390	1088.60	1904.90
		1053.40	1391	1395	1090.20	1907.90
		1054.90	1396	1400	1091.80	1910.90
		1056.70	1401	1405	1093.60	1913.70
		1058.20	1406	1410	1095.20	1916.80
		1059.90	1411	1415	1096.90	1919.80
		1061.50	1416	1420	1098.60	1922.90
		1063.20	1421	1425	1100.40	1925.90
		1064.80	1426	1430	1102.00	1928.90
		1066.70	1431	1435	1104.00	1931.80
		1068.40	1436	1440	1105.70	1934.80
		1069.90	1441	1445	1107.30	1937.70
		1071.70	1446	1450	1109.20	1941.00
		1073.20	1451	1455	1110.70	1943.80

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1074.80	1456	1460	1112.40	1946.90
		1076.60	1461	1465	1114.20	1949.80
		1078.10	1466	1470	1115.80	1952.80
		1079.80	1471	1475	1117.50	1955.80
		1081.30	1476	1480	1119.10	1958.50
		1083.10	1481	1485	1121.00	1961.50
		1084.50	1486	1490	1122.40	1964.10
		1086.20	1491	1495	1124.20	1967.10
		1087.60	1496	1500	1125.60	1969.90
		1089.20	1501	1505	1127.30	1972.90
		1090.70	1506	1510	1128.80	1975.40
		1092.30	1511	1515	1130.50	1978.20
		1093.90	1516	1520	1132.10	1981.10
		1095.40	1521	1525	1133.70	1984.10
		1096.90	1526	1530	1135.20	1986.60
		1098.50	1531	1535	1136.90	1989.50
		1100.10	1536	1540	1138.60	1992.40
		1101.60	1541	1545	1140.10	1995.20
		1103.20	1546	1550	1141.80	1997.90
		1104.80	1551	1555	1143.40	2000.80
		1106.30	1556	1560	1145.00	2003.60
		1107.80	1561	1565	1146.50	2006.50
		1109.40	1566	1570	1148.20	2009.10
		1110.90	1571	1575	1149.70	2012.10
		1112.40	1576	1580	1151.30	2014.90
		1114.00	1581	1585	1152.90	2017.70
		1115.60	1586	1590	1154.60	2020.40
		1117.10	1591	1595	1156.10	2023.40
		1118.70	1596	1600	1157.80	2026.20
		1120.20	1601	1605	1159.40	2029.00
		1121.80	1606	1610	1161.00	2031.60
		1123.20	1611	1615	1162.50	2034.60
		1124.90	1616	1620	1164.20	2037.30

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1126.40	1621	1625	1165.80	2040.20
		1128.10	1626	1630	1167.50	2042.90
		1129.70	1631	1635	1169.20	2045.90
		1131.10	1636	1640	1170.60	2048.50
		1132.80	1641	1645	1172.40	2051.50
		1134.30	1646	1650	1174.00	2054.20
		1135.90	1651	1655	1175.60	2057.10
		1137.40	1656	1660	1177.20	2059.80
		1138.90	1661	1665	1178.70	2062.60
		1140.50	1666	1670	1180.40	2065.40
		1142.00	1671	1675	1181.90	2068.30
		1143.60	1676	1680	1183.60	2071.10
		1145.20	1681	1685	1185.20	2074.00
		1146.70	1686	1690	1186.80	2076.70
		1148.30	1691	1695	1188.40	2079.60
		1149.60	1696	1700	1189.80	2082.40
		1151.30	1701	1705	1191.50	2085.30
		1152.70	1706	1710	1193.00	2088.00
		1154.30	1711	1715	1194.70	2090.80
		1155.80	1716	1720	1196.20	2093.50
		1157.40	1721	1725	1197.90	2096.50
		1159.00	1726	1730	1199.50	2099.10
		1160.50	1731	1735	1201.10	2102.00
		1162.20	1736	1740	1202.80	2104.70
		1163.60	1741	1745	1204.30	2107.70
		1165.20	1746	1750	1205.90	2110.40
		1166.70	1751	1755	1207.50	2113.30
		1168.30	1756	1760	1209.10	2116.10
		1169.90	1761	1765	1210.80	2119.10
		1171.40	1766	1770	1212.30	2121.60
		1172.90	1771	1775	1213.90	2124.50
		1174.50	1776	1780	1215.60	2127.40
		1176.00	1781	1785	1217.10	2130.40

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1177.70	1786	1790	1218.90	2132.80
		1179.20	1791	1795	1220.40	2135.70
		1180.80	1796	1800	1222.10	2138.60
		1182.30	1801	1805	1223.60	2141.50
		1183.90	1806	1810	1225.30	2144.20
		1185.40	1811	1815	1226.80	2147.10
		1187.00	1816	1820	1228.50	2149.90
		1188.40	1821	1825	1229.90	2152.80
		1190.10	1826	1830	1231.70	2155.30
		1191.60	1831	1835	1233.30	2158.30
		1193.20	1836	1840	1234.90	2161.20
		1194.80	1841	1845	1236.60	2164.10
		1196.20	1846	1850	1238.00	2166.50
		1197.90	1851	1855	1239.80	2169.50
		1199.30	1856	1860	1241.20	2172.30
		1201.00	1861	1865	1243.00	2175.20
		1202.50	1866	1870	1244.50	2177.80
		1204.00	1871	1875	1246.10	2180.80
		1205.60	1876	1880	1247.70	2183.60
		1207.10	1881	1885	1249.30	2186.50
		1208.70	1886	1890	1251.00	2189.20
		1210.20	1891	1895	1252.50	2192.20
		1211.80	1896	1900	1254.20	2194.90
		1213.40	1901	1905	1255.80	2197.80
		1214.80	1906	1910	1257.30	2200.40
		1216.40	1911	1915	1258.90	2203.10
		1217.70	1916	1920	1260.30	2205.70
		1219.10	1921	1925	1261.70	2208.20
		1220.50	1926	1930	1263.20	2210.90
		1222.00	1931	1935	1264.70	2213.30
		1223.40	1936	1940	1266.20	2216.10
		1224.80	1941	1945	1267.60	2218.50

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1226.30	1946	1950	1269.20	2221.10
		1227.70	1951	1955	1270.60	2223.50
		1229.00	1956	1960	1272.00	2226.30
		1230.50	1961	1965	1273.50	2228.70
		1231.90	1966	1970	1275.00	2231.40
		1233.40	1971	1975	1276.50	2233.70
		1234.60	1976	1980	1277.80	2236.40
		1236.30	1981	1985	1279.50	2239.00
		1237.50	1986	1990	1280.80	2241.60
		1238.80	1991	1995	1282.10	2244.00
		1240.30	1996	2000	1283.70	2246.70
		1241.70	2001	2005	1285.10	2249.10
		1243.20	2006	2010	1286.70	2251.80
		1244.50	2011	2015	1288.00	2254.30
		1246.10	2016	2020	1289.70	2256.90
		1247.40	2021	2025	1291.00	2259.50
		1248.80	2026	2030	1292.50	2262.10
		1250.20	2031	2035	1293.90	2264.40
		1251.70	2036	2040	1295.50	2267.10
		1253.10	2041	2045	1296.90	2269.50
		1254.50	2046	2050	1298.40	2272.30
		1256.00	2051	2055	1299.90	2274.80
		1257.40	2056	2060	1301.40	2277.40
		1258.60	2061	2065	1302.60	2279.70
		1260.10	2066	2070	1304.20	2282.50
		1261.50	2071	2075	1305.60	2284.90
		1263.00	2076	2080	1307.20	2287.60
		1264.30	2081	2085	1308.50	2290.10
		1265.80	2086	2090	1310.10	2292.80
		1267.20	2091	2095	1311.50	2295.20
		1268.50	2096	2100	1312.80	2297.90

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1270.00	2101	2105	1314.40	2300.20
		1271.40	2106	2110	1315.80	2303.00
		1272.90	2111	2115	1317.40	2305.40
		1274.20	2116	2120	1318.70	2308.10
		1275.70	2121	2125	1320.30	2310.50
		1277.10	2126	2130	1321.70	2313.20
		1278.60	2131	2135	1323.30	2315.70
		1279.90	2136	2140	1324.60	2318.40
		1281.20	2141	2145	1326.00	2320.70
		1282.80	2146	2150	1327.60	2323.50
		1284.10	2151	2155	1329.00	2325.90
		1285.50	2156	2160	1330.40	2328.50
		1286.90	2161	2165	1331.90	2330.90
		1288.10	2166	2170	1333.10	2333.00
		1289.40	2171	2175	1334.50	2335.40
		1290.60	2176	2180	1335.70	2337.50
		1291.80	2181	2185	1337.00	2339.90
		1293.00	2186	2190	1338.20	2342.10
		1294.20	2191	2195	1339.40	2344.20
		1295.50	2196	2200	1340.80	2346.50
		1296.70	2201	2205	1342.00	2348.80
		1298.00	2206	2210	1343.40	2351.10
		1299.20	2211	2215	1344.60	2353.20
		1300.40	2216	2220	1345.90	2355.50
		1301.70	2221	2225	1347.20	2357.80
		1302.90	2226	2230	1348.50	2360.10
		1304.20	2231	2235	1349.80	2362.20
		1305.40	2236	2240	1351.00	2364.30
		1306.50	2241	2245	1352.20	2366.70

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1307.90	2246	2250	1353.60	2368.80
		1309.10	2251	2255	1354.90	2371.10
		1310.40	2256	2260	1356.20	2373.30
		1311.60	2261	2265	1357.50	2375.70
		1312.80	2266	2270	1358.70	2377.80
		1314.00	2271	2275	1359.90	2380.00
		1315.20	2276	2280	1361.20	2382.30
		1316.50	2281	2285	1362.50	2384.60
		1317.80	2286	2290	1363.90	2386.80
		1319.10	2291	2295	1365.20	2389.00
		1320.20	2296	2300	1366.40	2391.30
		1321.40	2301	2305	1367.60	2393.60
		1322.70	2306	2310	1368.90	2395.80
		1323.90	2311	2315	1370.20	2398.00
		1325.20	2316	2320	1371.50	2400.20
		1326.40	2321	2325	1372.80	2402.60
		1327.50	2326	2330	1373.90	2404.70
		1328.90	2331	2335	1375.40	2407.00
		1330.10	2336	2340	1376.60	2409.20
		1331.40	2341	2345	1377.90	2411.50
		1332.60	2346	2350	1379.20	2413.70
		1333.90	2351	2355	1380.50	2416.10
		1335.00	2356	2360	1381.70	2418.20
		1336.20	2361	2365	1382.90	2420.40
		1337.50	2366	2370	1384.30	2422.60
		1338.80	2371	2375	1385.60	2424.90
		1340.10	2376	2380	1387.00	2427.10
		1341.20	2381	2385	1388.10	2429.30

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1342.40	2386	2390	1389.30	2431.60
		1343.70	2391	2395	1390.70	2433.90
		1344.90	2396	2400	1391.90	2435.90
		1346.20	2401	2405	1393.30	2438.30
		1347.40	2406	2410	1394.50	2440.50
		1348.70	2411	2415	1395.90	2442.90
		1349.90	2416	2420	1397.10	2444.90
		1351.10	2421	2425	1398.30	2447.30
		1352.40	2426	2430	1399.70	2449.50
		1353.60	2431	2435	1400.90	2451.90
		1354.80	2436	2440	1402.20	2453.90
		1356.00	2441	2445	1403.40	2456.20
		1357.20	2446	2450	1404.70	2458.50
		1358.50	2451	2455	1406.00	2460.80
		1359.80	2456	2460	1407.30	2462.90
		1361.10	2461	2465	1408.70	2465.20
		1362.20	2466	2470	1409.80	2467.50
		1363.50	2471	2475	1411.20	2469.70
		1364.60	2476	2480	1412.30	2471.60
		1365.70	2481	2485	1413.40	2473.80
		1366.80	2486	2490	1414.60	2475.70
		1367.90	2491	2495	1415.70	2477.70
		1369.00	2496	2500	1416.90	2479.80
		1370.20	2501	2505	1418.10	2481.80
		1371.20	2506	2510	1419.10	2483.70
		1372.40	2511	2515	1420.40	2485.80
		1373.50	2516	2520	1421.50	2487.80
		1374.60	2521	2525	1422.70	2489.80

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1375.70	2526	2530	1423.80	2491.80
		1376.80	2531	2535	1424.90	2493.90
		1377.90	2536	2540	1426.10	2495.90
		1379.10	2541	2545	1427.30	2497.90
		1380.10	2546	2550	1428.40	2499.90
		1381.30	2551	2555	1429.60	2502.00
		1382.40	2556	2560	1430.70	2503.90
		1383.50	2561	2565	1431.90	2505.90
		1384.60	2566	2570	1433.00	2508.00
		1385.70	2571	2575	1434.10	2510.00
		1386.90	2576	2580	1435.40	2511.90
		1388.00	2581	2585	1436.50	2514.10
		1389.00	2586	2590	1437.60	2516.00
		1390.20	2591	2595	1438.80	2518.00
		1391.30	2596	2600	1439.90	2520.00
		1392.30	2601	2605	1441.00	2522.10
		1393.50	2606	2610	1442.20	2524.00
		1394.60	2611	2615	1443.40	2526.10
		1395.80	2616	2620	1444.60	2528.10
		1396.80	2621	2625	1445.60	2530.10
		1397.90	2626	2630	1446.80	2532.10
		1399.10	2631	2635	1448.00	2534.30
		1400.20	2636	2640	1449.20	2536.10
		1401.20	2641	2645	1450.20	2538.20
		1402.40	2646	2650	1451.40	2540.00
		1403.50	2651	2655	1452.60	2542.20
		1404.70	2656	2660	1453.80	2544.20
		1405.70	2661	2665	1454.80	2546.20
		1406.80	2666	2670	1456.00	2548.20

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1408.00	2671	2675	1457.20	2550.30
		1409.10	2676	2680	1458.40	2552.20
		1410.10	2681	2685	1459.40	2554.30
		1411.30	2686	2690	1460.60	2556.30
		1412.40	2691	2695	1461.80	2558.30
		1413.60	2696	2700	1463.00	2560.20
		1414.60	2701	2705	1464.10	2562.20
		1415.60	2706	2710	1465.10	2564.00
		1416.70	2711	2715	1466.20	2565.90
		1417.70	2716	2720	1467.30	2567.70
		1418.70	2721	2725	1468.30	2569.60
		1419.80	2726	2730	1469.40	2571.50
		1420.80	2731	2735	1470.50	2573.40
		1421.80	2736	2740	1471.50	2575.20
		1422.90	2741	2745	1472.70	2577.20
		1423.90	2746	2750	1473.70	2579.00
		1424.90	2751	2755	1474.70	2580.90
		1426.00	2756	2760	1475.90	2582.70
		1427.00	2761	2765	1476.90	2584.70
		1428.00	2766	2770	1477.90	2586.50
		1429.10	2771	2775	1479.10	2588.40
		1430.10	2776	2780	1480.10	2590.20
		1431.10	2781	2785	1481.10	2592.10
		1432.20	2786	2790	1482.30	2594.00
		1433.20	2791	2795	1483.30	2595.90
		1434.30	2796	2800	1484.50	2597.70
		1435.30	2801	2805	1485.50	2599.70
		1436.30	2806	2810	1486.50	2601.50
		1437.40	2811	2815	1487.70	2603.40
		1438.40	2816	2820	1488.70	2605.30
		1439.40	2821	2825	1489.70	2607.10

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1440.50	2826	2830	1490.90	2609.00
		1441.50	2831	2835	1491.90	2610.90
		1442.50	2836	2840	1492.90	2612.70
		1443.60	2841	2845	1494.10	2614.70
		1444.60	2846	2850	1495.10	2616.40
		1445.60	2851	2855	1496.10	2618.40
		1446.70	2856	2860	1497.30	2620.30
		1447.70	2861	2865	1498.30	2622.10
		1448.70	2866	2870	1499.40	2624.00
		1449.80	2871	2875	1500.50	2625.80
		1450.80	2876	2880	1501.50	2627.70
		1451.80	2881	2885	1502.60	2629.70
		1452.90	2886	2890	1503.70	2631.40
		1453.90	2891	2895	1504.70	2633.40
		1455.00	2896	2900	1505.90	2635.30
		1456.00	2901	2905	1506.90	2637.10
		1457.00	2906	2910	1507.90	2639.00
		1458.10	2911	2915	1509.10	2640.90
		1459.10	2916	2920	1510.10	2642.70
		1460.10	2921	2925	1511.20	2644.70
		1461.20	2926	2930	1512.30	2646.40
		1462.20	2931	2935	1513.30	2648.40
		1463.20	2936	2940	1514.40	2650.20
		1464.30	2941	2945	1515.50	2652.10
		1465.30	2946	2950	1516.50	2654.00
		1466.30	2951	2955	1517.60	2655.90

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1467.40	2956	2960	1518.70	2657.70
		1468.40	2961	2965	1519.70	2659.70
		1469.40	2966	2970	1520.80	2661.50
		1470.50	2971	2975	1521.90	2663.40
		1471.50	2976	2980	1523.00	2665.20
		1472.50	2981	2985	1524.00	2666.90
		1473.50	2986	2990	1525.00	2668.80
		1474.50	2991	2995	1526.10	2670.60
		1475.50	2996	3000	1527.10	2672.40
		1476.50	3001	3005	1528.10	2674.20
		1477.50	3006	3010	1529.20	2676.00
		1478.50	3011	3015	1530.20	2677.80
		1479.50	3016	3020	1531.20	2679.70
		1480.50	3021	3025	1532.30	2681.40
		1481.50	3026	3030	1533.30	2683.30
		1482.50	3031	3035	1534.30	2685.10
		1483.50	3036	3040	1535.40	2686.90
		1484.50	3041	3045	1536.40	2688.70
		1485.50	3046	3050	1537.40	2690.50
		1486.50	3051	3055	1538.50	2692.30
		1487.50	3056	3060	1539.50	2694.20
		1488.50	3061	3065	1540.50	2695.90
		1489.50	3066	3070	1541.60	2697.80
		1490.50	3071	3075	1542.60	2699.50
		1491.50	3076	3080	1543.70	2701.40
		1492.50	3081	3085	1544.70	2703.20
		1493.50	3086	3090	1545.70	2705.00
		1494.50	3091	3095	1546.80	2706.80

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
		1495.50	3096	3100	1547.80	2708.60
		1496.50	3101	3105	1548.80	2710.40
		1497.50	3106	3110	1549.90	2712.30
		1498.50	3111	3115	1550.90	2714.00
		1499.50	3116	3120	1551.90	2715.90
		1500.50	3121	3125	1553.00	2717.70
		1501.50	3126	3130	1554.00	2719.50
		1502.50	3131	3135	1555.00	2721.30
		1503.50	3136	3140	1556.10	2723.10
		1504.50	3141	3145	1557.10	2724.90
		1505.50	3146	3150	1558.10	2726.80
			3151	3155	1559.10	2728.40
			3156	3160	1560.10	2730.10
			3161	3165	1561.10	2731.90
			3166	3170	1562.10	2733.60
			3171	3175	1563.10	2735.40
			3176	3180	1564.10	2737.10
			3181	3185	1565.10	2738.90
			3186	3190	1566.10	2740.60
			3191	3195	1567.10	2742.40
			3196	3200	1568.10	2744.10
			3201	3205	1569.10	2745.90
			3206	3210	1570.10	2747.60
			3211	3215	1571.10	2749.40
			3216	3220	1572.10	2751.10
			3221	3225	1573.10	2752.90
			3226	3230	1574.10	2754.60
			3231	3235	1575.10	2756.40
			3236	3240	1576.10	2758.10

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1984

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR DEC. 1983)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUB-SEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRE-CEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAY-ABLE (AS PRO-VIDED IN SEC. 203(A)) SHALL BE--
AT LEAST	BUT NOT MORE THAN		AT LEAST	BUT NOT MORE THAN		
			3241	3245	1577.10	2759.90
			3246	3250	1578.10	2761.60
			3251	3255	1579.10	2763.40
			3256	3260	1580.10	2765.10
			3261	3265	1581.10	2766.90
			3266	3270	1582.10	2768.60
			3271	3275	1583.10	2770.40
			3276	3280	1584.10	2772.10
			3281	3285	1585.10	2773.90
			3286	3290	1586.10	2775.60
			3291	3295	1587.10	2777.40
			3296	3300	1588.10	2779.10

TABLE 2

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNT PAYABLE FOR DEC. 1983	NO. OF YEARS REQUIRED MINIMUM EARNINGS LEVEL	SPECIAL MINIMUM PRIMARY INSURANCE AMOUNT PAYABLE FOR DEC. 1984	SPECIAL MINIMUM MAXIMUM FAMILY BENEFIT PAYABLE FOR DEC. 1984
18.10	11	18.70	28.10
35.80	12	37.00	55.60
53.70	13	55.50	83.50
71.50	14	74.00	111.10
89.30	15	92.40	138.70
107.30	16	111.00	166.60
125.10	17	129.40	194.10
143.00	18	148.00	222.00
160.80	19	166.40	249.60
178.50	20	184.70	277.20
196.50	21	203.30	305.20
214.30	22	221.80	332.80
232.30	23	240.40	360.80
250.10	24	258.80	388.30
267.90	25	277.20	415.90
285.90	26	295.90	444.00
303.70	27	314.30	471.60
321.50	28	332.70	499.20
339.30	29	351.10	526.90
357.10	30	369.50	554.50

[FR Doc. 84-28839 Filed 10-30-84; 8:45 am]
BILLING CODE 4190-11-C

Alcohol, Drug Abuse, and Mental Health Administration

Grants, Research on Mental Illness in Nursing Homes

AGENCY: The National Institute of Mental Health.

ACTION: Issuance of grant announcement for research on mental illness in nursing homes.

SUMMARY: The National Institute of Mental Health through the Center for the Studies of the Mental Health of the Aging seeks grant applications for research which will increase knowledge and improve research methodology on emotional, social, behavioral, and mental disorders of residents in nursing homes; will generate information regarding the interplay of biological, behavioral, genetic, and social processes underlying these disorders and the maintenance of mental health among nursing home residents; and will increase knowledge of mental health services and practices. The research may employ theoretical, laboratory, clinical, methodological, and field studies and may involve noninstitutional population elderly subjects as well as resident of nursing homes.

Receipt and review date of applications: December 1, 1984. Thereafter, applications will be accepted and reviewed according to the usual Public Health Service schedule and procedures. Specific dates are given in the Grant Announcement.

For further information or a copy of the announcement, contact:

Mary S. Harper, Ph.D., RN; or
Barry Lebowitz, Ph.D., Center for Studies of the Mental Health of the Aging, Room 11C–03 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (Telephone: 301–443–1185).

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 84–28639 Filed 10–30–84; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

National Public Lands Advisory Council; Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for National Public Lands Advisory Council.

SUMMARY: The purpose of this notice is to call for nominations for seven memberships on the Bureau of Land Management's National Public Lands Advisory Council.

The Council consists of 21 members. Under the staggered-term arrangement instituted by the Secretary of the Interior in 1981, the terms of seven members on the Council will expire on December 31, 1984. Current Council members may be reappointed or new members may be appointed. Terms of appointment will be for three years, beginning January 1, 1985, and expiring December 31, 1987.

Nominees for membership should be well qualified through education, training and experience to give informed and objective advice concerning land use and resource planning for the public lands.

DATE: Nominations should be received by the Bureau of Land Management by November 30, 1984.

DATES: Nominations should be received by the Bureau of Land Management by November 30, 1984.

ADDRESS: Persons wishing to nominate individuals to serve on the Council should send biographical data that includes name, address, profession, and other relevant information about the candidate's qualifications to: Director (150), Bureau of Land Management, Department of the Interior, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The function of the Council is to advise the Secretary of the Interior, through the Director, Bureau of Land Management on policies and programs of a national scope related to the resources and uses of public lands under the jurisdiction of the Bureau of Land Management.

The Council is expected to meet three times a year. Additional meetings may be called by the Director in connection with special needs for advice. Members will serve without salary, but will be reimbursed for travel and per diem expenses at rates prevailing for Government employees.

FOR FURTHER INFORMATION: Karen slater, Bureau of Land Management (150), Department of the Interior, Washington, DC, 20240, Telephone: (202) 343–2054.

Dated: October 26, 1984.

James M. Parker,

Acting Director.

[FR Doc. 84–28727 Filed 10–30–84; 8:45 am]

BILLING CODE 4310–84–M

Salem District Advisory Council: Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Salem District Advisory Council will be held November 26, 1984, at 1:30 p.m. at the BLM Salem District Office, 1717 Fabry Road, SE, Salem, Oregon.

Agenda for the meeting include:

1—1985 Annual Work Plan for the Salem District
2—Walker Flat Right-of-Way and threatened and endangered plant species
3—Timber contract relief
4—Grand Ronde Indian reservation restoration
5—Sub-committee report on herbicides
6—Oral statements from the public

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Salem District Office, 1717 Fabry Road SE, Salem, Oregon, 97302, by November 21, 1984. Written comments will also be received for the council's consideration.

Summary minutes will be maintained in the District office and will be available for public inspection and reproduction during business hours within 30 days following the meeting.

Dated: October 19, 1984.

Melvin Chase,

Acting District Manager.

[FR Doc. 84–28633 Filed 10–30–84; 8:45 am]

BILLING CODE 4310–33–M

[W–86202 and W–86258]

Wyoming; Realty Action; Modified Competitive Sale of Public Lands in Crook and Weston Counties

AGENCY: Bureau of Land Management, Interior.

ACTION: Modified competitive sale of land parcels in Crook and Weston Counties, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale

would not be consistent with FLPMA or other applicable law.

The planning document, environmental assessment/land report, and memorandum and letters of Federal, state, and local contacts concerning the sale are available for review at the Bureau of Land Management, Newcastle Resource Area Office. All bids and requests for information should be sent to BLM, Newcastle Resource Area, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701 (Phone (307) 746–4453).

The land described below is hereby segregated from all appropriation under the public land laws including the mining laws after publication in the **Federal Register**. The segregative effect will terminate when the patent is issued or 270 days from the date of publication of this notice.

Parcels

Serial No.	Legal description	Acreage	Appraised value
W-86202	T. 54 N., R. 62 W., 6th P.M., sec. 28, SW¼NE¼.	40.00	$6,000
W-86258	T. 47 N., R. 60 W., 6th P.M., sec 20, lot 1; sec. 21, lots 1, 2, 3; sec. 28, NW¼NW¼; sec. 29, NE¼NE¼.	230.48	18,500

Sale Procedures

1. The sale will be conducted by modified competitive bidding, and each parcel will be offered by a sealed bid process to adjoining landowners. The apparent high bidder will be required to submit evidence of adjoining landownership before the high bid can be accepted or terminated.

2. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a State, State instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands or interests in Wyoming.

3. Sealed bidding is the only acceptable method of bidding. All bids must be received in the Newcastle Resource Area Office by 4:30 P.M. on January 23, 1984, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked in the front lower left-hand corner with the words, "Public Land Sale, W–86202, Sale Held January 23, 1985" or "Public Land Sale, W–86258, Sale Held January 23, 1985."

4. All sealed bids must be accompanied by a payment of not less than ten (10) percent of the total bid. Each bid and any final payment must be accompanied by certified check, postal money order, bank draft, or cashier's check made payable to: Department of the Interior-BLM.

5. Failure to pay the remainder of the full price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next high bid will be honored or the land will be reoffered under competitive procedures. If two (2) or more envelopes containing valid bids of the sale amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

6. If any parcels fail to sell, they will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Newcastle Resource Area Office by 11:00 A.M., on the fourth (4th) Wednesday of each month beginning February 27, 1984. Reoffered land will remain available for sale until sold or until the sale action is cancelled or terminated.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A reservation for ditches or canals by authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the BLM Newcastle Resource Area Office. For W–85258, this reservation applies only to T. 47 N., R. 60 W., sec. 20, lot 1; and sec. 21, lot 1. The other subdivisions contain a private mineral estate.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Casper District Office, 951 Rancho Road, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: October 22, 1984.

James W. Monroe,

Casper District Manager.

[FR Doc. 84–28634 Filed 10–30–84; 8:45 am]

BILLING CODE 4310–22–M

[AA–6685–B]

Alaska Native Claims Selection; Ninilchik Natives Association, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance (DIC) under the provisions of sec. 14 of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613 (1976), will be issued to Ninilchik Native Association, Inc., for approximately 25 acres. The lands involved are within the Seward Meridian, Alaska:

T. 2 S., R. 12 W.

Upon issuance, the DIC will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE DAILY NEWS. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until November 30, 1984 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84–28654 Filed 10–30–84; 8:45 am]

BILLING CODE 4310–JA–M

[AA–6698–B]

Alaska Native Claims Selection; Salamatof Native Association, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance (DIC) under the provisions of sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971

(ANCSA), 43 U.S.C. 1601, 1611 (1976), will be issued to Salamatof Native Association, Inc., for approximately 3,973.17 acres. The lands involved are within the Seward Meridian, Alaska:

T. 6 N., R. 11 W.
T. 7 N., R. 11 W.
T. 7 N., R. 12 W.

Upon issuance, the DIC will be published once a week, for four (4) consecutive weeks, in THE CHEECHAKO NEWS. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until November 30, 1984 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-28652, Filed 10-30-84; 8:45 am]

BILLING CODE 4310-JA-M

[AA-10489]

Alaska Native Claims Selection; Sealaska Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the Decision to Issue Conveyance (DIC) to Sealaska Corporation, notice of which was published in the **Federal Register** (49 FR 32806) on August 16, 1984, is modified as to the land description for AA-10489.

Page 32806, third column, as reads:

AA-10489	T. 51 S., R. 58 E.	10

is modified to read:.

AA-10489	T. 51 S., R. 59 E.	10

Upon issuance, the modified DIC will be published once a week, for four (4) consecutive weeks, in the JUNEAU EMPIRE. Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until November 30, 1984 to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given August 16, 1984, is final.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-28653 Filed 10-30-84; 8:45 am]

BILLING CODE 4310-JA-M

Re-Establishment of the Federal-State Coal Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to advise the public that the charter for the Federal-State Coal Advisory Board has been revised, approved by the Secretary, and filed with the Library of Congress and appropriate Congressional committees, thereby re-establishing the advisory board for 2 years. The General Services Administration also concurred in the revisions to the board's charter.

In March 1984, the Department allowed the charter for the advisory board to expire. This was done so that policy changes relating to the responsibilities of the advisory board and the regional coal teams could be incorporated into the board's charter. The policy changes were the result of the Secretary's response to two recent studies of the coal program—one by the Commission on Fair Market Value Policy for Federal Coal Leasing and the other by the Office of Technology Assessment. The charter, as now written, is consistent with the coal program regulations (as revised in July 1982 and January 1983), as well as the Secretary's response to the two studies.

DATE: The revised charter will become effective on October 26, 1984.

FOR FURTHER INFORMATION CONTACT: Tom Walker, Bureau of Land Management (650), 18th & C Streets NW., Washington, DC 20240, telephone (202/FTS) 343-4636.

Dated: October 18, 1984.

James M. Parker,

Acting Director, Bureau of Land Management.

[FR Doc. 84-28662 Filed 10-30-84; 8:45 am]

BILLING CODE 4310-84-M

Bakersfield District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that the Bakersfield District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally on Friday, Saturday, and Sunday, November 30 and December 1-2, 1984. The meeting will be field-oriented and will be based out of the Beaver Dam Fire Station, located approximately 20 miles northeast of King City, in southwestern San Benito County, California. The official meeting will run from 1 p.m. on Friday through noon on Sunday.

SUPPLEMENTARY INFORMATION: The agenda will focus on development of a Coordinated Activity Plan for the Clear Creek/Condon Peak Management Area. The meeting will consist of field trips to view areas to be evaluated for management of hobby gem and mineral collection; cultural resources; recreation; soil, air, and water; rare, threatened, or endangered plants; and wildlife habitat. The Clear Creek/Condon Peak Management Area is located in both Fresno and San Benito counties and contains about 48,000 acres of BLM-Administered public lands within the Hollister Resource Area of the Bakersfield District.

Public participants are invited to join the meeting and field trips, but must provide their own transportation and meals.

Summary minutes of the meeting will be maintained in the Bakersfield District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Marta Witt, Public Affairs Officer, Bakersfield District, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301; (805) 861-4191.

Dated: October 24, 1984.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 84-28778 Filed 10-30-84; 8:45 am]

BILLING CODE 4310-40-M

[N-39813]

Nevada; Realty Action Noncompetitive Sale of Public Lands in Lincoln County

The following described lands have been examined and found suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at not less than fair market value. The land will not be offered for sale until 60 days after the date of the notice.

Mount Diablo Meridian

T. 1N., R. 67E., Sec. 29,
A parcel of land in the S½S½NE¼, E½SE¼ and E½W½SE¼,
Section 29 T. 1N., R. 67E., excluding certain mineral surveys containing 30 acres more or less.

The above described lands are proposed to be offered as a direct sale to California Portland Cement Company (CPC). CPC is planning a substantial financial investment to refurbish and operate a lime processing plant which is partially located on the above described public lands near Caselton, Nevada. The remainder of the plant facilities are located on adjancent private lands. CPC desires fee title and the disposal of these lands would serve an important public objective by providing economic development which cannot be achieved prudently or feasibly on land other than public land. Furthermore, speculative bidding would jeopardize the timely completion and economic viability of the project planned by CPC. The refurbishment of the plant will have a direct positive impact to the economy of Lincoln County and the Caselton/Pioche communities.

The sale is consistent with the Bureau's planning system. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The Board of County Commissioners for Lincoln County, Nevada fully supports the direct sale of these lands to CPC. In addition, the Bureau of Land Management has received numerous letters from the local populace and other interested persons expressing support for the proposed sale. The public interest would be served by offering this land for sale.

Conveyance of the available mineral interest will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of the direct sale offer will constitute an application for conveyance of those mineral interests. CPC will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interest in addition to the appraised value of the land.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. The United States reserves all oil and gas leaseable mineral deposits in the lands being conveyed, without limitation, under the general mineral leasing laws.

3. The United States reserves for itself and its licensees the right to prospect for, mine and remove the minerals owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mineral leasing laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling operations, and storage transportation facilities deemed necessary and authorized under law and implementing regulations.

4. Lessees of the United States shall only be liable for and shall only compensate owners of the surface estate for damages to the extent prescribed by regulations issued by the Secretary of the Interior.

5. Unless otherwise provided by separate agreement with the surface owner, lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior.

6. All causes of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against lessees of the United States; and the United States shall not be liable for the acts or omissions of its lessees.

And will be subject to:

1. Those rights for powerline purposes which have been granted to Lincoln County Power District No. 1, its successors or assigns, by Permit No. CC-020073, under the Act of March 4, 1911, 36 Stat. 1253, 43 U.S.C. 961.

2. Those rights for railroad purposes which have been granted to Los Angeles and Salt Lake Railroad (Union Pacific RR., lessee), its successors or assigns, by Permit No. CC-020905, under the Act of March 3, 1875, 18 Stat. 482; 43 U.S.C. 934-939.

3. Those rights for county road purposes (Caselton Heights Road) acquired by Lincoln County under R.S. 2477.

4. Those existing grazing rights of Brent F. Hunter, holder of grazing authorization No. 5018 to graze domestic livestock on the land according to the conditions and terms of said grazing authorization which shall cease on the date a waiver of grazing rights is signed. The patentee shall be entitled to receive annual grazing fees from Brent F. Hunter in an amount not to exceed that which is authorized under the Federal grazing fee published annually in the **Federal Register.** If a waiver of grazing rights is obtained from Brent F. Hunter by the Bureau of Land Management prior to the sale, this reservation will not be made a part of the patent.)

Detailed information concerning the sale is available for review at the Las Vegas District Office, Bureau of Land Management, 4765 W. Vegas Drive, Las Vegas, Nevada 89126. For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: October 26, 1984.

Kemp Conn,

District Manager.

[FR Doc. 84-28796 Filed 10-30-84; 8:45 am]

BILLING CODE 4310-HC-M

Colorado; Filing of Plats of Survey

October 24, 1984.

The plat of surveys of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., October 24, 1984.

The supplemental plat prepared to show amended lottings in section 7, T. 7 S., R. 77 W., Sixth Principal Meridian, Colorado, was accepted October 18, 1984.

The supplemental plat prepared to show a subdivision of original lot 5, section 8, T. 1 N., R. 102 W., Sixth Principal Meridian, Colorado, was accepted October 22, 1984.

These plats were prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 84-28637 Filed 10-30-84; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and/or to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7340. Comments and suggestions in writing are preferred. See address below.

Title: Acreage Limitation, 43 CFR Part 426.

Abstract: Respondents to this information collection include landholders who own or lease irrigation land, as defined in 43 CFR Part 426, and water user districts, which must summarize the information received from the landholders. Landholders are required to submit relevant information conerning their irrigation landholdings in order to establish their compliance with Reclamation law, and to determine the appropriate water rate for each landholding.

Bureau Forms No.: 7-1781A, 7-17813, 7-2180, 7-2181, 7-182, 7-2183, 7-2184, 7-2187, 7-2188, 7-2189, 7-2190, 7-2191, 7-2192, 7-2193, 7-2194, 7-2197, 7-2198, and 7-2199.

Frequency: Annually, or when landholding change occurs.

Description of respondents: Irrigation landholders, as defined in 43 CFR Part 426, and water user districts.

Annual Responses: 47,450.

Annual Burden Hours: 21,550.

Bureau clearance officer: Wilson M. Carr, Department of the Interior, Bureau of Reclamation, Room 7056, 18th and C Streets, NW., Washington, D.C. 20240, telephone 202-343-5356.

Dated: October 11, 1984.

William C. Klostermeyer,

Acting Commissioner.

[FR Doc. 84-28640 Filed 10-30-84; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-165]

Import Investigations; Certain Alkaline Batteries; Extension of Administrative Deadline for Completion of Investigation by 14 Days

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has extended the administrative deadline for completion of the above-captioned investigation by 14 days.

Authority: 19 U.S.C. 1337.

SUMMARY: The previous administrative deadline for completion of this investigation was October 22, 1984. The Commission has determined to extend the previous deadline by 14 days, i.e., until November 5, 1984.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0499.

By order of the Commission.

Issued: October 24, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-28624 Filed 10-30-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-189; Final]

Import Investigations; Calcium Hypochlorite From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-189 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of calcium hypochlorite, provided for in item 418.22 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value. As provided in § 207.25 of its Rules of Practice and Procedure (19 CFR 207.25), the Commission will make its determination in this investigation by February 5, 1985.

EFFECTIVE DATE: October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Lynn Featherstone (202-523-0242), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION: .

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of calcium hypochlorite from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on April 25, 1984, by Olin Corp., Stamford, CT. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (49 FR 25316, June 20, 1984).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to section 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list

containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16 of the rules (19 CFR 201.16(c))), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on December 7, 1984, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on December 20, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 5, 1984. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on December 11, 1984, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is December 17, 1984.

Testimony at the public hearing is governed by § 297.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 2, 1985.

Written submissions

As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 2, 1985. A signed orginal and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: October 23, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-28625 Filed 10-30-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-197]

Import Investigations; Certain Compound Action Metal Cutting Snips and Components Thereof; Commission Determination Not To Review Initial Determination Terminating Respondent

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (ID) (Order No. 4) terminating Action Eagle, Inc. as a respondent in the above-captioned investigation.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51 and 210.53.

SUMMARY: On August 6, 1984, respondent Action Eagle, Inc. moved for termination as a respondent in the investigation. Complainant Cooper Industries, Inc. filed an opposition to this motion and the Commission investigative attorney recommended termination of Action Eagle, Inc. The presiding officer issued an ID granting respondent's motion on September 24, 1984. The Commission received no petitions for review of the ID or comments from Government agencies.

Copies of the presiding officer's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523-0375.

By order of the Commission.

Issued: October 24, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-28622 Filed 10-30-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 337-TA-182/188]

Import Investigations; Certain Fluidized Supporting Apparatus and Components Thereof; Resumption of Investigations

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has resumed the above-captioned consolidated investigations, which had previously been suspended.

Authority: 19 U.S.C. 1337(b)(1) and 19 CFR 210.15.

SUMMARY: On August 31, 1984, the Commission suspended the above-captioned investigations under 19 U.S.C. 1337(b)(1) and Commission rule 210.15 because of a concurrent proceeding before the Federal Trade Commission and the Department of Justice under 15 U.S.C. 18a. 49 FR 35441 (September 7, 1984). On October 3, 1984, the Federal Trade Commission published notice that the concurrent proceeding on which the suspension had been based had been completed. 49 FR 39108 (October 3, 1984).

Copies of the nonconfidential version of the Commission's Action and Order and all other nonconfidential documents filed in connection with these investigations are available for

inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0480.

By order of the Commission.

Issued: October 19, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–28626 Filed 10–30–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–167]

Import Investigations; Certain Single Handle Faucets; Issuance of Exclusion Order

AGENCY: International Trade Commission.

ACTION: Issuance of exclusion order.

Authority: 19 U.S.C. 1337(d).

SUMMARY: On October 24, 1984, the Commission issued an order directing that the following articles are excluded from entry into the United States, except under license from the owner of the trademarks: (i) ball design handles for single handle faucets (including complete or partial signle handle faucet assemblies incorporating such handles) which infringe complainant Masco Corporation's common-law trademark in such ball design, (ii) ball design handles for single handle faucets (including complete or partial single handle faucet assemblies incorporating such handles) which bears the trademark "Delta" or any colorable imitations thereof, (iii) packaging for such handles and/or such faucet assemblies which bears the trademark "Delta" or a colorable imitation thereof; and (iv) packaging for such handles and/or such faucet assemblies which bears a depiction of the trademarked ball design handle faucet.

Copies of the Commission's action and order and all other non-confidential documents filed in connection with this investigation are avaialble for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202–523–0493.

By order of the Commission.

Issued: October 24, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–28621 Filed 10–30–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–190]

Import Investigations; Certain Softballs and Polyurethane Cores Therefore; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Diamond Sports Company.

SUMMARY: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 22, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: October 22, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–28620 Filed 10–30–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–178]

Import Investigations; Certain Vinyl-Covered Foam Blocks; Issuance of Exclusion Order

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has issued a general exclusion order in the above-captioned investigation.

Authority: 19 U.S.C. 1337.

SUMMARY: The presiding officer issued an initial determination on July 26, 1984, in which she determined that there has been a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the unauthorized importation or sale of certain vinyl-covered foam blocks which infringe claims 1 or 2 of U.S. Letters Patent 3,518,786. In accordance with the Commission's notice of August 24, 1984, a violation of section 337 exists in the unauthorized importation or sale of certain vinyl-covered foam blocks the tendency of which unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Pursuant to section 337(g), the Commission has determined that 150 percent of the entered value would be the appropriate bond requirement for entry of infringing vinyl-covered foam blocks during the 60-day Presidential review period.

Copies of the Commission's Action and Order, its Opinion, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International

Trade Commission , telephone 202–523–0079.

By order of the Commission.

Issued: October 25, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–28618 Filed 10–30–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 732–TA–164; Final]

Import Investigations; Stainless Steel Sheet and Strip From Spain; Determination

On the basis of the record [1] developed in investigation No. 731–TA–164 (Final), the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury,[2] nor is the establishment of an industry in the United States materially retarded, by reason of imports from Spain of stainless steel sheet and strip, provided for in items 607.90, 608.43, and 608.57 of the Tariff Schedules of the United States (TSUS), which the Department of Commerce has found are being, or are likely to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this final investigation, effective June 26, 1984, following a preliminary determination by the Department of Commerce that imports of stainless steel sheet from Spain are being, or are likely to be, sold in the United States at LTFV. At the same time, Commerce preliminarily determined that stainless steel strip from Spain was not being, and was not likely to be, sold in the United States at LTFV. Commerce's preliminary determination was published in the **Federal Register** of June 26, 1984. Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of July 25, 1984 (49 FR 20026). The hearing was held in Washington, D.C. on September 13, 1984, and all persons who requested the opportunity were permitted to appear in person or through counsel. The Commission's determination in this investigation was made in an open "Government in the Sunshine" meeting, held on October 16, 1984.

On January 13, 1984, petitions were filed with the Commission and the U.S. Department of Commerce on behalf of the Specialty Steel Industry of the United States and the United Steelworkers of America. The petitions alleged that stainless steel sheet and strip imported from Spain are being sold in the United States at LTFV and are causing material injury or the threat thereof to the U.S. industry producing such articles. Accordingly, the Commission instituted investigation No. 731–TA–164 (Preliminary) to determine whether there was a reasonable indication that an industry in the United States was materially injured or was threatened with material injury, or whether the establishment of an industry in the United States was materially retarded, by reason of imports from Spain of stainless steel sheet and strip.

On February 27, 1984, the Commission notified the Commerce Department of its affirmative determination with respect to the preliminary investigation of imports from Spain. Notice of the Commission's preliminary determination was published in the **Federal Register** of March 7, 1984 (49 FR 8505). As a result, Commerce continued its investigation into alleged LTFV sales of stainless steel sheet and strip from Spain. Commerce's final affirmative determination with respect to LTFV imports from Spain of stainless steel sheet and strip was published in the **Federal Register** of September 10, 1984 (49 FR 35538). On September 12, 1984, the Commission published in the **Federal Register** (49 FR 25872) a notice amending the scope of its final investigation to conform with Commerce's final determination by including stainless steel strip within the scope of the investigation.

The Commission transmitted its report on this investigation to the Secretary of Commerce on October 23, 1984. A public version of the Commission's report, Stainless Steel Sheet and Strip from Spain (investigation No. 731–TA–164 (Final), USITC Publication 1593, October 1984) contains the views of the Commission and information developed during the investigation.

By Order of the Commission.

Issued: October 23, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–28626 Filed 10–30–84 8:45 am]

BILLING CODE 7020–02–M

[1] The "record" is defined in § 207.2(i) of the Commission's *Rules of Practice and Procedure* (19 CFR 207.2(i)).

[2] Commissioner Eckes dissenting.

[Investigation No. 337–TA–191]

Import Investigations; Certain Stretch Wrapping Apparatus and Components Thereof; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: Muller Manufacturing, Ltd., and Muller Packaging Systems, Inc.

SUMMARY: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 22, 1984.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E. Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments:

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E. Street NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT:
Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: October 22, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–28627 Filed 10–30–84; 8:45 am]

BILLING CODE 7020–02–M

Proposed Revocation of Countervailing Duty Order Concerning Butter From Australia

AGENCY: U.S. International Trade Commission.

ACTION: Proposed revocation of countervailing duty order under section 104(b) of the Trade Agreements Act of 1979, concerning *Butter from Australia.*

SUMMARY: On May 17, 1982, the Government of Australia filed a request under section 104(b)(1) of the Trade Agreements Act of 1979 seeking a review of the outstanding countervailing duty order on butter exported from Australia. T.D. 42937, Sept. 5, 1928, as amended. On August 29, 1984, the Commission published notice in the **Federal Register** requesting public comment on the proposed noninstitution of a review investigation, under Section 104(b)(1) of the Trade Agreements Act of 1979, regarding the order and comments were to be filed no later than September 29, 1984. 49 FR 34310. That notice stated that if no interested party (19 U.S.C. 1677(9)) representing an industry (19 U.S.C. 711(4)(A)) requested an investigation and presented reasonable grounds in which the Commission could find material injury or threat of material injury, the Commission would not institute an investigation. In response to that notice, only one comment was received and that comment neither requested an investigation nor presented reasonable grounds on which material injury or threat could be found.

Accordingly, the Commission has determined not to institute an investigation. In these circumstances, the noninstitution of the investigation has the same effect as a determination of no material injury or threat thereof, and the Commission is advising the Department of Commerce that the outstanding countervailing duty order should be revoked.

FOR FURTHER INFORMATION CONTACT:
Jack Simmons, Esq., Office of the General Counsel, telephone 202–523–0493.

By order of the Commission.

Issued: October 24, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84– Filed 10–30–84; 8:45 am]

BILLING CODE 7020–02–M

Termination of Countervailing Duty Investigation Concerning Ferroalloys From Spain

AGENCY: International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to ferroalloys from Spain.

EFFECTIVE DATE: October 23, 1984.

FOR FURTHER INFORMATION CONTACT:
Ms. Vera Libeau, Office of Investigations, telephone number (202) 523–0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On April 23, 1982, the Commission received a request from the Government of Spain for the review of the outstanding countervailing duty order on ferroalloys from Spain. Notice of the countervailing duty order was published on January 2, 1980 in the **Federal Register** (45 FR 25).

On August 16, 1984, the Commission was notified by letter that the Ferroalloys Association, the original petitioner for the countervailing duty order, wished to withdraw its request for the imposition of countervailing duties under the above referenced countervailing duty order.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. That section directs the Commission to solicit public comment prior to termination and approve such termination only if it is in the public interest. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

On September 6, 1984, (49 FR 35257) the Commission published a notice in the **Federal Register** requesting public comment by October 9, 1984, on the proposed termination of the Commission investigation on ferroalloys from Spain. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigation on ferroalloys from Spain (T.D. 80–11). The termination of this investigation has the same effect as a determination that an industry in the United Sates would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty order were to be revoked.

In addition to publishing this **Federal Register** notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with this investigation and is also notifying the Department of Commerce of its action in this case.

By order of the Commission.

Issued: October 25, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–28617 Filed 10–30–84; 8:45 am]

BILLING CODE 7020–02–M

[Docket No. 331–199]

Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports of Certain High Technology Products

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with a request dated October 19, 1984, from the United States Trade Representative, the Commission has instituted investigation No. 332–199 for the purpose of providing advice requested by the U.S. Trade Representative (USTR) with respect to the probable economic effect on U.S. industries producing like or directly competitive articles, and on U.S. consumers, of the elimination of U.S. duties on certain high technology products.

EFFECTIVE DATE: October 24, 1984.

FOR FURTHER INFORMATION CONTACT:
(1) Articles covered under item 676.52(pt.), Mr. William Fletcher (202–523–0378); (2) Articles coverd under items 687.70–.85, Mr. Nelson Hogge (202–523–0487).

The above staff were in the Commission's Office of Industries. For

information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at (202–523–0487).

SUPPLEMENTARY INFORMATION: On October 19, 1984, the USTR furnished the United States International Trade Commission with a list of high technology products which are being considered for duty free treatment. The investigation covers the following articles and their respective tariff classification provisions in the Tariff Schedules of the United States:

TSUS item	Product description
676.52 (pt.)	Parts of automatic data-processing machines and units (subassemblies) thereof (other than parts incorporating a cathode-ray tube).
687.70	Transistors.
687.72	Diodes and rectifiers.
687.74	Monolithic integrated circuits.
687.77	Other integrated circuits.
687.81	Other (crystal components).
687.85	Parts of semiconductors.

Public Hearing

A public hearing in connection with this investigation will be held in the Commission Hearing Room, 701 E Street, NW., Washington, D.C. 20436, beginning at 10:00 a.m., on November 15, 1984, to be continued on November 16, 1984, if required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, not later than noon, November 9, 1984.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on November 14, 1984. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

Issued: October 26, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–28738 Filed 10–30–84; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-228X)]

Rail Carriers; Burlington Northern Railroad Co. Abandonment in Powell County, MT; Exemption

The Burlington Northern Railroad Company (BN) filed a notice of exemption under 49 CFR Part 1152 Subpart F— *Exempt Abandonments.* BN intends to abandon its line of railroad between milepost 1.07 near Phosphate and milepost 4.65, a distance of 3.58 miles in Powell County, MT.

BN has certified (1) that no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint, filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Montana has been notified in writing at least 10 days prior to the filing of the notice. See *Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment will be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective on November 30, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 13, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 20, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to BN's representative: Peter M. Lee, 3800 Continental Plaza, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 24, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84–28863 Filed 10–30–84 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 17–84]

Privacy Act of 1974; New Routine Use

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(e)(4) and (11), notice is given that the Department of Justice proposes to modify a system of records entitled "Immigration and Naturalization Service Index System, JUSTICE-INS–001," which was last published in the **Federal Register** on September 28, 1978 (43 FR 44695). Specifically, the "System manager(s) and address" section of the notice has been changed to reflect that the system manager Service-wide is now the Associate Commissioner, Information Systems. The "Routine uses of records * * *" section has also been revised. In particular, minor clarifications have been made to paragraphs D and H; paragraph F has been modified to show that the information may also be disseminated to state, local and foreign government agencies on a discretionary and/or reciprocal basis; and paragraph L has been added to describe a new routine use. The subject paragraphs are set forth below.

D. If records contained in this system indicate a violation or potential violation of law whether civil, criminal or regulatory in nature, the relevant records may be provided as a routine use to the appropriate agency, whether federal, state, local or foreign charged with the responsibility of investigating or prosecuting such violations or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto. Such records may also be furnished in response to requests from those agencies on a discretionary basis.

F. A record from this system of records may be disclosed as a routine use to a federal, state, local or foreign government agency on a discretionary and/or reciprocal basis in response to

its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

H. Relevant records that indicate violation of the laws of another nation, whether civil or criminal, may be provided to the appropriate foreign government agency charged with enforcing or implementing such laws; records indicating any such violation or potential violation may also be provided to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity. Such records may also be furnished in response to requests from appropriate foreign government agencies on a discretionary and/or reciprocal basis.

L. A record from this system of records may be disclosed as a routine use to a federal, state, local or foreign government agency on a discretionary and/or reciprocal basis, in response to its request, to assist in the collection or repayment of loans and fraudulently-secured benefits or grants.

Since the above new and modified routine uses are compatible with the purpose for which the system is maintained, no report to the Office of Management and Budget or the Congress is required. Inquiries or comments may be submitted in writing to Thomas F. O'Leary, Assistant Director, Administrative Services Staff, Justice Management Division, Department of Justice, Room 6314, 10th and Constitution Avenue, NW., Washington, D.C. 20530. All comments must be received by November 30, 1984. If no comments are received, the new and modified routine uses will be adopted as set forth. The amended system is reprinted below in its entirety.

Dated: October 18, 1984.

William D. Van Stavoren,

Deputy Assistant Attorney General for Administration.

JUSTICE/INS-001

SYSTEM NAME:

The Immigration and Naturalization Service Index System, which consists of the following subsystems:

A. Agency information control record index.

B. Alien address reports index and records.

C. Alien enemy index and records.

D. Automobile decal parking identification system for employees.

E. Centralized index and records (Master Index).

F. Congressional Mail Unit Correspondence control index.

G. Document vendors and alters index.

H. Enforcement indexes.

1. Group one. (a) Contact index. (b) Informant index. (c) Antismuggling index (general). (d) Criminal, immoral, narcotic, racketeer, and subversive index. (e) Suspect third party index.

2. Group two. (a) Air detail office index. (b) Anti-smuggling information centers, Canadian and Mexican borders. (c) Border Patrol Academy index. (d) Boarder Patrol sectors general index. (e) Fraudulent Document Center index.

3. Enforcement correspondence control index.

I. Examinations indexes.

1. Application and petition system.

2. Correspondence control index.

3. Service lookout system.

J. Extension training program enrollees.

K. Finance Section indexes.

1. Accounts with creditors.

2. Accounts with debtors.

L. Freedom of Information correspondence control index.

M. Intelligence indexes.

N. Microfilmed manifest records.

O. Naturalization and citizenship indexes.

1. Naturalization and citizenship docket cards.

2. Examiners docket lists of petitioners for naturalization.

3. Master docket list of petitions for naturalization pending one year or more.

P. Personnel investigations index and records.

Q. Property issued to employees.

R. Security access clearance index.

S. White House and Attorney General correspondence control index.

T. Health record system.

U. Personal data card system.

V. Compassionate cases system.

W. Emergency reassignment index.

X. Alien documentation, identification and telecommunications (ADIT) system.

SYSTEM LOCATIONS:

A. Central Office: 425 Eye Street, NW., Washington, D.C. 20536.

B. Regional Offices: (1) Burlington, Vt; (2) Fort Snelling, Twin Cities, Minn.; (3) Dallas, Tex.; (4) San Pedro, Calif.

C. District offices in the United States: (1) Anchorage, Alaska; (2) Atlanta, Ga.; (3) Baltimore, Md.; (4) Boston, Mass.; (5) Buffalo, N.Y.; (6) Chicago, Ill.; (7) Cleveland, Ohio, (8) Dallas, Tex.; (9) Denver, Colo.; (10) Detroit, Mich.; (11) El Paso, Tex.; (12) Hartford, Conn.; (13) Helena, Mont.; (14) Honolulu, Hawaii; (15) Houston, Tex.; (16) Kansas City, Mo; (17) Los Angeles, Calif., (18) Miami, Fla.; (19) Newark, N.J.; (20) New Orleans, La.; (21) New York, N.Y.; (22) Omaha, Nebr.; (23) Philadelphia, Pa.; (24) Phoenix, Ariz.; (25) Portland, Maine; (26) Portland, Oreg.; (27) St. Albans, Vt.; (28) St. Paul, Minn.; (29) San Antonio, Tex.; (30) San Diego, Calif.; (31) San Francisco, Calif.; (32) San Juan, P.R.; (33) Seattle, Wash.; (34) Washington, D.C.;

D. District offices in foreign countries: (1) Hong Kong, B.C.C.; (2) Mexico City, Mexico; (3) Rome, Italy.

E. Sub-offices: (1) Agana, Guam; (2) Albany, N.Y.; (3) Cincinnati, Ohio; (4) Hammond, Ind.; (5) Harlingen, Tex.; (6) Las Vegas, Nev.; (7) Louisville, Ky.; (8) Memphis, Tenn.; (9) Milwaukee, Wis.; (10) Norfolk, Va.; (11) Oklahoma City, Okla.; (12) Pittsburgh, Pa.; (13) Providence, R.I.; (14) Reno, Nev.; (15) St. Louis, Mo.; (16) Salt Lake City, Utah; (17) Skokane, Wash.;

F. Border Patrol Sector Headquarters: (1) Blaine, Wash.; (2) Buffalo, N.Y.; (3) Chula Vista, Calif.; (4) Del Rio, Tex.; (5) Detroit, Mich.; (6) El Centro, Calif.; (7) El Paso, Tex.; (8)— Grand Forks, N. Dak.; (9) Havre, Mont.; (10) Houlton, Maine; (11) Laredo, Tex.; (12) Livermore, Calif.; (13) Marfa, Tex.; (14) McAllen, Tex.; (15) Miami, Fla; (16) New Orleans, La.; (17) Ogdensburg, N.Y.; (18) Spokane, Wash.; (19) Swanton, Vt.; (20) Tucson, Ariz.; (21) Yuma, Ariz.

G. Border Patrol Academy, Los Fresnos, Tex.; Federal Law Enforcement Training Center (FLETC), Glynco, Ga.

H. Charlotte Amalie, St. Thomas, V.I.

I. Sub-offices in foreign countries: (1) Athens, Greece; (2) Frankfurt, Germany; (3) Naples, Italy; (4) Palermo, Palermo, Italy; (5A) Rome, Italy; (6) Tokyo, Japan; (7) Vienna, Austria.

J. El Paso Intelligence Center (EPIC), El Paso, Tex.

Addresses of offices are listed in the telephone directories of the respective cities listed above under the heading "United State Government, Immigration and Naturalization Service."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Agency information control record index (Location A, supra). Individuals named or referenced in documents classified for national security reasons.

B. Alien address reports index and records (Location A, supra). Aliens required to report addresses each January.

C. Alien enemy index and records (Location A, supra).

1. Alien enemies who were interned during World War II.

2. Americans of Japanese ancestry (Nisei) who returned to Japan and,

during World War II, either accepted employment by the Japanese Government or become naturalized in Japan.

D. Automobile decal parking identification for employees (Location B–43, supra). Current INS employees who have the privilege of parking their cars on government premises.

E. Centralized index and records (Master Index) (Locations A, C, D, E, and I, supra).

1. Individuals covered by provisions of the immigration and nationality laws of the United States.

2. Individuals who are under investigation, were investigated in the past, or who are suspected of violating the criminal or civil provisions of treaties, statutes, Executive orders, and Presidential proclamations administered by the Immigration and Naturalization Service, and witnesses and informants having knowledge of such violations.

F. Congressional Mail Unit correspondence control index (Location A, supra).

1. Individuals named in correspondence received, including INS employees and past employees; Federal, State, and local officials; and members of the general public.

2. Individuals named in reports or correspondence received, as individuals investigated in the past or under active investigation, or suspected of violations of the criminal or civil provisions of statutes enforced by INS, including Presidential proclamations and Executive orders relating thereto, and witnesses and informants having knowledge of violations.

G. Document vendors and alterers index (Location B–4; duplicates in several INS offices in the Western and Southern regions). Individiuals who are alleged immigration law violaters involved in the supply of fraudulent documents.

H. Enforcement indexes.

1. Group one (Locations A, B, C, and E supra): (a) Contact index; (b) Informant index; (c) Anti-smuggling index (general); (d) Criminal, immoral, narcotic, racketeer and subversive indexes; (e) Suspect third party index.

(1) Individuals who are in a position to know, learn of, and assist in locating aliens illegally in the United States; (2) individuals who have significant knowledge of foreign or domestic organizations subversive in nature and are willing to appear as Government witnesses or cooperate with INS on a continuing basis; (3) individuals who are known or suspected of being professional arrangers, transporters, harborers, and smugglers of aliens; who operate or conspire to operate with others to facilitate the surreptitious entry of an alien over a coastal or land border of the United States; and witnesses having knowledge of such matters; (4) individuals who are known or suspected of being habitual or notorious criminals, immorals, narcotic violators or racketeers, or subversive functionaries or leaders; (5) individuals who are known or believed to be engaged in fraud operations involving the preparation and submission of visa petitions and other applications for benefits administered by INS; or the preparation and submission of applications for immigrant visas and/or Department of Labor certifications, or the filing of false United States birth registrations for alien children to enable them to pose as citizens or to enable parents who are immigrant visa applicants to evade the labor certification requirement.

2. Group two. (a) Air detail office index (Location J, supra). Individuals who are pilots and/or owners of private aircraft flying between the United States and foreign countries: individuals who engage in or are suspected of being engaged in illegal activity such as alien smuggling or entry without inspection.

(b) Anti-smuggling information centers, Canadian and Mexican borders (Locations: northern border, F–19, supra; southern border, J, supra). Individuals who are known or suspected of being smugglers or tranporters of illegal aliens.

(c) Border Patrol Academy index (Location G, supra). Students or former students at the Border Patrol Academy; INS officers attending advanced training classes at the Academy or the Federal Law Enforcement Training Center (FLETC).

(d) Border Patrol sectors general index (Location F, supra). Past or present INS employees; individuals who are law violators, witnesses, contacts, informants, members of the general public, Federal, state, county, and local officials.

(e) Fraudulent Documents Center index (Location J, supra). Individuals who are members of the general public, notaries, public, state and local birth registration officials and employees, immigration law violators, vendors of documents, donors of documents, midwives, and witnesses. Also included in the system are names and information about fictitious persons used by counterfeiters or alterers of citizenship documents.

3. Enforcement correspondence control index (Location A, supra). (a) Individuals named in correspondence received, including employees, past employees, and others; (b) individuals named in documents, reports, or correspondence as individuals under current or past investigation, suspended of violation of the criminal or civil provisions of the statutes enforced by INS, including Executive orders and Presidential proclamations, and witnesses and informants having knowledge of violations.

I. Examinations indexes (Location A supra; duplicates in some local offices):

1. Application and petition index: individuals who have filed or assisted in filing petitions to classify aliens for the issuance of immigrant visas.

2. Correspondence control index: members of the general public.

3. Service lookout system: violators or suspected violators of the criminal or civil provisions of statutes enforced by INS.

J. Extension training program enrollees (Location A, supra). INS employees and other Federal agency employees enrolled in extension training program courses administered by INS.

K. Finance Section indexes (Locations A and B, supra): (1) Accounts with creditors; (2) Accounts with debtors.

(a) Individuals who are indebted to the United States Government for goods, services, or benefits or for administrative fines and assessments.

(b) Employees who have received travel advances or overpayments from the United States Government, who are in arrears in their accounts, or who are liable for damage to Government property.

(c) Vendors who have furnished supplies, material, equipment, and services to the Government.

(d) Employees, witnesses and special deportation attendants who have performed official travel.

(e) Employees and other individuals who have a valid claim against the Government.

L. Freedom of Information correspondence control index (Locations A, B, C, D, E, F, G, H, and I, supra). Individuals who request access to or copies of records maintained by INS, under the provisions of the Freedom of Information Act (5 U.S.C. 522).

M. Intelligence indexes (Locations A and B, supra). Individuals who have or are suspected of having violated the criminal or civil provisions of the statutes enforced by INS.

N. Microfilmed manifest records (Locations A, C–26, C–10, C–20, and C–29, supra). Individuals who have arrived or departed by aircraft or vessel at a United States port.

O. Naturalization and citizenship indexes (Locations C and E, supra, except E–6, E–7, E–8, and E–13).

1. Naturalization and citizenship docket cards. Individuals seeking benefits under Title III of the Immigration and Nationality Act of 1958, as amended.

2. Examiners' docket lists of petitioners for naturalization. Petitioners for naturalization and their beneficiaries.

3. Master docket list of petitioners for naturalization pending one year or more. Petitioners for naturalization and their beneficiaries.

P. Personnel investigations index and records (Location A, supra). Employees, former employees, other Government agency employees designated to perform immigration functions, witnesses, informants, and certain other persons having contacts with INS operations.

Q. Property issued to employees (Locations A, B, C, E, and F, supra). INS employees who have been issued property for use in performance of official duties.

R. Security access clearance index (Location A, supra). Current INS employees who have been cleared for access to documents and materials classified in the interest of national security.

S. White House and Attorney General correspondence control index (Location A, supra). Individuals named in or originating correspondence referred to INS by staff of the White House or Attorney General.

T. Health record system (Location A, supra). Persons at Location A who have requested health services or required emergency treatment.

U. Personal data card system (Locations A and B, supra). Employees and former employees of INS.

V. Compassionate cases system (Locations A and B, supra). INS employees who have requested transfers for personal reasons.

W. Emergency reassignment index (Locations B, C, E, and F, supra). INS employees who would be reassigned to other duty stations in case of emergency.

X. Alien documentation, identification, and telecommunications (ADIT) system (Location A, supra). Aliens lawfully admitted for permanent residence, commuters and other authorized frequent border crossings, and nonimmigrant persons other than transients.

Categories of records in the system: A. Agency information control record index. This system contains reference and locater data on the following kinds of documents:

1. Top secret and secret materials classified as national security information, including all copies prepared from controlled documents originated, received, or transmitted by INS officers.

2. Confidential material originated by other agencies and referred to INS, including all copies prepared from controlled documents.

3. All investigative reports, responses to security checks, and intelligence material received from sources within the Department of Justice and other Federal intelligence sources.

B. Alien address report index and records. This system contains an index and copies of Form I–53, Alien Address Report, required to be filed January 1 of each year by aliens in the United States.

C. Alien enemy index and records. This system contains a microfilm index and files containing various forms, reports, and other information.

D. Automobile decal parking identification system for employees. This System contains a list by number of each Department of Justice decal car sticker issued to local INS employees.

E. Centralized index and records (Master Index). The system consists of index records and related records and files containing various forms, applications and petitions for benefits under the immigration and nationality laws, reports of investigation, statements, reports, correspondence, and memorandums. Records which may be accessed electronically are limited to index and file locater data including name, identifying number, date and place of birth, date and port of entry, coded status transaction data, and location of relating records or files.

F. Congressional Mail Unit correspondence control index. This system contains a locater record for each report of piece of correspondence received, reflecting the name of the individual and the number of the subject filed in which specified information concerning the individual is maintained.

G. Document vendors and alterers index. This system consists of "mug book" photos of alleged immigration law violators involved in the supply of fraudulent documents, and data relating to the pictured violators including name, aliases, vital statistics, method of operation, list of convictions, present location, and source material.

H. Enforcement indexes. 1. Group one. (a) Contact index; (b) Informant index; (c) Antismuggling index (general); (d) Criminal, inmmoral, narcotic, racketeer and subversive indexes; (e) Suspect third party index. These systems of records are maintained on Form G–598, Contact Record; Form G–169, Informant Record; Form G–170, Smuggler Information Index Card; and other index cards containing reference and file locater data on the individuals, including in some cases biographic data, address, and a brief description of activities.

2. Group two. (a) Air detail office index. The primary record in the system is Form I–92A, Report of Private Aircraft Arrival, which is executed by the inspecting official upon arrival of a private aircraft from foreign territory. There are also index cards, forms, investigative reports, records, and correspondence on aircraft arrivals, failures to report for inspection, and known or suspected alien smuggling operations using aircraft; and microfiche indexes containing names of owners of aircraft of United States registery.

(b) Anti-smuggling information centers, Canadian and Mexican borders. This system contains Form G–170, Smuggler Information Index Card, other index cards, and correspondence relating to anti-smuggling activities. These indexes are in loose leaf form and are distributed to Border Patrol offices in the border areas.

(c) Border Patrol Academy index. This system contains general information and correspondence regarding each student's academic progress in training. The information is maintained on the following forms: SW–91, Probationary Achievement Report; SW–91A, Scholastic Grade Worksheet; SW–91B, IOBTC Achievement Report-Immigration Inspector; SW–91C, IOBTC Achievement Report-Investigator; SW–96, Class Rating Form; SW–128, Training Data: SW–282, Registration Information Form: SW–446, Conduct and Efficiency Report of Probationary Employee-5½ and 10 Months Exam Grades.

(d) Border Patrol sectors general index. This system contains indexes, forms, reports, and records relating to activities of the Border Patrol including Form I–44, Record or Apprehension of Seizure,Form I–326, Prosecution Reports; Form I–263A and I–263B, Record of Sworn Statement; Form I–195, Criminal Prosecution Control Card; Form I–263W, Record of Sworn Statement-Witness; Form I–236, Prosecution Reports; Form G–170, Smuggler Information Index Card; Form G–296, Report of Violation of Section 239, Immigration and Nationality Act; Form G–330, Notice of Action Information; Form G–445, Conduct and Efficiency Evaluation of Probationary Appointees; Form G–598, Contact Record. This system also contains copies of correspondence and memorandums between INS offices and outside agencies and individuals, as well as photographs of some violators of the immigration laws of individuals

suspected of being involved in immigration law violations.

(e) Fraudulent Document Center index. This system contains birth certificates, baptismal certificates, and other indentification documents used by aliens to support their fraudulent claims to United States citizenship. Most of the documents are genuine; however, there are also counterfeit and altered documents in the system. Also contained in the system are cross indexes, investigative reports, and records of individuals involved in fraud schemes or whose documents have been put to fraudulent usage.

3. Enforcement correspondence control index. This system contains reference and locator information on documents, reports, and correspondence received in the offices of the Associate Commissioner, Enforcement. Records are maintained on Form G–617, Correspondence Control Card, and Form CO–147, Call-up Index—Domestic Control.

I. Examinations indexes. 1. Application and petition systems. This system contains petitioners' names, date and place of birth, names of prior spouses, immigration "A" number if an alien, and date of marriage if married; beneficiarys' names, date and place of birth, immigration "A" number if any, names of spouses, and nationality code, and the names, dates, and places of birth of any children; name of the person administering the oath or preparing the form, if other than a Government employee.

2. Correspondence control index. This system contains reference and locator information on documents, reports and corespondence received in the office of the Associate Commissioner, Examinations. Records are maintained on Form G–617, Correspondence Control Card.

3. Service lookout system. This system contains names and reference data on violators, alleged violators, and suspected violators of the criminal or civil provisions of the statutes enforced by INS.

J. Extension training program enrollees. This system contains correspondence and records of each enrollee's test scores; dates of actions such as mailing of lesson materials, test results, and certificates of completion; and dates of receipt of tests.

K. Finance Section indexes. 1. Accounts with creditors. Records are vendors' invoices, purchase orders, travel vouchers, and claims filed by appropriation for the fiscal year from which payment is chargeable.

2. Accounts with debtors. Records consist of bills for inspection services performed under the Act of March 2, 1931; fees, fines, penalties, and deportation expenses assessed pursuant to the Immigration and Nationality Act; and employee indebtedness for travel advances, for the unofficial use of Government facilities and services, for damage to or loss of Government property, and for erroneous or overpayment of compensation for travel expenses.

L. Freedom of Information correspondence control index. Records are kept on Form G–617, Correspondence Control Card, and include reference and locator information on each request for information received under the Freedom of Information Act.

M. Intelligence indexes. Records include reference and locator information on documents, reports, bulletins, and correspondence; records are categorized by name, violation, and activity.

N. Microfilmed manifest records. The system contains microfilmed indexes and arrival and departure manifests with brief biographical data and facts of arrival and departure. Arrival records for certain ports date from 1891, and departure records date from 1900. Records are not complete, as some records were destroyed and not microfilmed.

O. Naturalization and citizenship indexes. 1. Naturalization and citizenship docket cards. Docket cards are 3X5 or 5X8 index cards for each applicant, beneficiary, or petitioner, recording type of application, date of receipt, file and/or petition number, court number where petition for naturalization was filed, and reference number of the individual's case file.

2. Examiners' docket lists of petitioners for naturalization. Records are maintained on Form N–476, Examiner's Docket List, and record court of naturalization jurisdiction, petition number, petition filing date, court number, name of petitioner, name of beneficiary, proposed recommendation by the naturalization examiner, reasons for continuance, and reference number of the individual's case file.

3. Master docket lists of petitions for naturalization pending one year or more. Records are maintained on Form N–476, Examiner's Docket List, and contain reference and locater information on petitions pending for one year or longer.

P. Personnel investigations index and records. Index records for closed cases or cases under active investigations contain reference and locater information including names, locations, and allegations. Two relating sets of temporary work folders contain reports, documents, and correspondence.

Q. Property issued to employees. Records are maintained on Form G–570, Record-Receipt—Property Issued to Employees, which lists name, description of property, serial number, dates issued and returned, employee's initials, and supervisor's initials.

R. Security access clearance index. Records are kept on 3X5 index cards listing employee's name, dates when clearances were granted, and levels of clearance. Related records and reports are maintained by the Office of Management and Finance, Department of Justice.

S. White House and Attorney General correspondence control index. Records are maintained on Form G–617, Correspondence Control Card, and contain reference and locator information on correspondence addressed to the President and the Attorney General which has been referred to INS for appropriate attention.

T. Health record system. Records are kept on 5X7 index cards listing name, date, and treatment given.

U. Personal data card system. Records are kept on Form G–74. Personal Data Card, for each employee or former employee. Information includes name, date of birth, height, weight, sex, blood type, photograph, and color of hair and eyes.

V. Compassionate cases system. Records are kept on 3X5 index cards containing employees' name, position, grade, present location, date of request, date circulated to committee, disposition, and (when applicable) new location of employee. Relating records include the employee's request; Form G–410, Employee Qualification-Skills Inventory; local and regional recommendations, medical statements (where applicable), records of committee actions, and response to employee.

W. Emergency reassignment index. Records are kept on Form G–560, Emergency Activity Project Assignment. Information includes name, age, grade, title, official station, residence, telephone number, and emergency assignment activity.

X. Alien documentation, identification and telecommunications (ADIT) system. Records consist of formatted data base records of personal and biographical information such as name, date of birth, picture and fingerprint coordinates, height, mother's first name, father's first name, city/town/village of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

A. General, applicable to all Service index system, includes but is not limited to: Sections 103, 265 and 290 and Title III of the Immigrations and Nationality Act, hereinafter referred to as the Act (66 Stat. 163), as amended (8 U.S.C. 1103; U.S.C. 135; 8 U.S.C. 1360), and the regulations pursuant thereto.

B. Specific, applicable to some of the indexes, including but not limited to:

1. Executive Order 11652, and 28 CFR 17.79-Agency control information record index, and Access clearance information system.

2. 31 U.S.C. 66a—Finance Section indexes.

3. Title III of the Act, as amended (8 U.S.C. section 1401 through 1503), and the regulations promulgated thereunder—Naturalizations and citizenship indexes.

4. Sections 235 and 287 of the Act, as amended (8 U.S.C. 1225; and 8 U.S.C. 1357), and the regulations promulgated pursuant thereto—Personnel investigations.

5. Section 231 of the Act, as amended (8 U.S.C. 1221)—Micro-filmed manifest records.

6. 40 U.S.C. 483—Property management system.

7. 5 U.S.C. 4113—Extension training program.

8. 5 U.S.C. 552. The Freedom of Information Act requires certain record keeping; this system was established and is maintained in order to enable INS to comply with this requirement.

9. 5 U.S.C. 301—Health Record System. Personal Data Card System, and Compassionate Cases System.

10. Executive Order 11490—Emergency Reassignment Index.

11. Section 204, 214, and 290 of the Act, as amended (8 U.S.C. 1154, 1184, 1360)—Application and petition system.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: This system of records is used to serve the public by providing data for responses, when authorized, to written inquiries, complaints and so forth. It is also used to administer the management, operational, and enforcement activities of the Service. The records are used by officers and employees of the Service and the Department of Justice in the administration and enforcement of the immigration and nationality laws, and related statutes, including the processing of applications for benefits under these laws, detecting violations of these laws, and for referrals for prosecution.

A. Relevant information contained in this system of records maintained by the Service to carry out its functions may be referred, as a routine use, to clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing petitions for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

B. Relevant information contained in this system of records maintained by the Service to carry out its functions may be referred, as a routine use, to the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Laws, Act, and all other immigration and nationality laws, including treaties and reciprocal agreements.

C. Relevant information contained in this system of records maintained by the Service to carry out its functions may be provided, as a routine use, to other federal, state, and local government law enforcement and regulatory agencies, foreign governments, the Department of Defense, including all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, INTERPOL, and individuals and organizations during the course of investigation in the processing of a matter or a proceeding within the purview of the immigration and nationality laws, to elicit information required by the Service to carry out its functions and statutory mandates.

D. *If records contained in this system indicate a violation or potential violation of law whether civil, criminal or regulatory in nature, the relevant records may be provided as a routine use to the appropriate agency, whether federal, state, local or foreign charged with the responsibility of investigating or prosecuting such violations or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto. Such records may also be furnished in response to requests from those agencies on a discretionary basis.*

E. In the event that this system of records maintained by the Service to carry out its functions indicates a violation or potential violation of the immigration and nationality laws, or of a general status within Service jurisdiction, or by regulation, rule, or order issued pursuant thereto, the relevant records in this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal and to opposing counsel in the course of discovery.

F. *A record from this system of records may be disclosed as a routine use to a federal, state, local or foreign government agency on a discretionary and/or reciprocal basis in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.*

G. 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 information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision of this Service 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.

H. *Relevant records that indicate violation of the laws of another nation, whether civil or criminal, may be provided to the appropriate foreign government agency charged with enforcing or implementing such laws; records indicating any such violation or potential violation may also be provided to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity. Such records may also be furnished in response to requests from appropriate foreign government agencies on a discretionary and/or reciprocal basis.*

I. Relevant information contained in this system of records may be disclosed, as a routine use, to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

J. A record from this system may be disclosed to other Federal agencies for the purpose of conducting national intelligence and security investigations.

K. Information contained in this system of records may be disclosed to an applicant, petitioner or respondent or to his or her attorney or representative (as defined in 8 CFR 1.1(j)) in connection with any proceeding before the Service.

L. *A record from this system of records may be disclosed as a routine use to a federal, state, local or foreign government agency on a discretionary and/or reciprocal basis in response to*

its request, to assist in the collection or repayment of loans and fraudulently-secured benefits or grants.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the indivudual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Generally, index records and cards are stored in manually operated index machines, file drawers, and boxes; other information is stored manually as paper records in file folders at location B, C, E, F, and H, supra. Inactive files are stored at Federal Records Centers, Exceptions are as follows:

A. Alien address report index and records: Forms I–53, Alien Address Report, are microfilmed in the order in which they are received. An index is maintained on microfiche and on computer-readable magnetic tape.

B. Alien documentation, identification, and telecommunications (ADIT) system information is stored on magnetic tape and disks. Original forms completed by the individuals are filed with other records described for the subsystem "Centralized index and records."

C. Alien enemy index: Index records are maintained on microfilm. Actual files are stored in Federal Records Centers.

D. Centralized index and records: Most records are paper documents stored in file folders. Those index records which can be accessed electronically are stored on magnetic disk and tape.

E. Enforcement indexes: Original index cards and records are stored in manually operated file drawers and machines. Some records are also maintained in the automated system published in a notice entitled "JUSTICE/DEA-INS-111, Automated Intelligence Records Systems (Pathfinder)."

F. Examinations indexes: (1) Application and petition system records are stored on magnetic media at the Department of Justice Data Management Service. Original paper forms completed by the individuals are filed with other records in the subsystem called "Centralized index and records" (2) Service lookout system records are maintained on magnetic tape and in printed looseleaf reference books at ports of entry.

RETRIEVABILITY:

Generally, records are indexed and retrievable by name and/or "A" or "C" file number Exceptions are as follows:

A. Air detail office index system: Aircraft data is filed in-numerical sequence, within each calendar year.

B. Intelligence indexes: Records are retrieved by name within organization, activity, or type of violation.

C. Examiners' docket lists of petitioners for naturalization, and Master Docket lists of petitions for naturalization pending one year or more, are filed chronologically for each court exercising naturalization jurisdiction. Relating records are filed by petition number.

Access controls: Records are safeguarded in accordance with Department of Justice rules and procedures. INS officers are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked outside of normal office hours. Many records are stored in cabinets or machines which are locked outside of normal office hours. Access to automated systems is controlled by restricted passward for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Several general rules apply to many subsystems of records:

A. Alien registration records are retained for 100 years from the closing data or date of last actions.

B. Correspondence control cards (forms G-617) are normally retained for one year following the year in which created.

C. Correspondence portions of subject files are nomally retained no longer than two years. Records are then either microfilmed or destroyed by burning.

D. Records in policy portions of subject files are retained indefinitely.

E. Indexes and records not specifically mentioned are retained only so long as they serve a useful purpose.

F. Records are destroyed by shredding, burning, or as provided in disposal schedules.

Exceptions to the general practices are as follows:

A. Alien documentation, identification, and telecommunications (ADIT) system records are maintained until naturalization, death, or other material change in status of the individual, or until the registration card is relinquished.

B. Air detail office index: Forms I–92A are retained for five years.

C. Border Patrol trainee examination papers are destroyed six months after the trainee officer completes his probationary year.

D. Centralized index records stored on magnetic disk and tape are updated periodically and maintained for the life of the relating record. Original index cards are microfilmed, then destroyed.

E. Compassionate cases system records are retained for three years after completion of action.

F. Congressional Mail Unit correspondence control index records are retained for three years.

G. Emergency reassignment index records are destroyed upon the transfer, separation, retirement, or death of the employee.

H. Enforcement indexes relating to law violators and witnesses are retained for three years. Routine investigations records are destroyed when the investigation is closed. Correspondence control records are destroyed after final action on the subject matter.

I. Examinations indexes: (1) Application and petition system records are deleted from the automated data base five years after the date of the last activity. Inactive records will be stored on magnetic tape for an additional five years. (2) Service lookout system records are deleted five years after insertion, unless removed at an earlier date or reinserted by the listing agency.

J. Finance Section indexes; accounts with creditors and debtors are retained for two years, from the close of the fiscal year to which they relate and then are transferred to Federal Records Centers for storage and disposition.

K. Freedom of Information correspondence control index cards and records of requests under appeal or litigation are retained until completion of the action. Other index records of FOIA requests are retained for one year following the year in which created.

L. Health records are retained for six years after the date of the last entry.

M. Intelligence indexes: records are maintained indefinitely.

N. Naturalization examiners, docket lists and master docket lists are retained for two years. Naturalization and citizenship docket cards are purged after applications are rejected, closed, granted, or denied, or petitions for naturalization are granted, denied, or nonfiled.

O. Microfilmed manifest records are retained permanently.

P. Personal data cards are retained for three years after the employee is separated (Location A, supra). In regional offices (Location B. supra), records are destroyed after the employee is separated.

Q. Personnel investigations records are destroyed at the close of the fiscal year following the year of investigation. However, Operation Clean Sweep records are being retained until the program is terminated. Records of criminal investigation are retained as long as the information serves a useful purpose.

R. Security access clearance index records are destroyed upon the separation, death, or retirement of the employee.

S. White House and Attorney General corrspondence control index cards are retained for one year beyond the expiration of the term of the President.

System manager(s) and address:

The system manager, Servicewide, is the Assoociate Commissioner, Information Systems (Location A, supra).

B. The Associate Commissioner, Information Systems, is the sole manager of the following subsystems:

1. Agency information control record index.
2. Alien address reports index and records.
3. Alien documentation, identification and telecommunications (ADIT) system.
4. Alien enemy index.
5. Centralized index and records (Master Index).
6. Congressional Mail Unit correspondence control index.
7. Document vendors and alterers index.
8. Enforcement correspondence control index.
9. Examinations indexes: (1) Application and petition system; (2) Correspondence control index; (3) Service lookout system.
10. Finance Section indexes.
11. Freedom of Information correspondence control index.
12. Health record system.
13. Intelligence indexes.
14. Microfilmed manifest records.
15. Property issued to employees.
16. Security access clearance index.
17. White House and Attorney General correspondence control index.

C. The following officials are system managers for special subsysterms:

1. Automobile decal parking identification for employees: Deputy Regional Commissioner (Location B–4, supra).

2. Enforcement indexes, group one (Contact index; Informant index; Antismuggling index (general); Criminal, immoral, narcotic, racketeer and subversive indexes; Suspect third party index): the ranking Service officer of the offices in which the indexes are maintained (Locations A, B, C, and E, supra.

3. Enforcement indexes, group two: (a) Air detail office index: Deputy Director (Location J, supra). (b) Antismuggling information centers: (1) Canadian border, Chief Patrol Agent (Location F–19, supra); (2) Mexican Border, Deputy Director (Location J, supra). (c) Border Patrol Academy index: Chief Patrol Agent (Locations G, supra). (d) Border Partrol sectors general index: Chief Patrol Agent (Location F, supra). (e) Fraudulent Document Center index (Location J, supra).

4. Compassionate cases system: Associate Commissioner, Information Systems. (Location A, supra); Regional Commissioners (Location B, supra).

5. Emergency reassignment index: Regional Commissioners (Location B, supra); District Directors (Location C, supra); Officers in charge (Location E, supra); Chief Patrol Agents (Location F, supra).

6. Extension training program enrollees: Chief, Employee Development Branch, Office of Assistant Commissioner, Personnel (Location A, supra).

7. Naturalization and citizenship indexes: (a) Naturalization and citizenship docket cards, and Examiners' docket lists of petitioners for naturalization: District Directors (Location C, supra); Officers in Charge (Location E, supra, except E–6, E–7, E–8, and E–13). (b) Master docket lists of petitions for naturalization pending one year or more: The Associate Commissioner, Management (Location A, supra); Regional Commissioners (Location B, supra); District Directors (Location C, supra); Officers in charge (Location E, supra, except E–6, E–7, E–8, and E–13).

8. Personal data card system: Associate Commissioner, Information Systems (Location A, supra); Regional Commissioners (Location B, supra).

NOTIFICATION PROCEDURE:

A. Inquires should be addressed to the system managers listed above, except for the following subsystems:

1. Finance Section indexes: address inquires to the INS office at which business was conducted.

2. Freedom of Information correspondence control index: address inquiries to the INS office nearest the requested's place of residence, or (if known) the INS office where the record is located.

B. Systems totally exempt from disclosure pursuant to 5 U.S.C. 532a (j) and (k) listed below:

1. Agency information control record index.
2. Document vendors and alterers index.
3. Emergency reassignment index.
4. Enforcement indexes, group one: (a) Contact index. (b) Informant index. (c) Anti-smuggling index (general). (d) Criminal, immoral, narcotic, racketeer, and subversive indexes. (e) Suspect third party index.
5. Enforcement indexes, group two: Anti-smuggling information centers, Canadian and Mexican broders.
6. Examinations indexes: Service lookout system.
7. Intelligence indexes.

RECORD ACCESS PROCEDURE:

In all cases, requests for access to a record from any record subsystem shall be in writing or in person. If a request for access is made in writing, the envelope and later shall be clearly marked "Privacy Access Request." The requester shall include a description of the general subject matter and if known, the relating file number. To identify a record relating to an individual, requester should provide the indivdual's full name; date and place of birth; alien, citizen, or employee identification number; and, if appropriate, the date and place of entry into or departure from the United States. The requester shall also provide a return address for transmitting the information.

Most of the subsystems of records contain information which the Attorney General has exempted from disclosure pursuant to 5 U.S.C. 552a (j) and (k), and records which are classified pursuant to Exective order. Each requester will be accorded access to the records relating to himself only to the extent that such records are not within the scope of exemptions and are not classified.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his request to the

INS office nearest his residence or to the office in which he believes a record concerning him may exist. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

Record source categories: Basic information contained in INS records is supplied by individuals on Department of State and INS applications and reports. Other information comes from inquiries and/or complaints from members of the general public and members of the Congress; referrals of inquiries and/or complaints directed to the White House or Attorney General; INS reports of investigation, sworn statements, correspondence and memorandums; official reports, memorandums, and written referrals from other government agencies, including Federal, state, and local, and from various courts and regulatory agencies; information from foreign government agencies and international organizations; and personnel and administrative applications and forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e)(1), (2), and (3); (e)(4) (G), (H), and (I); (e) (5) and (8); (f); (g); and (h) of the Privacy Act. These exemptions apply to the extent that information in the subsystems is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register** as additions to Title 28, Code of Federal Regulations (28 CFR 16.99).

[FR Doc. 28642 Filed 10-30-84; 8:45 am]
BILLING CODE 4410-10-M

Immigration and Naturalization Service

Wage Determination System for Territory of Guam

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of temporary worker wage rates for territory of Guam.

SUMMARY: The Governor of Guam is authorized to continue using the 1980 Adverse Effect Wage Rate (AEWR) established by the Secretary of Labor to make temporary alien labor certifications until a prevailing wage determination system is approved by the Commissioner or until November 30, 1984, whichever comes first.

The Service's final rule (see 49 FR 15182) which transferred authority to make temporary labor certifications for alien workers in the Territory of Guam from the Secretary of Labor to the Governor of Guam required the Governor to develop a system for determining prevailing wage rates, subject to approval by the Commissioner. Commencing July 30, 1984, the Governor was allowed to use the 1980 AEWR until the Commissioner approves the system or for 90 days, whichever comes first (see 49 FR 30377). Additional time is needed to resolve problems with the proposed wage determination system submitted by the Governor. While appropriate consultations and revisions to the system are being made, the Governor may use the 1980 AEWR until November 30, 1984.

(Secs. 103 and 214 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1103 and 1184)

Dated: October 26, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-28721 Filed 10-30-84; 8:45 am]
BILLING CODE 4410-10-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-83]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council.

DATES: Date and time: November 15, 1984, 10 a.m. to 5 p.m., and November 16, 1984, 8:30 a.m. to 4 p.m.

ADDRESS: Kennedy Space Center, Room 4102, Headquarters Building, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel, B. Cohen, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453-8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of Twenty-five members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, and history, as they relate to NSAS's activities.

Vistors will be admitted to the meeting room up to its capacity, which is approximately 60 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of meeting: Open. However, potential visitors should note that, because of the character of operations at the Kennedy Space Center, access to the installation is strictly controlled. Visitors will be granted access only in accordance with normal installation policy.

Agenda

November 15, 1984

10 a.m.—Introductory Remarks
10:20 a.m.—NASA Response to Council Recommendations for Effective Shuttle Utilization
1:15 p.m.—Tour of STS and Payload Processing Facilities
4:15 p.m.—Discussion
5 p.m.—Adjourn

November 16, 1984

8:30 a.m.—Review of NASA Planning Process
1 p.m.—Advisory Group Reviews of Space Station Planning
4 p.m.—Adjourn

Dated: October 24, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-28601 Filed 10-30-84; 8:45 am]
BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Carolina Power & Light Co.; Brunswick Steam Electric Plant, Unit 1 Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket No. 50-325]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-71, issued to the Carolina Power & Light

Company (CP&L, the licensee), for operation of the Brunswick Steam Electric Plant, Unit 1 (the facility), located in Brunswick County, North Carolina.

The amendment proposed would revise Section 4.6.1.2.d to allow a one-time only deferment of required Type B and C local leak rate tests (LLRTs) until the next refueling outage scheduled to begin on or before March 31, 1985 in accord with the licensee's application dated September 4, 1984, as supplemented October 22, 1984. Technical Specification (TS) Section 4.6.1.2.d requires performance of LLRTs at least once per 24-month interval based on the requirements of 10 CFR 50, Appendix J, Section D, Part 2. Therefore, an exemption to 10 CFR Part 50, Appendix J is also requested. A listing of the valves and penetrations involved in this request, their size (applicable to penetrations only), results of the previous LLRTs, and the current test due dates are provided in the application. These due dates range from December 1984 to March 1985. Therefore, the extensions requested range from approximately ½ month to approximately 3½ months. Additionally, TS Section 4.6.1.2.f would be revised to allow a one-time only deferment of main steam line isolation valve (MSIV) leak testing until the March 31, 1985 refueling outage. The current due date for the MSIV leak testing is March 18, 1985.

The Appendix J test schedule for the facility is out-of-phase with the refueling cycle. Normally these tests are done during a refueling outage, which among other things, is desirable in order to maintain personnel exposures as-low-as-is-reasonably-achievable (ALARA). The last Unit 1 refueling outage was in late 1982 and lasted until July 1983. The fact that the Appendix J tests were done early in the refueling outage, that the outage lasted longer than originally planned and that the operating cycle was changed from 12 to 18 months caused these tests to be out-of-phase with the refueling outages. With the current LLRT schedule, mid-cycle LLRTs would need to be performed again early in Brunswick-1 Cycle 5 return to a schedule which is coincident with the Unit 1 refueling interval. Performance of mid-cycle LLRTs now and during the next fuel cycle would result in increased exposure of personnel of approximately 20 man-rem which is not consistent with CP&L's ALARA policy.

In addition, the test interval for Type C tests in Appendix J was based on two years of expected exposure of components to service conditions. In the case of the valves referred to in our request, approximately eight months of the two-year period since the valves were last tested was spent in an extended maintenance outage during which the components were not exposed to an operating environment.

Technical Specification Section 4.6.1.2.f requires that the main steam line isolation valves be leak tested at least once per 18 months. The MSIVs were last tested on May 3, 1983. Utilizing the maximum surveillance period of 125 percent, the latest required performance date is March 18, 1985. The requested extension results in only an additional 12 days, or a 1.75 percent increase, in the maximum surveillance interval permitted by the TS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change represents a relaxation in the surveillance requirements; however, the length of the requested extension is small with respect to the maximum allowable frequency. Extending the surveillance interval for the LLRT from a maximum surveillance interval of 24 months to a range of 24½ months for some valves to as much as 27½ months for others. This does not constitute a significant reduction in the verification of operability of the involved valves. This is based on the following information:

1. The majority of the tests requiring extensions are for valves and penetrations which are not exposed to harsh environments and typically exhibited satisfactorily test results.

2. Subsequent to the last performance of these LLRTs an eight-month outage ensued during which the valves and penetrations were not subject to normal operating conditions thus reducing the potential degradation during this period.

3. The TS limit for LLRT leakage is 159.78 SCFH (calculated in accordance with TS Section 3.6.1.2). The present recorded LLRT leakage for Brunswick-1 is approximately 58 SCFH below this limit. In addition, the TS limit of 159.78 SCFH is only 60 percent of the containment leakage calculated using 10 CFR Part 100 guidelines. Therefore, the present recorded LLRT for Brunswick-1 is approximately 38 percent of 10 CFR Part 100 guidelines.

4. Actual containment leakage during a LOCA would require leakage by two valves in series. Most LLRTs are performed between these valves, resulting in greater recorded leakage than would most probably occur during a LOCA.

5. The condition of the components is not expected to change during the requested extension period which is short in comparison with the two-year test interval.

6. The intent of Appendix J was that isolation valves be tested during refueling outages. The request is to extend the LLRT interval to coincide with the scheduled outage for refueling.

Based on the above information, operation of the facility in accord with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

During our review, we could find no way that the extension of time could create the possibility of a new or different kind of accident from any accident previously evaluated.

The above information, in particular items 1, 2 and 3, indicates that operation of the facility would not involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By November 30, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition

for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Domenic B. Vassallo: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application, dated September 4, 1984, as supplemented October 22, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Dated at Bethesda, Maryland, this 24th day of October, 1984.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 84-28736 Filed 10-30-84; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR 50.55a to Duke Power Company, the licensees for the Oconee Nuclear Station, Units Nos. 1, 2, and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action

10 CFR 50.55a(g)(4) requires that licensees update their pump and valve inservice inspection (ISI) and testing (IST) programs to a newer edition of Section XI of the ASME Code each ten years. Since the regulations require these updates based on the 10-year anniversary of facility commercial operation, multi-unit sites often find that each unit has an ISI program structured to a slightly different edition of the

Code. The exemption would allow a common start date for ISI and IST for all three Oconee units and that date to be at other than 120 months from commercial operation of any one unit.

The proposed exemption is in response to the licensee's application dated December 2, 1983.

The Need for the Proposed Action

The proposed exemption is needed because ISI and IST at Oconee would be accomplished for some period of time to two different ASME Codes if a common start date were not established. Although administatively possible, this situation could contribute to increased personnel errors in the performance of inspection and testing requirements to two different versions of the Code. This can create a substantial and additional administrative workload for what can be described as only nominal technical differences in the inspection and testing requirements.

Environmental Impact of the Proposed Action

The proposed exemption will provide a degree of ISI and IST that is equivalent to that required by 10 CFR 50.55a(g)(4) such that there is no increase in the risk of failure for operational readiness of pumps and valves whose function is required for safety at these facilities. Consequently, the probability of failure for operational readiness of components has not been increased, the radiological risk is not greater than determined previously, and the proposed exemption does not affect otherwise plant radiological effluents. Therefore, the Commisison concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Oconee Nuclear Station, Units Nos. 1, 2 and 3.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated December 2, 1983, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Dated at Bethesda, Maryland this 17th day of October, 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-28735 Filed 10-30-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

South Carolina Electric and Gas Co.; South Carolina Public Service Authority; Granting of Relief From Certain Requirements of ASME Code Section XI Inservice (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules and Inservice Inspection of Nuclear Power Plant Components" to the South Carolina Electric and Gas Company and South Carolina Public Service Authority. The relief relates to the preservice hydrostatic tests for the Virgil C. Summer Nuclear Station, Unit 1 (the facility) located in Fairfield County, South Carolina. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief relates to certain preservice examination requirements, pursuant to the Commission's regulations in 10 CFR 50.55a(g)(6)(i). In lieu of hydrostatic tests, the licensees will perform nondestructive examinations consisting of visual and surface examination of the welds.

The requests for relief comply 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 the related Safety Evaluation Report and letter to the licensee.

Pursuant to 10 CFR 51.32, the Commission has determined that granting the relief will have no significant impact on the environment (49 FR 40511).

For further details with respect to this action, see (1) the licensees' letter dated August 1, 1984, (2) the Commission's letter to the licensees dated October 23, 1984, and, (3) the Commission's related Safety Evaluation Report. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180. 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 23rd day of October 1984.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84-28734 Filed 10-30-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on November 15 and 16, 1984, in Room 5104, New Executive Office Building, Washington, D.C. The meeting will begin at 6:00 p.m. on November 15, recess and reconvene at 8:00 a.m. on November 16. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The November 15 session and a portion of the November 16 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

The portion of the meeting open to the public will begin approximately 10:00 a.m. Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456–7740, prior to 3:00 p.m. on November 14. Ms. Boyd is also available to provide further information regarding this meeting.

Dated: October 22, 1984.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 84–28641 Filed 10–30–84; 8:45 am]

BILLING CODE 3170–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Economic Forecasting Advisory Committee; Regular Meeting Notice

AGENCY: Economic Forecasting Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Presentation on Regional Economic Model
- Discussion of Council load forecast assumptions for DSIs
- Discussion of issue paper on the impact of electricity rates on the regional economy
- Presentation on Preliminary Draft Economic, Demographic and Fuel Price Assumptions

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Economic Forecasting Advisory Committee.

DATE: Wednesday, November 7, 1984. 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Debbie Kitchin, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84–28631 Filed 10–30–84; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 939; 803–40]

Presidio Management; Filing of an Application for an Order Granting Exemption

October 25, 1984.

Notice is hereby given that Presidio Management ("Applicant" or "General Partner") 690 Market Street, Suite 410, San Francisco, California 94104, which intends to register as an investment adviser under the Investment Advisers Act of 1940 (the "Act"), filed an application on August 24, 1984, and an amendment thereto on October 12, 1984, requesting an order of the Commission pursuant to section 206A of the Act (1) exempting Applicant's advisory fee arrangements with Geary Partners, L.P., a California limited partnership (the "Partnership"), from the prohibitions of section 205(1) of the Act, and (2) exempting Applicant from the recordkeeping requirements of section 204 of the Act and Rules 204–2(b) and (c) promulgated thereunder to the extent these provisions require separate records to be maintained for each limited partner in the Partnership. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions thereof.

According to the application, Applicant has been formed as a general partnership under the California Uniform Partnership Act by Van L. Brady, William J. Brady and James W. Fuller pursuant to a general partnership agreement. Applicant states that it is licensed as an investment adviser by the California Commissioner of Corporations under the California Corporate Securities Act of 1968 and is the general partner of the Partnership, which currently has five limited partners and approximately $1,533, 693 in assets. The Partnership may accept in the future a limited number of additional sophisticated individuals or entities as limited partners meeting the eligibility requirements set forth below. The current five limited partners satisfy all such requirements.

Applicant states the Partnership will invest primarily in small capitalization companies in the earlier or later stages of trading which the Partnership considers to have the potential for outstanding earnings and market appreciation. Applicant will look for companies which are publicly financed but have not yet been widely discovered by the investment community. According to the application, the Partnership may also invest in securities of emerging or somewhat more established companies for which there is no existing public market or where size or circumstance has created a relatively illiquid but potentially rewarding investment opportunity. The Partnership will also seek out other special situations involving high appreciation potential, which occasionally arise in the growth company market.

Applicant represents that the limited partnership interests will be sold in a private offering exempt from registration under the Securities Act of 1933 (the "Securities Act"). According to the application, each limited partner will be required to be an "accredited investor" as that term is defined in Regulation D under the Securities Act. In addition, each limited partner who is a natural person will be required to represent in writing the following: (1) That such limited partner has a minimum net worth of $1,000,000; (2) that such limited partner (except if such individual is a general partner of the General Partner) is investing at least $150,000 in the Partnership; and (3) that such limited partner is investing not more than 33% of such limited partner's invested capital in the Partnership unless such limited partner is investing at least $1,000,000 in the Partnership or otherwise has under management by Applicant or any

general partner thereof an aggregate of $1,000,000.

The application states that each limited partner that is a bank, savings and loan association, investment company, pension or profit-sharing trust, individual retirement account, self-employed individual retirement plan or other institutional investor as defined in subdivision (i) of Section 25102 of the California Corporations Code or in section 260.102.10 or section 260.105.14 of the California Corporation Commissioner's Rules will be required to represent the following; (1) that such limited partner is making a minimum investment of $150,000 in the Partnership; and (2) if such limited partner is a pension or profit-sharing plan or fund with assets of less than $500,000, that the limited partner is not investing more than 50% of its assets in the Partnership.

Applicant states that each limited partner that is neither a natural person nor an institutional investor will be required to represent the following: (1) that such limited partner is investing at least $150,000 in the Partnership; and (2) that such limited partner has gross assets of at least $1,000,000.

Applicant represents that limited partnership interests will be sold only to investors who are sophisticated and able to bear the economic risk of an investment in the Partnership and who Applicant reasonably believes have, either alone or with their client representatives, knowledge and experience in financial matters so as to be capable of evaluating the merits and risks of the proposed method of compensation of the Applicant. A limited partner will be permitted to transfer, mortgage or pledge his interest only with Applicant's consent.

Applicant represents it will not reduce its capital account with the Partnership to an amount less than the greater of 1% of the aggregate contributions to the Partnership or $20,000. The minimum funding goal is $2 million. Applicant further represents it contemplates investing from 3% to 5% of the total capital contributed to the Partnership by the limited partners.

Applicant states it will have exclusive right and power to manage and operate the business of the Partnership and to determine its business policies. Applicant will be responsible for all operating expenses of the Partnership including expenses related to office space, equipment and supplies needed in the conduct of the business of the Partnership, compensation for all persons employed by Applicant in the conduct of Partnership business (except legal, accounting or other professional services rendered to the Partnership), investment advisory services and other expenses related to investment research and management, and telephone and other general overhead expenses. To cover the estimated amount of such expenses, Applicant states that Partnership will pay Applicant a quarterly management fee based on a percentage of the total net asset value of the Partnership. Applicant further states it will maintain financial records for the Partnership and will provide annual reports to the limited partners on the affairs of the Partnership.

Applicant represents that the limited partners holding one-third of all the interests of the limited partners, an expelled partner alone, or a retiring limited partner alone, shall have the right to an independent appraisal of any Partnership asset or liability with respect to which Applicant has independently determined a value. Applicant represents that it will promptly revise any valuation which the independent appraiser finds to be erroneously computed, or, with respect to unregistered securities, without reasonable basis.

According to the application, an "Opening Capital Account" will be established for each partner, including the General Partner, in an amount initially equal to the partner's cash contribution. "Partnership Percentages" will be determined at the beginning of each fiscal year or "Interim Period" by dividing the number of each partner's Opening Capital Account by the sum of the Opening Capital Accounts for all partners. The sum of the Partnership Percentages will equal 100%. An Interim Period begins and ends with any change in any parter's Partnership Percentage (as a result of, for example, a cash distribution), and also ends on the last day of any fiscal year. At the end of each fiscal year or Interim Period, the "Closing Capital Account" of each partner for that year will be determined as follows:

(1) Ninety percent of any "Net Profit" of the Partnership will be credited to the Opening Capital Accounts of all the partners (including the General Partner) in proportion to their respective Partnership Percentages. Net Profit with respect to a fiscal year or Interim Period is defined as the excess of the net worth of the Partnership including net realized and unrealized appreciation or depreciation of securities on the last day of the fiscal year or Interim Period, over the net worth of the Partnership including realized and unrealized appreciation or depreciation of securities on the first day of such fiscal year or Interim Period.

(2) The remaining ten percent of any Net Profit will be credited to the Opening Capital Accounts of all partners, including the General Partner, to the extent that such account was previously debited with a "Contingent Loss," as defined in paragraph (3) below. Such Net Profit will be credited to a partner's Opening Capital Account on the basis of the proportion which any unrestored Contingent Loss previously debited to that partner's capital account bears to the aggregate amount of unrestored (or noncancelled) Contingent Loss previously debited to the capital accounts of all partners. The balance, if any, of this ten percent of Net Profit will be credited to the Opening Capital Account of the General Partner.

(3) Any Net Loss will be debited to the Opening Capital Accounts of all the partners, including the General Partner, in proporation to their respective Partnership Percentages. Ten percent (10%) of any Net Loss of the Partnership for any fiscal year or Interim Period which is debited to the Opening Capital Account of the partners will be Contingent Loss and may be restored only out of future Net Profit, as described in paragraph (2) above. Net Loss with respect to any fiscal year or Interim Period is defined as the excess of the net worth of the Partnership, including net realized and unrealized appreciation or depreciation of securities, on the first day of the fiscal year or Interim period over the net worth of the Partnership, including net realized and unrealized appreciation or depreciation of securities, on the last day of the fiscal year or Interim Period.

The application states that a limited partner is entitled to distribution from the Partnership of all or a part of his Closing Capital Account determined on the last day of a fiscal year. Any Net Profit credited to the General Partner's Closing Capital Account at the end of each fiscal year will be paid to the General Partner to the extent the Net Profit consists of realized gains, unless the General Partner elects to contribute such amounts to the capital of the Partnership, in which case the funds will be credited to the General Partner's capital account. Further, it is represented that if the aggregate Net Profit of the Partnership is realized during and distributed after the end of a fiscal year, the General Partner remains liable to the limited partners for the less of any subsequent Contingent Loss or economic loss, which must be paid to them upon dissolution.

Applicant proposes to maintain the books and records designated by paragraphs (b) and (c) of Rule 204–2

under the Act for the Partnership rather than for each limited partner, representing that it would be impractical and unduly burdensome to prepare and maintain all of the designated books and records individually. Applicant further states, however, that it will maintain a capital account for each limited partner reflecting its contribution, allocations, distributions and withdrawals.

Applicant requests an exemption from section 205(1) of the Act to the extent necessary to permit it to receive the proposed share of the profits of the Partnership. Applicant also requests an order exempting it from the provisions of Section 204 of the Act and of Rule 204–2(b) and (c) thereunder to the extent that such provisions might otherwise require it to maintain the designated books and records with respect to each limited partner. Applicant represents that it will comply with all other applicable provisions of Rule 204–2.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 19, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proofs of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-28723 Filed 10-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21424; File No. SR-AMEX-84-31]

Self-Regulatory Organizations; Proposed Rule Change; American Stock Exchange, Inc.; Revision of Certain Strike Price Policies

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 9, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to revise certain strike price policies to permit the introduction of (i) $5 strike prices for stock options; (ii) strike prices in increments of $5 for underlying stocks trading over $100; and (iii) three in- and three out-of-the-money strike prices for index options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange is proposing three modifications to its strike price policies to both expand the range of available strike prices and facilitate the introduction of new ones. The modifications are designed to ensure that strike prices are available to accommodate changing market movements. This is necessary to provide continuity for investors engaging in hedging and trading strategies.

Introduction of $5 Strike Prices (Stock Options): Current Exchange policy for stock options provides for the listing of strike prices (for both puts and calls) (i) to be set in $5 intervals for stocks trading from $10 to $100 and (ii) to bracket the price of the underlying security. Thus, if a stock is trading at $17, strike prices of $15 and $20 would be listed. Subsequently, if the stock price moves up to $20, $25 strike prices would be added; if the stock price moves down to $15, $10 strike prices would be added. Under this policy, both in- and out-of-the-money puts and calls are generally always available for trading.

For stocks trading at $10 or below, no in-the-money calls or out-of-the-money puts ($5 strike prices) are available for trading because current Exchange policy prohibits the introduction of $5 strike prices. This restriction is a carry-over from a time when the maintenance criteria for underlying stocks required the Exchange to begin to "unwind", for eventual delisting, options whose underlying stock closed below $10 for a specified period of time. Thus, it would have been inappropriate to add $5 strike prices at a time when the price of the underlying stock declined to $10 or below because the option might have to be delisted.

In November 1981, the maintenance criteria were modified to require delisting if an underlying stock closed below $8 (instead of $10) for a specified period of time. The issue of introducing $5 strike prices was not addressed at that time. Recently, when a number of options whose underlying stocks were trading below $10 but did not meet delisting criteria (i.e., were not in the process of being "wound down"), the Exchange received special approval from the SEC to list $5 strike prices for certain options. The Commission staff requested the Amex and the other options exchanges to submit rule changes to authorize the listing of such strike prices on a regular basis.

Accordingly, the Exchange herein proposes that its strike price policy be modified to permit the introduction of $5 strikes for stock options, so long as the underlying stock has not met delisting requirements. This policy change will permit, on a formal basis, the additions of in-the-money call and out-of-the-money put strike prices and thus provide a full complement of trading opportunities for investors.

Introduction of $5 Strike Price Increments Over $100 (Stock Options): As noted above, current Exchange policy for stock options provides for the listing of strike prices at $5 intervals for stocks trading between $10 and $100 and at $10 intervals for stocks trading above $100. When the Exchange initiated index options trading, $5 strike price intervals were introduced up to $200. Subsequently, the SEC approved the expansion of $5 intervals for index values above $200.

The utility of $5 strike price increments over $100 has been clearly demonstrated in index options. The narrower intervals provide additional flexibility for hedgers and traders. The highly successful index options trading in $5 increments has prompted many market participants to request that this policy be carried over to stock options.

Therefore, the Exchange proposes to modify its stock option strike price policy to permit the introduction of $5 strike price intervals over $100, while still retaining the authority to list $10 strike price intervals if market conditions warrant.

Index Options Strike Prices: As described above with respect to stock options, the Exchange initially sets strike prices which bracket the value of an underlying index. Subsequently, as an index value touches the highest or lowest available strike price, additional (higher or lower) strike prices are authorized for listing. Generally, two business days after such authorization the new strike price is added.

However, under this procedure during periods of rapid index value moves, strike prices may not be available as quickly as they are needed. Substantial intra-day as well as daily index value moves make it necessary to provide a more complete range of strike prices to allow for ongoing trading and hedging.

Therefore, to assure the continuing availability of both in- and out-of-the-money puts and calls, the Exchange proposes to both initially list and maintain the listing of three strike prices which are in-the-money and three which are out-of-the-money. This will provide a full complement of trading and hedging opportunities.

The proposed changes are consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act") and rules and regulations thereunder applicable to the Exchange by increasing the availability of strike prices, and thus potentially increasing market liquidity. Therefore, the proposed rule changes are consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. *Self-Regulatory Organization's Statement on Burden on Competition*

The AMEX believes that the proposed rule changes will not impose a burden on competition.

C. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invitied to submit written data, views and arguments concerning the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principle office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 22, 1984.

For Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 24, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-28722 Filed 10-30-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 1-B; Revision 1]

Delegation of Authority; Interagency Agreements

Delegation of Authority No. 1-B, (46 FR 55586) is hereby revised to read as follows:

(a) Pursuant to the authority vested in me by the Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1958, 72 Stat. 689, as amended, the following authority is hereby delegated as shown below:

(1) The positions listed below, in addition to the Administrator, are hereby delegated authority to sign interagency agreements with other Government agencies: Deputy Administrator, Associate Deputy Administrator for Management and Administration, Associate Deputy Administrator for Special Programs

(2) The Director, Office of Administrative Services is delegated authority to sign interagency health agreements with the Department of Health and Human Services.

(b) The authority delegated herein may not be redelegated.

(c) All authority delegated herein may be exercised by any SBA employee designated as acting in one of the positions shown above.

EFFECTIVE DATE: October 31, 1984.

Dated: October 26, 1984.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 84-28719 Filed 10-30-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-84-20]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final dispostion.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 20, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. 2, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on October 25, 1984.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24262	City of Winston-Salem	14 CFR 91.79(b)	Petitioner requests relief, for Law enforcement purposes, from the provisions of FAR 91.79(b) which requires aircraft, over congested areas, to operate at altitudes no lower than 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.
23952	Bernalillo County Sheriff's Dept	14 CFR 91.79(b)	Petitioner requests relief, for Law enforcement purposes, from the provisions of 91.79(b) which requires aircraft, over congested areas, to operate at an altitude no lower than 100 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.
23918	International Business Machines Corp	14 CFR 21.181	To amend Exemption 3973 to add one Lear 55 and two Gulfstream II aircraft and allow operation of these aircraft using the provisions of minimum equipment lists.
24277	ABCO Leasing, Inc	14 CFR 91.303	To allow petitioner to operate one Stage 1 aircraft in noncompliance with operating noise limits until "hush kits" are installed.
24271	Leas Express Air, Inc	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 aircraft from Los Angeles International Airport in noncompliance with the operating noise limits.
22359	Kenn-Air	14 CFR 135.261(b)	To extend the January 31, 1985, termination date of Exemption 3468A, to allow petitioner to operate helicopters in hospital emergency medical service without meeting the flightcrew duty time limitations.
22436	American Airlines	14 CFR 121.99 and 121.351	To extend the February 15, 1985, termination date of Exemption 3493A, to allow petitioner to operate airplanes in extended overwater operations on routes in the New York Oceanic Control Areas between the east coast and Bermuda with one of two installed high frequency communication radio systems inoperative at the time of departure and without maintaining two-way radio communications between each aircraft and the dispatch office along the named route.
18324	American Airlines	14 CFR 43.3 and 121.709	To extend the November 30, 1984, termination date of Exemption 2678 as amended, to allow inflight restowal of passenger oxygen masks by qualified flight engineers.
24264	Aramco Associated Co	14 CFR 91.45	To allow petitioner to return its DC-8-72 aircraft N728A to a base for repairs with one engine inoperative.
24300	Air Canada	14 CFR 93 Subpart K	Petitioner requests relief from FAA determination that its base number of slots at LaGuardia Airport is 24. The base number is used by the airline scheduling committee to determine the current number of each carrier's slots under the High Density Traffic Airport Rule.
24243	Sundstrand Corp	14 CFR Portions of Parts 21 and 91	To allow petitioner to operate Cessna 550 aircraft utilizing the provisions of a minimum equipment list.
24253	Mead Corporation	14 CFR 21.181	To allow the operation of a Falcon 50 aircraft utilizing the provisions of a minimum equipment list.
20583	Tenneco, Inc	14 CFR 61.58	To extend the December 31, 1984, termination date of Exemption 3160, as amended, which allows petitioner's pilots to complete a 24-month pilot-in-command check in an approved flight simulator.
22457	American Airlines	14 CFR 121.99 and 121.351	To extend the January 31, 1985, termination date of Exemption 3462, as amended, to allow petitioner to operate airplanes in extended overwater operations on certain routes with one of two installed high frequency communications radio systems inoperative at the time of departure and with only one long-range navigational radio system as the primary means of navigation.
18104	Flight Safety Intl	14 CFR 61.57(a)(1)	To extend the January 31, 1985, termination date of Exemption 2592, as amended, to permit petitioner to administer the Biennial Flight Review in approved simulators operated by petitioner.
24260	USAir, Inc	14 CFR 121.349	To allow petitioner to substitute a single OMEGA navigation system for one of the two required ADF navigation systems required for operation from the southern east coast of the United States to Puerto Rico, the Bahama Islands, Grand Cayman, and Cozumel, Cancun, Mexico.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24219	Eastern Airlines, Inc	14 CFR Portions of Part 121	To Allow petitioner to be exempted from a specific provision of Appendix H of Part 121 of the FAR which limits the conduct of Phase IIA training and checking utilizing a Phase I simulator to 3.5 years from the date such approval was received from the FAA.
24218	Pan American World Airways, Inc	14 CFR Portions of Part 121	To Allow petitioner to be exempted from a specific provision of Appendix H of Part 121 of the FAR which limits the conduct of Phase IIA training and checking utilizing a Phase I simulator to 3.5 years from the date such approval was received from the FAA.

Note.—The above two petitions from Pan American World Airways and Eastern Airlines have been granted, however comments are solicited on the exemptions. The comments received will be used to assess the final determination on the exemptions.

24187	Florida Dept. of Law Enforcement	14 CFR 91.65(b), 91.73(a), 91.79(c), 91.85(b), and 91.109(a).	To allow petitioner to be exempted from the FAR §§ 91.65(b), 91.73(a), 91.79(c) 91.85(b), and 91.909(a) to conduct law enforcement air support. Partial grant 10/9/84.

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23985	Air New Zealand	14 CFR 91.303	To allow petitioner to operate one DC-8 aircraft after December 31, 1984, in noncompliance with the operating noise limits. Denied 10/12/84.
24128	Mr. Fred L. Goebel	14 CFR 65.71(a)(2)	To exempt petitioner from § 65.71(a)(2) of the FAR to enable im to become eligible for a mechanic certificate and assorted ratings although he cannot speak the English language. Granted 10/10/84.
24241	Amway Corporation	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: BAC 1-11: N523AC. Granted 10/12/84.
24103	IBM	14 CFR 91.191	To allow petitioner to operate Gates Learjet Aircraft in Minimum Navigation Performance Specifications Airspace and the North Atlantic track utlizing a single UNS-1 Flight Management System with expanded database option and using a Canadian Marconi CMA 734 VLF/Omega remote sensor. Withdrawn 8/5/84.
23906	Eagle Aviation, Inc.	14 CFR 121.61(c)(1)	To permit petitioner to use Mr. T. Belote as director of maintenance although he does not fully meet the experience requirements. Project cancelled exemption unnecessary.
24109	Trans-Air-Link Corp.	14 CFR 121.61(d)(1)	To allow Mr. Bertram G. Peterson to serve as a chief inspector without holding a current mechanic certificate with both airframe and powerplant ratings for 3 years. Granted 10/16/84.
24062	Pan Aviation Inc.	14 CFR 91.303	To allow petitioner to operate four Stage 1 Boeing 707 aircraft in noncompliance with the operating noise limits until December 31, 1987, or twelve months after the availability of quiet nacelles, whichever is first. Denied 10/17/84.
24071	Jet Charter Service	14 CFR 91.303	To allow petitioner to operate two Stage 1 Boeing 707 aircraft in noncompliance with the operating noise limits until January 1, 1988. Denied 10/16/84.
24151	Belize Air Int'l., Ltd	14 CFR 91.303	To allow petitioner to operate STage 1 aircraft until January 1, 1988, in noncompliance with the operating noise limits. Denied 10/16/84.

[FR Doc. 84-28604 Filed 10-30-84; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP84-16; Notice 1]

American Honda Motor Co., Inc.; Petition for Exemption From Notice and Recall for Inconsequential Noncompliance

American Honda Motor Co., Inc., of Gardena, California, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.218, Motor Vehicle Safety Standard No. 218, *Motorcycle Helmets,* on the basis that it is inconsequential as it related to vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.5, *Projections,* of Safety Standard No. 218 states in pertinent part that "A helmet shall not have any rigid projections inside its shell." Honda has distributed "less than 20,000" helmets in the model years 1982-84 with provision for installation of audio headsets which are ellipsoidal in shape, about 1½ inches at their longest point, and which project inwards from the liner surface approximately 1 inch. Petitioner stated that it is aware of no comments from purchasers concerning the noncompliance. Further, the headset mounting points are below the impact test areas designated in Standard No. 218.

In order to obtain an expert opinion as to the likelihood of an internally mounted audio headset becoming a significant causative factor of injury, the petitioner consulted Dr. Irving Rehman, Emeritus Professor of Anatomy, University of Southern California School of Medicine who had performed over 300 autopsies on motorcycle accident victims, with particular attention to the head and neck region. Dr. Rehman submitted a preliminary report which has been placed in the docket, with the petition. Dr. Rehman's report indicates that he had examined a sample "to determine whether the placement of the two ear speakers over the mastoid area had any potential to produce injury, skull fracture, and/or brain damage." He concluded that he saw "no probability" for the speaker "to produce trauma in an impact to the mastoid area of the head."

Interested persons are invited to submit written data, views and arguments on the petition of American Honda Motor Co., Inc. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 30, 1984.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on October 25, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-28681 Filed 10-30-84; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 25, 1984.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these

information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0553
Form Number: IRS Form RCMW 1–727
Type of Review: Revision
Title: Availability Statement
OMB Number: 1545–0090
Form Number: IRS Forms 1040SS and 1040PR
Type of Review: Revision
Title: U.S. Self-Employment Tax Return and Planilla Para La Declaracion De Le Contribucion Federal Sobre El Trabajo Por Cuento Propia-Puerto Rico
OMB Number: New
Form Number: None
Type of Review: New
Title: Competent Authority Study Group Questionnaire
OMB Number: 1545–0365
Form Number: IRS Forms 5305 and 5305A
Type of Review: Extension
Title: Individual Retirement Trust Account and Individual Retirement Custodial Account
OMB Number: 1545–0115
Form Number: IRS Form 1099–MISC
Type of Review: Revision
Title: Statement for Recipient of Miscellaneous Income
OMB Number: 1545–0112
Form Number: IRS Form 1099–INT
Type of Review: Revision
Title: Statement for Recipients of Interest Income
OMB Number: 1545–0015
Form Number: IRS Form 706
Type of Review: Revision
Title: United States Estate Tax Return
OMB Number: New
Form Number: IRS Pub 1224
Type of Review: New
Title: IRS Outreach Brochure
OMB Number: 1545–0720
Form Number: IRS Form 8038
Type of Review: Revision
Title: Information Return for Private Activity Bond Issues
Clearance Officer: Garrick Shear (202) 566–6254, Room 5571, 111 Constitution Avenue, NW., Washington, D.C. 20224.
OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Bureau of the Public Debt

OMB Number: 1535–0025
Form Number: PD Form 3360
Type of Review: Extension
Title: Request for Reissue of United States Savings Bonds/Notes in the Name of a Person Other Than the Owner (Including Legal Guardian, Custodian for a Minor Under a Statute, etc.)
Clearance Officer: Paula Spedden (202) 634–5295, Bureau of the Public Debt, Room 420, Vanguard Building, 1111 20th Street, NW., Washington, D.C. 20226.
OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,

Departmental Reports, Management Office.

[FR Doc. 84–28725 Filed 10–30–84; 8:45 am]

BILLING CODE 4810–25–M

[Number 145–21]

Order; Fiscal Service; Designation of the Bureau of Government Financial Operations as Financial Management Service

Dated: October 10, 1984.

By virtue of the authority vested in me as Secretary of the Treasury, it is hereby ordered that:

1. The Department of the Treasury's Bureau of Government Financial Operations shall hereafter be known as the Department of the Treasury's Financial Management Service.

2. All regulations, rules, orders, decisions, forms, and other Bureau of Government Financial Operations and Treasury documents will be amended to conform to this order, but existing supplies of these materials shall be used without change until they are exhausted.

3. No action taken pursuant to this designation shall be invalid by reason of the fact that any statute or regulation provides or indicates that the action should have been taken under a different name.

Donald T. Regan

Secretary of the Treasury.

The principal officials of the Financial Management Service are as follows:

Financial Management Service (formerly Government Financial Operations)

Commissioner, W. E. Douglas
Deputy Commissioner, Marcus Page
Legal Counsel, Kenneth Schmalzbach
Planning Office, Bettsy Hettinger
External Affairs, Thomas Gillilland
Assistant Commissioner, Administration, Kenneth Kalscheur
Assistant Commissioner, Comptroller, Mitchell Levine
Assistant Commissioner, Field Operations, Bland Brockenborough
Assistant Commissioner, Headquarters Operations, Michael Serlin
Assistant Commissioner, Federal Finance, Russell Morris
Assistant Commissioner, Information Systems, Ronald Nervitt

[FR Doc. 84–28702 Filed 10–30–84; 8:45 am]

BILLING CODE 4810–35–M

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6–8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 9% for the second quarter of FY 1985.

DATES: The rate will be in effect for the period beginning on January 1, 1985 and ending on March 31, 1985.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Cash Management Division, Financial Management Service, Department of the Treasury, Treasury Annex No. 1, PB–711, Washington, D.C. 20226 (Telephone: 202/634–5131).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal cash management systems and is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the twelve-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 per centum. The rate in effect for the second quarter of FY 1985 reflects the average investment rates for the twelve-month period ended September 30, 1984. The applicable rate will be published on or around the end of the first month of a given quarter for use during the succeeding calendar quarter.

Dated: October 23, 1984.
Richard A. Greenstein,
Director, Working Capital Group.
[FR Doc. 84-28638 Filed 10-30-84; 8:45 am]
BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; University Affiliation Program; Application Notice for Fiscal Year 1985

Applications from U.S. institutions of higher education for grants are invited under the University Affiliation Program.

Authority for this program is contained in the Mutual Education and Cultural Exchange Act of 1961, Pub. L. 87-256 (Fulbright-Hays Act). (Information collection involved in this program has been cleared by OMB Approval Number 3116-0179, expiration date 1/31/87).

The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for institutional partnerships between U.S. and non-U.S. colleges and universities. The goal of the Program is to facilitate bilateral institutional relationships which promote mutual understanding through faculty and staff exchanges.

Applications on behalf of the collaborating institutions are to be submitted by the U.S. partner. Participating institutions should be prepared to: assign faculty or staff to the partner institution for teaching, lecturing or research; maintain said person(s) on full salary; and receive visiting faculty from the partner institution. USIA funds are to be used for participant travel costs and modest compensation supplements. Institutional overhead is not allowable. Projects supported by USIA should last a minimum of two years and a maximum of three years; the total request to USIA should not exceed $50,000, covering eligible expenses of both institutions for the two- or three-year period.

In FY 1985, approximately thirty grants will be awarded through the regular competition for specific countries and themes, reflecting the priorities of the Office of Academic Programs branches and the Agency's Area Offices, as well as academic and Agency-wide considerations. Of these thirty, there will be up to twenty-five grants for the five geographic areas (Central America included for the American Republic area) and up to five grants specifically for Central America.

Proposals will be accepted either for the establishment of new affiliations or for the enhancement of existing affiliations not previously funded by USIA's Affiliation Program. Proposals for funding ad hoc reserach projects, technical assistance projects and feasibility studies to plan affiliations will not be considered in this program.

All proposals will be subject to Agency review for conformity to relevant OMB and legal considerations. Funding of any proposal is subject to the regular procedures, regulations and requirements for Bureau of Educational and Cultural Affairs grants, including review by the General Counsel's office.

Eligibility, as follows, has been determined in concultation with appropriate Agency elements. The four eligible fields for University Affiliation proposals will be the huamnities, social sciences, education and communications; proposals will be accepted from departments or academic units in these areas. Because one of the program's purposes is to strenthen ties between the U.S. and many areas of the world, country and thematic priorities have been identified.

Africa: Any discipline(s) in the above four fields; applicants should focus on one or two specific subject areas of interest. Eligible for 1985 are: Benin, Botswana, Ethiopia, Gabon, Guinea, Lesotho, Madagascar, Mauritius, Niger, Nigeria, Sierra Leone, Swaziland, Zaire, and Zambia.

American Republics: Any discipline(s) in the above four fields; applicants should focus on one or two specific subject areas of interest. Eligible for 1985 are: Argentina, Belize, Chile, Costa Rica, EL Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguary, Uruguay, Venezuela and the countries of the West Indies.

East Asia/Pacific: Proposals in the above four fields that will develop area studies, i.e., systematic knowledge of the society, culture and institutions of each other's country, on the two sides of the partnership. Eligible for 1985 are: Australia, Japan, Korea, Malaysia, New Zealand, People's Republic of China, Singapore and Thailand.

Europe: Any discipline(s) in the above four fields; applicants should focus on one or two specific subject areas of interest. Eligible for 1985 are: Ireland, Italy, Portual and Turkey.

Near East/South Asia: Any discipline(s) in the above four fields; applicants should focus on one or two specific subject areas of interest. Eligible for 1985 are: Bahrain, Egypt, Jordan, India, Iraq, Morocco, Pakistan, Sri Lanka, Syria and West Bank.

Special Competition

There will also be a special competition for up to ten grants in 1985 to commemorate the bicentennial of the U.S. Constitution. We invite applications dealing with the international dimensions of the origins and development of constitutional principles, the impact of the U.S. Constitution on other legal and political systems, the influence of other countries' legal and political practices upon the evolution of the U.S. constitutional system, and the cultural and social implications of constitutional arrangements.

This competition is open to worldwide competition. Proposals for the special competition should be so marked.

1. *Eligibility:* Applications on behalf of the collaborating institutions are to be submitted by the U.S. partner. Eligible partner institutions are:

a. Accredited, degree-granting U.S. institutions of higher education, including two-year institutions;

b. Recognized non-U.S. institutions of higher education.

2. *Review Process:*

The review process is conducted in three stages—technical, academic and Agency. Proposals that are technically ineligible (eligibility criteria follow) will not be forwarded for further consideration by the academic or Agency review committees. Proposals must be postmarked by February 1, 1985. As a courtesy, proposals received by January 18, 1985, will be reviewed for completeness upon receipt. Should they be found to be incomplete, notification will be sent to the applicant specifying the items missing, which may be submitted by the application deadline. All corrected or supplementary materials must be postmarked by February 1, 1985.

Upon completion of the technical review, project directors of ineligible proposals will be informed in writing. Technically eligible proposals will be forwarded for review to an outside committee of academic peers. Proposals that are recommended by the academic peer review committees on substantive grounds will be forwarded for further consideration by the Agency review committees. Agency review committees will then evaluate the proposals by specific criteria addressed to quality and area and program balance.

Review criteria follow:

Technical Review Criteria

Within deadline; ten copies of: narrative of twenty pages or fewer, abstract, complete budget, required letters of agreement, etc.; eligible

country and academic area(s); two- or three-year program.

Academic Review Criteria

a. Sound academic goals, selection of topics and plan; academic experience of participants (including linguistic proficiency);

b. Strong mutual institutional commitment;

c. Integration of faculty and administration of both institutions (department, college, division or school) in the planning of the proposed activities;

d. Feasibility of program plan;

e. Evidence that the proposed individual exchanges are likely to achieve the program's overall goal of institutional academic development;

f. Mutual advancement of cultural and political understanding of the countries represented in the partnership through development of individual and institutional ties;

g. Demonstration that the partnership is likely to continue after the conclusion of the USIA grant.

Agency Review Criteria

a. USIS post assessments;

b. Advancement of the mutual cultural and political understanding with the countries represented in the partnership;

c. Academic quality, reflected in academic review category and summary notes;

d. Feasibility of program plan;

e. Promise of long-term impact;

f. Cost-effectiveness.

3. *Application Procedures:*

Applicants must submit their proposals in ten (10) copies to: University Affiliation Program, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

In order to be eligible for review the proposal *must* include:

Summary document

a. A typed, double-spaced abstract of approximately two pages.

Narrative, a text not to exceed twenty (20) typed, double-spaced pages, including:

a. A brief (two-page) description of the participating institutions and participating departments;

b. A detailed description of the proposed affiliation program including but not limited to: the name and qualifications of the designated project director; the roster of participants or representative sample of potential participants and their qualifications, including language skills; a statement of need; a description of the activities, including when and where they will occur; and the anticipated benefits of the program. First-year participants must be identified. A plan for institutional evaluation of the program must also be included.

c. A detailed line-item budget outlining specific expenditures and source(s) from which funds are anticipated. The budget should include any in-kind and cash contributions to the program made by the U.S. and non-U.S. universities.

Appendices, which should be kept to a minimum but must include:

a. The vitae of the potential participants, clearly indicating the level of language skills, overseas experience, knowledge of the prospective partner country as demonstrated through courses taught, relevant scholarly and non-scholarly travel, publications, and research activities. The vitae of the U.S. participants must be included; the vitae of non-U.S. participants are desirable.

b. Documentation of institutional support for the proposed affiliation, *including a signed letter of endorsement from the U.S. institution's vice chancellor/provost/vice-president, as well as a signed letter of endorsement from the president (or equivalent) of the non-U.S. institution.* Both letters must address the particular affiliation program of the proposal. A general letter of agreement between the two institutions without reference to this specific program will not fulfill this requirement.

c. A brief summary of ongoing, active international linkages at both partner institutions.

4. *Budget Items:*

Eligible Budget Items

a. International airfare for participants;

b. Compensation (salary and/or benefits supplements) or modest per diem may be requested for such specific items as housing, food and other maintenance items, while in exchange status. Participating universities will be expected to continue full salary for their own faculty. The maximum amount that may be requested for compensation supplements/per diem may not exceed the rates set by the U.S. Department of State. (The USIA action officers, listed below, will supply these rates upon request.)

U.S. institutions are reminded that in certain countries restrictions may be placed on the export of salary in local currency.

Ineligible Budget Items

a. Institutional overhead;

b. Administrative expenses incurred in connection with the affiliation;

c. Funds for student exchanges;

d. Travel and per diem for dependents.

5. *Deadlines:*

Proposals must be *postmarked on or before* February 1, 1985. As a courtesy, proposals *received* by January 18, 1985, will be reviewed for completeness upon receipt. Should they be found to be incomplete, notification will be sent to the applicant specifying the item(s) missing, which may be submitted by the application deadline. Incomplete proposals, or corrected or supplementary materials postmarked after February 1, or received after February 15, 1985, or complete proposals postmarked after February 1, 1985, or received after February 15, 1985, will *NOT* be considered by the technical, academic or Agency review committees. Applicants are responsible for the submission of complete applications. *All* required items must be postmarked by the deadline and received at USIA by February 15, 1985. Proposals *received* by January 18, 1985, are eligible for early review for completeness.

6. *Notification:*

All applicants will be notified of the results of the review process on or about May 15, 1985. Funded proposals will be subject to periodic reporting and evaluation requirements.

Inquiries

For questions concerning programming and budget, please contact: Africa: Dr. Curtis Huff, Branch Chief, E/AEA, United States Information Agency, 301 4th Street, SW., Washington, D.C. 20547, (202) 485–7376.

American: Mr. Wayne Peterson, Branch Chief.

Republics: E/AEL, United States Information Agency, 301 4th Street, SW., Washington, D.C. 20547, (202) 485–7365.

East Asia: Ms. Louise Crane, Branch Chief, and the E/AEF.

Pacific: United States Information Agency, 301 4th Street, SW., Washington, D.C. 20547, (202) 485–7402.

Europe: Mr. William Dickson, Branch Chief, E/AEE, United States Information Agency, 301 4th Street, SW., Washington, D.C. 20547, (202) 485–7420.

Near East: Mr. Jonathan Owen, Branch Chief.

South Asia: E/AEN, United States Information Agency, 301 4th Street, SW., Washington, D.C. 20547, (202) 485–7368.

Dated: October 10, 1984.

Ronald L. Trowbridge,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 84-28685 Filed 10-30-84; 8:45 am]

BILLING CODE 8230-01-M

President's International Youth Exchange Initiative; Announcement: Phase II

The United States Information Agency (USIA) announces a program of selective assistance through limited grant support to private not-for-profit organizations for programs to expand the President's International Youth Exchange Initiative to 25 countries listed below.

The purpose of the program is to promote youth exchanges between the United States and the following countries: Algeria, Austria, Bahrain, Bolivia, Botswana, Colombia, Costa Rica, Cyprus, Dominican Republic, Egypt, India, Indonesia, Israel, Ivory Coast, Jamaica, Jordan, Kenya, Malaysia, South Korea, Spain, Thailand, Togo, Turkey, and Uruguay. Proposals for exchanges with other countries will not be accepted at this time. There is no other competition in effect at this time.

Organizations should not plan exchanges earlier than the summer of 1985. Grant awards will be made subject to the availability of funding.

The objective of this program is to strengthen the institutional capabilities of organizations in order to promote increased international youth exchanges. Organizations applying for grant support must demonstrate that funding will result in a direct increase in the number of exchange visitors. Proposals should describe the present level of exchange being conducted and the additional exchanges that will be achieved as a result of grant funding.

Eligibility

Academic, cultural, not-for-profit youth exchange and youth-serving organizations are eligible to apply. General guidelines for the Bureau of Educational and Cultural Affairs require that grants to organizations which have worked in the youth exchange field for less than four years may not exceed $60,000. Organizations must be capable of meeting the "Criteria for Teen-ager Exchange Visitor Programs" or "Criteria for Practical Trainees", which may be found at law libraries in the Code of Federal Regulations under 22 CFR 514 or may be obtained by writing to USIA.

Program Content

There are three major categories of program that are the subject of this competition—General, Bilateral (jointly funded by the US and a partner government), and Special Projects for several countries.

I. General Exchange Programs

Single or multi-country projects for partial USIA grant support. Priority will be given to projects that conform to the following models:

A. Long-Term Academic Homestay. Generally one academic year or semester programs for 15–19 year-old secondary school students or recent graduates. Program includes: homestay for the duration of the experience, attendance at a secondary school, community activities, orientation, and language study as necessary.

B. School-to-School Exchanges. Generally 3–4 week programs for 15–18 year-old secondary school students. This is primarily a school linkage model in which a group of students from the same school or classroom, accompanied by a teacher, participate in an exchange with a partnered school abroad. Program features include study of the partner country before departure, homestays, study and community activities during the exchange.

C. Thematic Exchanges. Generally 4–8 week programs for students aged 15–25. Program features include: study of a country or set of relevant issues prior to the exchange; periodic meetings during the exchange involving host nationals to discuss the issues, under guidance of a group leader or chaperone; some touring; homestays for most or all of the visit; and orientations.

D. Work Projects. Programs for students and young professionals aged 15–25 for minimum 4-week duration but preferably 6–12 weeks. Program features include: experiential learning activities, including camp counseling, historical preservation or restoration, public works, conservation, and volunteer community service; may be done as a group, involving interaction with a similar-aged group of host country nationals, or as individual projects; campstays as appropriate, but homestays where possible are preferred; and pre-departure orientations and post-return debriefings.

E. Non-Academic Homestays. Programs for students, young workers, farm youth, et al., aged 15–25, of a minimum 4-weeks duration, but preferably 6–12 weeks. Program features include: homestay for the full period of the visit; community activities; group activities, such as scouting, recreation, service projects; individual activities, such as volunteer farm work; pre-departure orientations and post-return debriefings.

F. Internships. Programs of 6 weeks to 1 year for students, young professionals and young workers, aged 15–25. Program features include: individual homestays for the duration of the program; work in a private enterprise or public agency, usually in the area of one's career choice or vocation; may be coupled with study; community activities; orientations. Grant funding is usually restricted to partial travel and partial administrative costs; tuitions and stipends are not funded. Certain types of programs may require use of the J–1 "trainee" visa, for which prior authorization is a prerequisite.

II. Bilateral Programs

Exchanges jointly supported by the United States and a single partner government. No multi-country programs will be accepted under this category. Specific short-term bilateral exchange projects have been developed with the Governments of Israel and Jordan only. These will receive priority over proposals for exchanges with Israel and Jordan submitted under the "General" category. The partner government will identify interested organizations in that country to receive government funds and implement the exchange. Proposals submitted by US organizations to implement the US portion of the exchange will be reviewed in USIA. Those receiving favorable recommendations will be referred to a joint steering committee in the partner country for approval and matching with a foreign organization. Please write to the Youth Exchange Staff (address given below) or call to request a copy of the project list for the country of your choice.

USIA support will generally be limited to: domestic and international travel for US participants from point of origin to city of destination and return; costs of hosting foreign participants; orientation; essential administrative costs; and health and accident insurance.

III. Special Projects

USIA is seeking organizations to plan and implement certain specific projects under grant funding for the following countries:

Algeria—A 4–6 week non-academic homestay project, including one week of orientation/English language brush-up, stays with host families, and one week of travel. The counterpart Algerian organization, "Nedjma," the travel arm of the National Union of Youth, is willing to program a group of American youth in Algeria.

Bahrain—(1) 4–6 week non-academic homestay for a Bahraini Youth Club or Student Summer Club group and a reciprocal program for similar US group in Bahrain, summer 1985. (2) a short-term secondary school academic

exchange in the fall of 1985 or spring of 1986.

Bolivia—6–8 week non-academic homestay or work project for up to 20 Bolivian youth aged 15–25 from mining families. Agricultural of vocational work/learning experience is preferred.

Colombia—Non-academic homestays, work projects, or internships for 20–25 Colombian youth aged 15–25 in the following fields: teacher interns, small business interns, young labor leaders, and agricultural work/learning projects.

Kenya—A 4–6 week non-academic homestay for 6 Kenyan and 6 American farm youth, summer 1985. Young Farmers of Kenya is the counterpart group.

Republic of Korea—(1) Thematic exchange: 4–8 week program for students 15–25, including orientation, study of the language, culture, and bilateral issues, homestays for most or all of the visit, and some touring. (2) Non-academic homestay: 6–8 week program for students, young volunteers, farm youth, aged 15–25, including homestays, voluntary farm or social service work, pre-departure orientations and post-return debriefings.

Thailand—Two-way exchange of young farmers for short (2 months) or long (one year) stays. Thai co-sponsor is Bangkok Bank. Write USIA for details.

Togo—(1) 4–6 week exchange of Togolese scouts with scouting group in US including camp experience, homestays and orientation. (2) homestay/workshops for 6–8 youthful Togolese artists, dancers, musicians. (3) 4–6 week archeological excavation project in cooperation with the University of Benin for 7 to 10 students aged 18–25. (4) Exchange of rural youth, including leadership development, farm stays, and observation of agricultural techniques.

Uruguay—4–6 week work/internship program for 5 Uruguayan members of the "Impuslo" group of the "Foro Juvenil", aged 19–25, working in psychology, medicine, social work and law. Internships should be in programs dealing with juvenile prostitution, drug addiction, and delinquency, preferably with Spanish-speaking communities. Program should also include homestays, orientation and debriefing sessions. Foro Juvenil is interested in programming a similar group in Uruguay.

Grant Guidelines

Proposals will be judged on the extent to which projects address the following criteria:

—The activity should contribute to the sustained, long-term development of youth exchanges.

—Networking—Certain projects involve matching the organizational experience and capability of an exchange group with the resources of a youth-serving organization or network with facilities, youth memberships, community access, etc. These proposals will be judged on their potential for forging these relationships and generating viable exchange activities.

—Joint funding—Financial support from counterpart organizations and government agencies in the partner country.

—Cost-sharing—Financial and in-kind support from participating organizations, schools, community funding sources and parents in the U.S.

—Efforts to mainstream disabled youth into exchange activities.

—Challenge grants—This involves the use of a block grant to an organization, which in turn makes small grants available to its constituent member groups, with the proviso that matching funds be raised. Such proposals will be judged on the quality of the exchange activities and other criteria listed herein.

—Reciprocity—The exchanges should be two-way and as balanced (inbound/outbound) as possible.

—Cost-effectiveness—Greatest return for each federal dollar invested; reasonable per capita cost in comparison with other proposals submitted.

—Quality—The project should contribute to the mutual education of American and foreign participants.

—Self-management—The organization should demonstrate the ability to administer the project without extensive subcontracting to other non-profit or profit-making organizations. Where such arrangements exist please provide a copy of the service agreement.

The following are project elements or types which are considered inappropriate for purposes of this competition:

—Sports exchanges.

—Full scholarship support.

—Research studies.

—Study for post-secondary academic credit or degree programs.

—Campus-to-campus exchanges of university students or teachers.

—Travel/observation tours.

—Hotel-hopping delegations.

—Conferences.

—School tuitions.

—Stipends to host families.

—Support for exchange activities already being carried out.

—Performing tours.

—Any project which is designed to lobby elected officials or promote politically partisan views, or whose aim is to promote religious activities.

Geographic distribution of exchanges is a key consideration in the award of grant funds.

Proposal Format

Interested organizations should write or call the Youth Exchange Staff for guidelines which specify what should be included in the narrative portion of the proposal, how budgets should be designed, and what attachments are required.

Review Process

Proposals (original and 10 copies) should be received in USIA no later than December 31, 1984. Following an initial screening for eligibility and completeness, proposals will be reviewed by a USIA panel during January and February. Final decisions are made by the Associate Director for Educational and Cultural Affairs. Funding will be available by March 15, 1985.

For further information on this program contact the International Youth Exchange Staff, Bureau of Educational and Cultural Affairs (E/YX), U.S. Information Agency, Washington, DC 20547 or call (202) 485–7299.

Dated: October 26, 1984.

Ronald L. Trowbridge,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 84–28686 Filed 10–30–84; 8:45 am]

BILLING CODE 8230–01–M

International Youth Exchange; Approved Logo Usage

AGENCY: United States Information Agency.

ACTION: Announcement.

SUMMARY: The United States Information Agency announces the opportunity for qualifying participants in the President's International Youth Exchange Initiative to use the Initiative's logo for approved purposes.

EFFECTIVE DATE: This announcement is effective November 1, 1984.

FOR FURTHER INFORMATION CONTACT: The International Youth Exchange Staff, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Room 255, Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency announces the opportunity for qualifying participants in the President's International Youth Exchange Initiative to use the Initiative's logo for approved purposes. This announcement covers the criteria for qualifying to use the logo,

under what circumstances the logo may be used, misrepresentation, and the application procedure for obtaining permission to use the logo.

Criteria

The Agency, in its discretion, will grant permission to use the logo to organizations which meet the following three criteria:

1. One of the following: a. A tax exempt organization which holds a Section 501(c)(3) exemption from the Internal Revenue Service; b. a tax supported organization; or c. such other non-profit organizations which can demonstrate to the Agency's satisfaction that they possess community based volunteer support for International Youth Exchange.

2. The organization must sponsor or support international youth exchange programs for 15–25 year olds.

3. a. The organization must have a proven track record, which means that the organization has four years of experience in youth exchange; or

b. The organization must demonstrate, to the Agency's satisfaction, a commitment to community based volunteer participation and support for youth exchange which upholds the goals and aims of the President's Initiative.

Use

Permission will be granted for specific use of the logo. Applications must specify how the logo will be used. Authorization will only be issued for the stated use in the request. Expanded use will require re-authorization. Authorizations will be effective for one year from the date of authorization.

The Agency contemplates that organizations will be authorized to use the logo for certain purposes. Anticipated authorizations include but are not limited to, internal newsletters, annual reports, an article about the President's Initiative, fundraising literature, and for limited commercial purposes as specifically approved.

Misrepresentation

Permission to use the logo indicates that the organization is a participant in the President's Initiative. It in no way implies sponsorship, approval, authorization, guarantee, support, or designation of the organization's programs by the President's International Youth Exchange Initiative, the United States Information Agency or the United States Government and may not be represented by an organization as such.

Application Procedure

Organizations or groups which meet the stated criteria should send a request in writing to the address noted above. The request should state each intended use of the logo. Documentation supporting each use must accompany the request.

The Agency will make its decision on whether to grant permission to use the logo based on (1) the documentation supplied by the organization; and (2) upon any information the Agency possesses by virtue of its involvement in the field of international youth exchange.

Re-Authorization

The Agency will exercise discretion when re-authorizing permission for an organization to use the logo. The Agency will consider whether:

1. The organization is financially responsible;

2. The organization has appropriately represented international youth exchange, the President's Initiative, or the organization's relationship to the President's Initiative.

3. The organization has complied in good faith with the goals and aims of the President's Initiative; or

4. The organization's conduct has brought either the organization or the President's Initiative into disrepute.

Ronald L. Trowbridge,

Associate Director, Bureau of Educational and Cultural Affairs, United States Information Agency.

[FR Doc. 84–28630 Filed 10–30–84; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 212
Wednesday, October 31, 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

	Items
African Development Foundation	1
Civil Aeronautics Board	2
Federal Deposit Insurance Corporation	3
Federal Reserve System	4

1

AFRICAN DEVELOPMENT FOUNDATION

Board Meeting.

TIME: 2:00 p.m.

PLACE: 1724 Massachusetts Avenue, N.W., Washington, D.C. 20036.

DATE: November 10, 1984.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Chairman's Report
2. President's Report
3. Kenya Board Trip Report
4. External Committee Report (Mr. A.C. Arterbery)
5. Farewell to Dr. Frank Ruddy
6. Other Business

CONTRACT PERSON FOR MORE INFORMATION: Ms. Marge Cook (634–9853)

October 26, 1984.

Leonard H. Robinson, Jr.,

President.

[FR Doc. 84-28815 Filed 10-29-84; 3:05 pm]

BILLING CODE 6116-01-M

2

CIVIL AERONAUTICS BOARD

[M–413 amdt 1, Oct. 23, 1984]

Deletion from the October 25, 1984 meeting.

The CAB will meet:

TIME AND DATE: 10:00 a.m. Open; 2:30 p.m. Closed; October 25, 1984.

PLACE: Room 1027 (Open) Room 1012 (Closed) 1825 Connecticut Avenue, NW., Washington, DC 20428.

SUBJECT:

20. Docket 35634, IATA agreements proposing revised cargo rates in U.S./Canada—Europe/Africa/Middle East markets, and in Europe/Africa/ Middle East—Asia/South West Pacific markets. (BIA, OGC)
21. Docket 35634, IATA agreement proposing cargo rate revisions for most Western Hemisphere markets. (BIA, OGC)
22. Docket 35634, IATA agreement, inter alia, proposing cargo rate increases from American Samoa/Guam. (BIA, OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673–5068.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-28737 Filed 10-29-84; 9:15 am]

BILLING CODE 6320-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:10 p.m. on Thursday, October 25, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The First National Bank of Gaylord, Gaylord, Kansas, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, October 25, 1984; (2) accept the bid for the transaction submitted by Farmers National Bank of Gaylord, Gaylord, Kansas, a newly-chartered national bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

At the same meeting, the Board of Directors also considered a recommendation with respect to an administrative enforcement proceeding against a certain individual participating in the conduct of the affairs of an insured bank (name of person and name and location of bank authorized to be exempt from disclosure pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of "Government in the Sunshine Act" (5 U.S.C. 522b(c)(6), (c)(8), and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe 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: October 26, 1984.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-28767 Filed 10-29-84; 11:33 am]

BILLING CODE 6714-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, November 5, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meetings.

Dated: October 26, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-28728 Filed 10-26-84; 4:47 pm]

BILLING CODE 6210-01-M

federal register

Wednesday
October 31, 1984

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels in Steel Plants; Final Rule.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2661-3]

Standards of Performance for New Stationary Sources: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels in Steel Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Revisions to the standards of performance for electric arc furnaces (EAF's) in the steel industry and Reference Method 5D were proposed in the **Federal Register** on August 17, 1983 (48 FR 37338). This action promulgates the revisions to those standards of performance for EAF's that were proposed on October 21, 1974 (39 FR 37466) and Reference Method 5D. The revised standards apply to new, modified, and reconstructed EAF's and argon-oxygen decarburization (AOD) vessels for which construction was commenced after August 17, 1983. These standards implement Section 111 of the Clean Air Act and are based on a determination that EAF's and AOD vessels in steel plants cause or contribute significantly to air pollution which may be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed EAF's and AOD vessels in steel plants to control emissions to the level achievable through use of the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

EFFECTIVE DATE: October 31, 1984.

Under section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard (NSPS) is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings initiated to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels in Steel Plants—Background Information for Promulgated Standards" (EPA-450/3-82-020b). The BID, Vol. II, contains (1) a summary of all the public comments made on the proposed amended standards along with the responses to the comments, and (2) a summary of the changes made to the standards since proposal.

Docket. Docket number A-79-33, containing information considered in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5624).

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1974 (39 FR 37466), standards of performance were proposed under Section 111 of the Clean Air Act to control particulate matter emissions from EAF's used in the steel industry. These standards of performance were promulgated on September 23, 1975 (40 FR 43850), and apply to any facility constructed, modified, or reconstructed after October 21, 1974. Under the Clean Air Act amendments of 1977, standards of performance must be reviewed every 4 years and revised if appropriate. On April 21, 1980, a notice was published in the **Federal Register** (45 FR 26910) announcing such a review of the standards of performance for EAF's in the steel industry. The review found that fugitive emissions capture technology had improved since promulgation of the original standards of performance for EAF's. The review also found that AOD vessels are a significant source of particulate matter emissions in specialty steel shops. As a result of these findings, it was determined that a revision of the standards was appropriate. Therefore, additional data were collected on the controlled emission levels from EAF's and AOD vessels to determine how the standards should be revised.

Revised standards and Reference Method 5D were proposed on August 17, 1983. These proposed standards would regulate particulate matter emissions from AOD vessels in addition to those from EAF's, and are applicable to facilities constructed, modified, or reconstructed after August 17, 1983. In addition, the proposed standards would establish more stringent fugitive visible emission standards for both EAF's and AOD vessels than are applicable in the current standards. The proposed standards would also allow the period monitoring of positive-pressure fabric filter control systems by visible emissions observers using Reference Method 9 in lieu of the existing continuous opacity monitoring requirements because a single transmissometer may not accurately measure the opacity of visible emissions from the multiple stacks or long monovents associated with positive-pressure fabric filters, and the cost of multiple monitors is considered to be unreasonable.

Positive-pressure fabric filters have become the predominant control device used to control emissions from EAF's. They usually have stub stacks, roof monitors, vents, or other exhaust configurations that do not provide the path length of undisturbed flow that is necessary for Method 5 testing. Therefore, Method 5D for measuring particulate matter emissions from positive-pressure fabric filters was added to Appendix A of the General Provisions in 40 CFR Part 60. This test method identifies appropriate locations and procedures for sampling emissions from positive-pressure fabric filters.

The Final Amendments

In response to public comments, certain changes have been made to the standards since proposal, and the more important of these changes are summarized below. The rationale for the changes is discussed in the Section entitled "Significant Comments and Changes to the Proposed Revision."

Section 272(a)(3)(iii) and related sections 274(a)(3), (a)(4), (b), (c), (e), and (f) (which are in the current standards but were not included in the proposed revised standards) are reinstated in the regulation for promulgation. Sections 274 (b) and (c) have been revised, and sections 274 (e) and (f) have been redesignated (f) and (g). These sections require that the flow rate through each capture hood and the pressure in the free space inside the furnace be continuously monitored and that the flow rate and pressure be maintained at levels established during the performance test. The visible emission standards apply during the establishment of these levels.

Modular, multiple-stack, negative-pressure fabric filters have been

included with positive-pressure fabric filters as control devices that may be monitored by Reference Method 9 observations in lieu of transmissometers.

Where it is possible to determine that visible emissions from multiple sites are attributable to a single incident of the visible emissions, sections 275(i) and 275a(c) have been revised to permit only one set of Reference Method 9 observations at the point of highest opacity that directly relates to the cause (or location) of the incident.

Several other changes have been made in the standards. Both Subparts AA and AAa are revised to permit either periodic monitoring and recording of fan motor amperage and damper position or continuous monitoring and periodic recording of flow rates through each separately ducted hood. In Subpart AA, if fan motor amperage/damper position monitoring is the chosen alternative, the monthly operational status inspections that were proposed will be required. Sections 275(a)(1) and 275a(a)(4) have been revised to make it clear that only Reference Method 5 is to be used on negative-pressure fabric filters and only Method 5D is to be used on positive-pressure fabric filters. A section on recordkeeping and reporting requirements has been added to Subpart AA. This section requires that when the "baseline" monitored values (i.e., pressure, fan motor amperage, or flow rate) are outside of acceptable ranges, these values must be reported semiannually. To be consistent with Subpart AA, Subpart AAa has been revised to require establishment of these same "baseline" values. Semiannual reporting of values outside of the specified ranges is also required for Subpart AAa. Both Subparts AA and AAa have had a provision added to clarify the requirements of acceptance by the Administrator in sections 275(g)(2) and 275a(h)(2). When utilizing a performance test method that compensates for the emissions from the facilities not subject to the provisions of the standards, the Administrator must be notified of the method to be used 30 days prior to the performance test and must approve the method.

Summary of Environmental, Energy, and Economic Impacts

There has been no change in the environmental, energy, and economic impacts since proposal. These impacts are discussed in detail in Chapters 7 and 8 of "Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels in Steel Industry—Background Information for Proposed Revisions to Standards," (EPA–450/3–82–020a) (BID, Vol. I).

The standards recommended for promulgation would reduce nationwide particulate matter emissions from the carbon and specialty steel plants by about 960 tons per year for the industry in the fifth year following proposal of the standards. Because these emissions are collected as dry particulate matter, solid waste would increase by 960 tons per year in the fifth year following proposal. However, the dust from the fabric filters in specialty shops is generally recycled, and personnel in carbon steel shops are currently attempting to develop techniques for recycling their dust. The recommended standards would not cause any impacts on water quality. The nationwide energy consumption in the fifth year would not increase under the recommended standards.

There would be an increase in capital and annualized costs associated with the recommended standards. Because of changes in the fugitive emissions capture and monitoring requirements, the total capital costs of compliance with the NSPS would increase, at most, by $3,150,000 through the first 5 years following proposal of the standards. Similarly, total annualized costs in the fifth year would increase by no more than $479,000.

Public Participation

No public hearing was held. A hearing was requested but this request was later withdrawn. The public comment period extended from August 17, 1983, through October 21, 1983. Seven written comments were received. These comments represented one steel industry trade association, three steel companies, two government environmental agencies, and one individual. All comments were considered in developing the standards recommended for promulgation, and, where appropriate, changes have been made to the proposed revisions.

Responses to Comments on the Proposed Revisions

A detailed discussion of the comments that were received and the Agency's responses can be found in the BID for the promulgated revisions (Vol. II) that is referenced in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID, Vol. II, serves as the basis for the changes that have been made to the proposed revisions. The major comments and responses are summarized in this preamble under the following two headings: Test Methodolgy and Emission Limits.

Test Methodology

The majority of the public comments concerned the mass emission test methodology. Comments from the steel industry questioned the use of EPA Reference Methods 5 and 5D rather than high-volume sampling as the appropriate test method for measuring particulate matter emissions.

The NSPS are performance standards that are expressed in terms of mass emission rates. Determination of compliance with these standards requires accurate measurement of the pollutants for which these standards are set. For this reason, the EPA, in the General Provisions (40 CFR 60.8(e)), requires that all control devices be testable.

Positive-pressure fabric filters have historically presented a difficult test situation because of the complications involved in testing the many different configurations in which positive-pressure fabric filters occur. Some States have implemented the requirement that all control devices be testable by requiring affected facilities controlled with positive-pressure fabric filters to undertake the expensive retrofit of stacks or stack extensions onto the fabric filter for testing purposes. Other States have used various high-volume sampling techniques.

The EPA evaluated several approaches to testing positive-pressure fabric filters in an attempt to develop a test method that could be applied at reasonable cost and that was reliable and practical for these devices. High-volume sampling and Reference Method 5 sampling were among the approaches evaluated. The Agency conducted simultaneous comparison tests on a positive-pressure fabric filter using both Method 5 equipment and high-volume samplers. The data obtained from these tests show that the high-volume particulate concentration results were 70 to 85 percent lower than those indicated by the Method 5 equipment on emissions from the same positive-pressure fabric filter. Results of other comparisons between the two methods, both direct and indirect, also show that high-volume sampling methods produce results lower than Method 5 or Method 5D (docket entry IV–A–1).

The Agency has determined that it is necessary to use demonstrably reliable equipment and multipoint sampling to ensure a representative collection of particulate emissions from most emission sources, including fabric filters. Reference Method 5D incorporates the multipoint sampling requirements with

the use of reliable Method 5 equipment to provide a practical method for testing positive-pressure fabric filters. Method 5D is a modification of Method 5, which has proven reliable over many years of use. Method 5D incorporates the procedures of Method 5 and also prescribes procedures that make it practical for use on positive-pressure fabric filters. Method 5D is the method used to collect the data in support of the particulate emission standard.

The proposed provision that would allow the use of Reference Method 9 as an alternative to transmissometers for continuous monitoring of positive-pressure fabric filters is endorsed by the American Iron and Steel Institute (AISI). At the same time, the AISI believes that continuous monitors should not be required on modular, negative-pressure fabric filters that have multiple stacks because such fabric filters would also require multiple monitors, which would significantly increase the capital and operating costs. Therefore, the AISI recommends that Reference Method 9 be allowed on both modular, multiple-stack, negative-pressure fabric filters and positive-pressure fabric filters as an alternate method of continuous monitoring.

To respond to this comment, information was gathered (docket nos. IV–E–1, IV–E–2, and IV–E–3) about current installations and trends in the use of modular, multiple-stack, negative-pressure fabric filters. An industry trend toward positive-pressure fabric filters was confirmed.

It is unlikely that modular, multiple-stack, negative-pressure fabric filters will be used extensively by the industry; however, we are aware of three such fabric filters in use to control emissions from EAF's. The annualized costs of one transmissometer range from $8,000 to $13,000. To obtain accurate measurements on positive-pressure fabric filters, it would be necessary to install multiple transmissometers, and these additional costs are considered to be unreasonable. As is the case for positive-pressure fabric filters, the costs of installing multiple transmissometers to accurately measure visible emissions from this type of negative-pressure fabric filter would be expected to be unreasonable. Therefore, it is appropriate to permit Reference Method 9 visible emission observations by a certified observer in lieu of a transmissometer to monitor visible emissions from such units because, as for positive-pressure fabric filters, the costs are reasonable and the measurements are as accurate. Sections 273(c), 275(i), 273a(c), and 275a(c) of the regulations have been changed to reflect this position.

In a broader context, several comments were received questioning the accuracy and reliability of using Reference Method 9 to measure the opacity of fugitive emissions. In addition, several comments suggested that a shop roof mass emission standard would be more appropriate than a shop roof visible emission standard.

The "EPA Response to Remand Ordered by U.S. Court of Appeals for the District of Columbia in Portland Cement Association v. Ruckelshaus (486 F.2d 375, June 29, 1973)" discusses in detail the reliability and accuracy of Reference Method 9 and accompanying certification techniques for determining compliance with visible emission standards. On the basis of this response, the visible emission standard included in the NSPS for portland cement plants was affirmed by the Court on appeal in *Portland Cement Association* v. *Train*, 513 F.2d 506 (1975). The data gathered in responding to the remand for portland cement plants convincingly demonstrate that individual visible emission observers can, for single runs, read the opacity of visible emissions within an acceptable level of precision. The accuracy of the Method is taken into account in the enforcement process, as provided explicitly by Reference Method 9.

Furthermore, Reference Method 9, Section 2.3, specifies that opacity observations must be made at the point of greatest opacity in that portion of the plume where condensed water vapor is not present. The plumes that results from fugitive emissions from the dust-handling equipment associated with EAF's in the steel industry would not be expected to contain condensed water vapor because the temperatures of such plumes are typically about 120° to 130°F. Thus, there should be no difficulty in determining at what point in the visible fugitive emission plume the opacity should be read because a certified observer only needs to look for the point of greatest opacity.

The Agency had determined that the use of visible emission standards is technically sound and provides the most practical and inexpensive means to ensure that affected facilities are properly maintained and operated. The opacity of visible emissions exiting the shop roof monitor is a good indicator of the performance of the process and fugitive emissions capture systems. Therefore, shop roof visible emission opacity limits were selected as the format for this standard. Practical methodology does not exist to obtain measurements of mass emissions discharged from shop roof monitors of EAF facilities because the emissions are intermittent and highly variable, both in length of time and mass rate. Therefore, a mass emission limit for fugitive emissions from the shop roof is not consistent with the requirements of the Clean Air Act.

One commenter pointed out that, in some cases, it could be necessary to perform three Reference Method 9 opacity observations for each source of visible emissions from a fabric filter to comply with 40 CFR 60.275a(c). The commenter cites an example: a positive-pressure fabric filter with 32 compartments, each of which is discharged into a common outlet plenum that is open to the atmosphere at each end of the fabric filter. In addition, a horizontal slot is located on the front, bottom side of each compartment. Thus, visible emissions resulting from a broken bag in any one compartment could be seen at three locations. Thus, the commenter concludes that section 275a(c) would require 54 minutes of Reference Method 9 observations for the one incident.

It is not the Agency's intent to create unnecessary work for owners or operators of affected facilities. Thus, sections 275(i) and 275a(c) have been revised to make it clear that, where it is possible to determine that visible emission at multiple sites are attributable to only one incident of the visible emissions, one set of Reference Method 9 observations from the point of highest opactiy that directly relates to the cause (or location) of the incident will be sufficient.

Emission Limits

Several Commenters questioned why the mass emission standard had not been lowered when revising the standards.

Except for one test run at one facility, the data collected during the revision of this standard demonstrated that fabric filters on EAF's can achieve an emission level of less than 0.0031 grains per dry standard cubic foot (gr/dscf). However, the Agency has determined that the mass standard should not be lowered. This is because it was determined that, to guarantee fabric filter compliance with a 0.0031 gr/dscf standard, vendors might increase capital costs of fabric filters as much as 25 percent (docket Nos. II–E–56, II–E–57, II–E–58, II–E–60). This increase in costs would result from the increased air-to-cloth ratio and other design factors needed to ensure continuous compliance with a more stringent emission limit. Thus, the

incremental cost effectiveness of the more stringent standard would be as much as $8,000/ton, which is considered to be unreasonable.

According to the Clean Air Act Amendments of 1977, section 111(a)(1), a standard of performance shall reflect "application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." The 0.0052 gr/dscf limit is based on the data available from well-controlled and -operated facilities, and it takes into account the costs of complying with the standards.

Several comments were received concerning the level of the standard for visible emissions from the shop roof monitor. Two commenters believed the visible emission standard should be lower, and one commenter believed the standard should be higher.

By setting the level of the standard to include all the data acquired during entire heat cycles, achievability of the standards is ensured during normal operation of the steelmaking process. As was explained in the proposal preamble (48 FR 37347), the visible emission limits were selected based on the performance of the capture and control technologies that served as the basis for Regulatory Alternative B (partially open roof monitor). Regulatory Alernative C (closed roof) was not considered suitable as the basis for national standards of performance because it is based on a closed roof configuration which may aggravate worker and equipment heat stress problems. Operating experience with this roof configuration is limited in areas of the country where ambient temperatures and humidity are high. Because the effects of heat stress cannot be fully evaluated at this time, Regulatory Alternative B was selected as the basis for the proposed revised standards.

Twenty-seven hours of opacity observations were made of shop roof monitor visible emissions at two shops that utilized the capture systems upon which Regulatory Alternative B is based. The maximum opacity observed during these 27 hours was 5 percent. Visible emission limits for NSPS are based on achieved levels at well-operated and -maintained facilities that have installed what is considered to be the best demonstrated control technology. Thus, the visible emission level for this industry was set at 6 percent, which includes the highest Reference Method 9 observation plus a reasonable margin of safety. this methodology was approved by the Court in *Portland Cement* v. *Train, supra.*

The AISI pointed out that, although the data base for the control configuration recommended for the NSPS contains tests at two facilities (Plants J and N) that "are representative of the suggested technology (closed roof monitors over furnace only)" [Regulatory Alternative B], only 7 hours of Reference Method 9 observations were obtained during the charging and tapping portions of the heat cycle. The AISI believes these are insufficient data upon which to base a continuous 6 percent visible emission shop roof standard. The AISI recommends continuing to allow exceptions to the standard during charging and tapping.

The Agency has concluded that the 27 hours of Method 9 visible emission data acquired during the entire heat cycle at representative plants provide, in the Agency's judgment, an adequate data base upon which to set a standard. *National Lime Association* v. *EPA*, 627 F.2d 416 (D.C. Cir. 1980), which is cited in one comment, does require that the data be from representative facilities and that the standard be achievable; however, the Court did not specify any quantity of data that must be acquired before a standard can be set, and the Agency believes that the data are sufficient to demonstrate the achievability of the standard because worst-case conditions (i.e., dirty scrap as charging material) for this industry were included in the test program. The questions of achievability of the standard and limited data were raised by the AISI at the National Air Pollution Control Techniques Advisory Committee meeting in July 1982, prior to proposal of the revised standards. In response to these concerns, Plant N was visited and tested. Even during furnace upset conditions, when the fugitive emission capture system was receiving furnace process emissions at a rate estimated to be almost 10 times higher than it would during normal furnace operation, Plant N achieved the standard. The maximum 6-minute average visible emission reading over a 2-day period that covered many entire heat cycles was 3.3 percent. All of the data for Alternative B demonstrate that the visible emission limit of 6 percent opacity is achievable.

As noted earlier, Alternative B was recommended because the effects of heat stress on workers and equipment in closed roof shops in some areas of the country were unknown. The Agency did not want to risk causing any facility to incur problems with heat stress to achieve compliance with the standards. It was comments (docket entries II–D–67 and II–E–54) made by the AISI about possible heat stress problems in closed roof shops that persuaded the Agency to conclude that the standards should reflect the less stringent requirements of Regulatory Alternative B. As both the AISI and the Agency recognized, there were few partially open roof shops in existence, and, thus, only limited data could be acquired; however, these data are considered to be sufficient to set standards based on Regulatory Alternative B.

Because the 27 hours of data acquired during charging, melting, and tapping demonstrate that the 6 percent visible emission limit can be achieved with best demonstrated control technology, the Agency no longer believes that exceptions to the standard are appropriate for the charging and tapping portions of the EAF heat cycle.

The AISI stated in their comments that the deletion of section 272(a)(3)(iii) for sources built between October 21, 1974, and August 17, 1983, was not explained at proposal and is inappropriate. This subsection required compliance with the shop roof opacity standard only when the flow rate through each capture hood and the pressure in the free space inside the furnace were being measured during a performance test. The flow rates and pressure established at this time became "baseline." At all other times, these operating conditions were required to be maintained at the baseline values or better. The AISI stated that the deletion of this paragraph results in the imposition of a new and more stringent emission limit on shops built to comply with the original NSPS because these shops will now have to meet the shop opacity standards during all routine EAF operations. The AISI suggested that this is retroactive regulation of existing sources and exceeds the EPA's authority under section 111 of the Clean Air Act. The AISI recommended reinstatement of the paragraph.

The deletion of section 272(a)(3)(iii) from the standards is not considered to be more stringent regulation because the Agency believes that if the flow rate through each capture hood and the pressure in the free space inside the furnace are maintained at the levels established during the performance test, the affected facility will be in compliance with the visible emission standard. The deletion occurred because it was believed that not having to continuously monitor the flow rate and pressure would relieve some of the monitoring burden on owners or operators of affected facilities. The

Agency believes that deletion of this section is less expensive for, and more convenient to, owners or operators of the affected facilities. It was not the Agency's intention to make the standard more stringent; therefore, the proposed regulation has been amended. Section 272(a)(3)(iii) and related sections 274 (a)(3), (a)(4), (b), (c), (e), and (f) of the original regulation are reinstated. Sections 274 (b) and (c) have been revised, and sections 274 (e) and (f) have been redesignated (f) and (g). Therefore, sources built between October 21, 1974, and August 17, 1983, are required to continuously monitor, and maintain at baseline values, the flow rate through each capture hood and the pressure in the free space inside the furnace. Monitoring of fan motor amperage and damper position has been retained as an alternative to flow rate monitoring. The shop roof visible emission standard will apply during the most recent performance test.

Information Requirements Impacts

Three types of reporting would be associated with the proposed standards. First, there would be notification requirements, which would inform enforcement personnel of facilities subject to the standards. Second, there would be reporting of the results of performance tests that would be conducted to determine compliance with the standards. These reports are required by the General Provisions of 40 CFR Part 60, which apply to all standards of performance. Third, for Subparts AA and AAa, a report would be required of monitored values that occurred outside specified ranges, and for Subpart AAa, a report would be required to document exceedances of the control device opacity standards. This reporting would be required on a semiannual basis.

In addition, any owner or operator subject to the proposed standards would have to maintain the operating log of key operating parameters in a form suitable for inspection.

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires that the Office of Management and Budget (OMB) approve reporting and recordkeeping requirements that qualify as an "information collection request" (ICR).

Information collection requirements associated with this regulation (those included in 40 CFR Part 60, Subparts AA and AAa) have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3101 *et seq.*, and have been assigned OMB Control Number 2060–0038.

Based on the information collection requirements analysis, the resources needed by the industry, which includes facilities subject to existing NSPS (36) and new facilities (4 are estimated), to maintain records and to collect, prepare, and use the reports for the first 3 years would be about 10.3 person-years per year (includes one time and annual reporting and recordkeeping). The resources required by government agencies to process and maintain records for the first 3 years would be about 0.2 person-years per year.

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review materials (Section 307(d)(7)(A)).

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires consideration of the impacts of proposed regulations on small businesses. The guidelines for conducting a regulatory flexibility analysis define a small business as "any business concern which is independently owned and operated and not dominant in its field as defined by the Small Business Administration Regulations under Section 3 of the Small Business Act." The Small Business Administration has determined that any firm classified in SIC 3312 (which includes carbon and specialty steel shops) that employs less than 1,000 workers will be considered small in regard to the Small Business Act.

Of the 87 firms that currently operate one or more EAF shops, employment and financial data are available for only 42. Of these 42, none employ fewer than 1,000 employees. It is likely, however, that some of the remaining 45 firms do qualify as small businesses. It is possible, therefore, that some small businesses could be affected by the standards.

If a substantial number of small businesses may be affected by a regulation, the RFA requires an analysis of whether these impacts are "significant." If any of the following four criteria are met, the impact of the regulation on a small business is considered significant.

Under the first criterion, the impact is judged to be significant if the regulation causes the average total cost of production to increase by 5 percent or more. The standards would not cause an increase in the average total cost of production as high as 5 percent. Thus, the potential impacts of the standards on small businesses are not significant from an average total cost standpoint.

The second criterion for significance relates compliance costs to sales for small versus large businesses. If compliance costs as a percent of sales for small businesses are at least 10 percent higher than compliance costs as a percent of sales for large businesses, the impact is judged to be significant. The total annualized cost of compliance as a percent of sales is much less than 10 percent greater for a small plant than for a large plant. The small business impact of the standards is not significant by this measure.

A third criterion to measure the significance of an impact on small businesses compares the capital cost of compliance with the capital available to small firms. It is difficult to determine how much capital is available to a firm. A reasonable approach is to recognize that the capital available to a small firm building a new plant with an EAF or AOD vessel at least equals the capital cost of the plant itself. The capital cost of compliance with the standards would be well under 1 percent of plant capital cost. Therefore, the capital costs of compliance do not represent a significant portion of capital available to small businesses.

The fourth criterion for significance is if the regulation is likely to result in closures of small businesses. The standards would not result in any closures of firms of any size.

There has been no change in the impact of the standards on small businesses since proposal. The promulgated standards, therefore, would not have a significant impact on small businesses. Thus, a regulatory flexibility analysis was not conducted.

Miscellaneous

The effective date of this regulation is October 31, 1984. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (August 17, 1983).

As prescribed by section 111, establishment of standards of performance for this source category is based on the Administrator's determination that these sources contribute significantly to air pollution which may reasonably be anticipated to

endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts,and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to ensure that the proposed standards would represent the best system of emission reduction considering costs. The economic impacts assessment is included in the BID, Vol. I. There have been no changes in the economic impacts assessment since proposal.

In addition to economics, the cost effectiveness of each regulatory alternative was evaluated in order to determine the least costly way to reduce emissions and to assure the controls required by this rule are reasonable relative to other particulate matter regulations. In this case, the standards of performance will result in a reduction of fugitive emissions of 45 and 78 tons per year per plant at typical specialty and carbon steel plants, respectively. The overall annualized costs for fugitive emissions capture equipment would increase by $18,000 and $32,000 to achieve this emission reduction. Thus, the cost effectiveness of the fugitive emissions standards would be $400 and $411 per ton of particulate matter removed for typical specialty and carbon steel plants, respectively.

Under Executive Order 12291, the EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation is not considered major. The standard would have a minimal impact on the economy with a slight increase in the air pollution control system expenditures by 1987. Only slight increases in costs or prices of products are anticipated. The standard would not adversely affect competition, employment, or the ability of the industry to compete with foreign steel firms.

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

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic Minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by Reference, Can surface coating, Sulfuric acid plants, Individual organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers, Lime.

Dated: October 22, 1984.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

1. 40 CFR Part 60, Subpart AA title is revised to read as follows:

Subpart AA—Standards of Performance for Steel Plans: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.

2. Section 60.270 is revised to read as follows:

§ 60.270 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities in steel plants that produce carbon, alloy, or specialty steels: electric arc furnaces and dust-handling systems.

(b) The provisions of this subpart apply to each affected facility identified in paragraph (a) of this section that commenced construction, modification, or reconstruction after October 21, 1974, and on or before August 17, 1983.

(Secs. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411 and 7601(a)))

3. In § 60.271, paragraph (a) is revised to read as follows:

§ 60.271 Definitions.

* * * * *

(a) "Electric arc furnace" (EAF) means a furnace that produces molten steel and heats the charge materials with electric arcs from carbon electrodes. Furnaces that continuously feed direct-reduced iron ore pellets as the primary source of iron are not affected facilities within the scope of this dfinition.

* * * * *

4. In 60.272, paragraphs (a)(3)(i), (ii), and (iii) are revised to read as follows:

§ 60.272 Standard for particulate matter.

(a) * * *

(3) Exit from a shop and, due solely to operations of any EAF(s), exhibit 6 percent opacity or greater except:

(i) Shop opacity less than 20 percent may occur during charging periods.

(ii) Shop opacity less than 40 percent may occur during tapping periods.

(iii) Opacity standards under paragraph (a)(3) of this section shall apply only during periods when pressures and either control system fan motor amperes and damper positions or flow rates are being established under § 60.274(c) and (g).

* * * * *

(Secs. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411 and 7601(a)))

5. In § 60.273, paragraph (c) is added to read as follows:

§ 60.273 Emission monitoring.

* * * * *

(c) No continuous monitoring system shall be required on any modular, multiple-stack, negative-pressure or positive-pressure fabric filters if observations of the opacity of the visible emissions from the control device are performed by a certified visible emission observer in accordance with § 275(i) of this subpart.

(Secs. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601)))

6. In § 60.274, paragraphs (e), (f), and (g) are redesignated (f), (g), and (h), and paragraphs (b) and (c) are revised and paragraphs (e) and (i) are added to read as follows:

§ 60.274 Monitoring of operations.

* * * * *

(b) Except as provided under paragraph (d) of this section, the owner or operator subject to the provisions of this subpart shall check and record on a once-per-shift basis the furnace static pressure (if a DEC system is in use) and either (1) check and record the control system fan motor amperes and damper positions on a once-per-shift basis; or (2) install, calibrate, and maintain a monitoring device that continuously records the volumetric flow rate through each separately ducted hood. The monitoring device(s) may be installed in any appropriate location in the exhaust duct such that reproducible flow rate monitoring will result. The flow rate monitoring device(s) shall have an accuracy ±10 percent over its normal operating range and shall be calibrated according to the manufacturer's instructions. The Administrator may require the owner or operator to

demonstrate the accuracy of the monitoring device(s) relative to Methods 1 and 2 of Appendix A of this part.

(c) When the owner or operator of an EAF is required to demonstrate compliance with the standards under § 60.272(a)(3) and at any other time the Administrator may require that (under Section 114 of the Act, as amended) either the control system fan motor amperes and all damper positions or the volumetric flow rate through each separately ducted hood shall be determined during all periods in which a hood is operated for the purpose of capturing emissions from the EAF subject to paragraph (b)(1) or (b)(2) of this section. The owner or operator may petition the Administrator for reestablishment of these parameters whenever the owner or operator can demonstrate to the Administrator's satisfaction that the EAF operating conditions upon which the parameters were previously established are no longer applicable. The values of these parameters as determined during the most recent demonstration of compliance shall be maintained at the appropriate level for each applicable period. Operation at other than baseline values may be subject to the requirements of paragraph 276(a).

* * * * *

(e) The owner or operator shall perform monthly operational status inspections of the equipment that is important to the performance of the total capture system (i.e., pressure sensors, dampers, and damper switches). This inspection shall include observations of the physical appearance of the equipment (e.g., presence of hole in ductwork or hoods, flow constrictions caused by dents or accumulated dust in ductwork, and fan erosion). Any deficiencies shall be noted and proper maintenance performed.

* * * * *

(i) During any performance test required under § 60.8, and for any report thereof required by § 60.275(c) of this subpart or to determine compliance with § 60.272(a)(3) of this subpart, the owner or operator shall monitor the following information for all heats covered by the test:

(1) Charge weights and materials, and tap weights and materials;

(2) Heat times, including start and stop times, and a log of process operation, including periods of no operation during testing and the pressure inside the furnace where direct-shell evacuation systems are used;

(3) Control device operation log; and

(4) Continuous monitor or Reference Method 9 data.

(Secs. 111, 114 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)))

7. In § 60.275, paragraphs (a)(1), (a)(3), (a)(4), (b), and (c) are revised, and paragraphs (a)(5), (i), and (j) are added to read as follows:

§ 60.275 Test methods and procedures.

(a) * * *

(1) Either Method 5 for negative-pressure fabric filters and other types of control devices or Method 5D for positive-pressure fabric filters for concentration of particulate matter and associated moisture content.

* * * * *

(3) Method 2 for velocity and volumetric flow rate;

(4) Method 3 for gas analysis; and

(5) Method 9 for the opacity of visible emissions.

(b) For Method 5 or 5D, the sampling time for each run shall be at least 4 hours. When a single EAF is sampled, the sampling time for each run shall also include an integral number of heats. Shorter sampling times, when necessitated by process variables or other factors, may be approved by the Administrator. For Method 5 or 5D, the minimum sample volume shall be 4.5 dsmG53 (160 dscf).

(c) For the purpose of this subpart, the owner or operator shall conduct the demonstration of compliance with § 60.272(a) of this subpart and furnish the Administrator a written report of the results of the test. This report shall include the following information:

(1) Facility name and address;

(2) Plant representative;

(3) Make and model of process, control device, and continuous monitoring equipment;

(4) Flow diagram of process and emission capture equipment including other equipment or process(es) ducted to the same control device;

(5) Rated (design) capacity of process equipment;

(6) Those data required under § 60.274(i) of this subpart;

(i) List of charge and tap weights and materials;

(ii) Heat times and process log;

(iii) Control device operation log; and

(iv) Continuous monitor or Reference Method 9 data.

(7) Test dates and test times;

(8) Test company;

(9) Test company representative;

(10) Test observers from outside agency;

(11) Description of test methodology used, including any deviation from standard reference methods;

(12) Schematic of sampling location;

(13) Number of sampling points;

(14) Description of sampling equipment;

(15) Listing of sampling equipment calibrations and procedures;

(16) Field and laboratory data sheets;

(17) Description of sample recovery procedures;

(18) Sampling equipment leak check results;

(19) Description of quality assurance procedures;

(20) Description af analytical procedures;

(21) Notation of sample blank corrections; and

(22) Sample emission calculations.

* * * * *

(i) Visible emissions observations of modular, multiple-stack, negative-pressure or positive-pressure fabric filters shall occur at least once per day of operation. The observations shall occur when the furnace is operating in the melting and refining period. These observations shall be taken in accordance with Method 9, and, for at least three 6-minute periods, the opacity shall be recorded for any point(s) where visible emissions are observed. Where it is possible to determine that a number of visible emission sites relate to only one incident of the visible emissions, only one set of three 6-minute observations will be required. In the case, Reference Method 9 observations must be made for the site of highest opacity that directly relates to the cause (or location) of visible emissions observed during a single incident. Records shall be maintained of any 6-minute average that is in excess of the emission limit specified in § 60.272(a) of this subpart.

(j) Unless the presence of inclement weather makes concurrent testing infeasible, the owner or operator shall conduct concurrently the performance tests required under § 60.8 to demonstrate compliance with § 60.272(a)(1), (2), and (3) of this subpart.

(Secs. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)))

8. Section 60.276 is added to Subpart AA to read as follows:

§ 60.276 Recordkeeping and Reporting Requirements.

(a) Operation at a furnace static pressure that exceeds the value established under Section 274(f) and either operation of control system fan

motor amperes at valves exceeding ±15 percent of the value established under Section 274(c) or operation at flow rates lower than those established under Section 274(c) may be considered by the Administrator to be unacceptable operation and maintenance of the affected facility. Operation at such values shall be reported to Administrator semiannually.

(b) When the owner or operator of an EAF is required to demonstrate compliance with the standard under § 60.275(g)(2) or (g)(3), the owner or operator shall obtain approval from the Administrator of the procedure(s) that will be used to determine compliance. Notification of the procedure(s) to be used must be postmarked 30 days prior to the performance test.

(Secs. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)))

9. 40 CFR Part 60, Subpart AAa is added to read as follows:

Subpart AAa—Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983

Sec.

60.270a Applicability and designation of affected facility.
60.271a Definitions.
60.272a Standard for particulate matter.
60.273a Emission monitoring.
60.274a Monitoring of operations.
60.275a Test methods and procedures.
60.276a Recordkeeping and reporting requirements.

(Secs. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)))

Subpart AAa—Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983

§ 60.270a Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities in steel plants that produce carbon, alloy, or specialty steels: electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems.

(b) The provisions of this subpart apply to each affected facility identified in paragraph (a) of this section that commences construction, modification, or reconstruction after August 17, 1983.

§ 60.271a Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in Subpart A of this part.

"Argon-oxygen decarburization vessel" (AOD vessel) means any closed-bottom, refractory-lined converter vessel with submerged tuyeres through which gaseous mixtures containing argon and oxygen or nitrogen may be blown into molten steel for further refining.

"Capture system" means the equipment (including ducts, hoods, fans, dampers, etc.) used to capture or transport particulate matter generated by an electric arc furnace or AOD vessel to the air pollution control device.

"Charge" means the addition of iron and steel scrap or other materials into the top of an electric arc furnace or the addition of molten steel or other materials into the top of an AOD vessel.

"Control device" means the air pollution control equipment used to remove particulate matter from the effluent gas stream generated by an electric arc furnace or AOD vessel.

"Direct-shell evacuation control system" (DEC system) means a system that maintains a negative pressure within the electric arc furnace above the slag or metal and ducts emissions to the control device.

"Dust-handling system" means equipment used to handle particulate matter collected by the control device for an electric arc furnace or AOD vessel subject to this subpart. For the purposes of this subpart, the dust-handling system shall consist of the control device dust hoppers, the dust-conveying equipment, any central dust storage equipment, the dust-treating equipment (e.g., pug mill, pelletizer), dust transfer equipment (from storage to truck), and any secondary control devices used with the dust transfer equipment.

"Electric arc furnace" (EAF) means a furnace that produces molten steel and heats the charge materials with electric arcs from carbon electrodes. For the purposes of this subpart, an EAF shall consist of the furnace shell and roof and the transformer. Furnaces that continuously feed direct-reduced iron ore pellets as the primary source of iron are not affected facilities within the scope of this definition.

"Heat cycle" means the period beginning when scrap is charged to an empty EAF and ending when the EAF tap is completed or beginning when molten steel is charged to an empty AOD vessel and ending when the AOD vessel tap is completed.

"Melting" means that phase of steel production cycle during which the iron and steel scrap is heated to the molten state.

"Negative-pressure fabric filter" means a fabric filter with the fans on the downstream side of the filter bags.

"Positive-pressure fabric filter" means a fabric filter with the fans on the upstream side of the filter bags.

"Refining" means that phase of the steel production cycle during which undesirable elements are removed from the molten steel and alloys are added to reach the final metal chemistry.

"Shop" means the building which houses one or more EAF's or AOD vessels.

"Shop opacity" means the arithmetic average of 24 observations of the opacity of emissions from the shop taken in accordance with Method 9 of Appendix A of this part.

"Tap" means the pouring of molten steel from an EAF or AOD vessel.

§ 60.272a Standard for particulate matter.

(a) On and after the date of which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from an EAF or an AOD vessel any gases which:

(1) Exit from a control device and contain particulate matter in excess of 12 mg/dscm (0.0052 gr/dscf);

(2) Exit from a control device and exhibit 3 percent opacity or greater; and

(3) Exit from a shop and, due solely to the operations of any affected EAF(s) or AOD vessel(s), exhibit 6 percent opacity or greater.

(b) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from the dust-handling system any gases that exhibit 10 percent opacity or greater.

§ 60.273a Emission monitoring.

(a) Except as provided under paragraphs (b) and (c) of this section, a continuous monitoring system for the measurement of the opacity of emissions discharged into the atmosphere from the control device(s) shall be installed, calibrated, maintained, and operated by the owner or operator subject to the provisions of this subpart.

(b) No continuous monitoring system shall be required on any control device serving the dust-handling system.

(c) No continuous monitoring system shall be required on modular, multiple-stack, negative-pressure or positive-pressure fabric filters if observations of the opacity of the visible emissions from the control device are performed by a

certified visible emission observer in accordance with § 60.275a(c) of this subpart.

(Sec. 114 of the Clean Air Act, as amended (42 U.S.C. 7414))

§ 60.274a Monitoring of operations.

(a) The owner or operator subject to the provisions of this subpart shall maintain records of the following information:

(1) All data obtained under paragraph (b) of this section; and

(2) All monthly operational status inspections performed under paragraph (c) of this section.

(b) Except as provided under paragraph (d) of this section, the owner or operator subject to the provisions of this subpart shall check and record on a once-per-shift basis the furnace static pressure (if DEC system is in use) and either (1) check and record the control system fan motor amperes and damper position on a once-per-shift basis; or (2) install, calibrate, and maintain a monitoring device that continuously records the volumetric flow rate through each separately ducted hood. The monitoring device(s) may be installed in any appropriate location in the exhaust duct such that reproducible flow rate monitoring will result. The flow rate monitoring device(s) shall have an accuracy of ±10 percent over its normal operating range and shall be calibrated according to the manufacturer's instructions. The Administrator may require the owner or operator to demonstrate the accuracy of the monitoring device(s) relative to Methods 1 and 2 of Appendix A of this part.

(c) When the owner or operator of an affected facility is required to demonstrate compliance with the standards under § 60.272a(a)(3) and at any other time the Administrator may require that (under section 114 of the Act, as amended) either the control system fan motor amperes and all damper positions or the volumetric flow rate through each separately ducted hood shall be determined during all periods in which a hood is operated for the purpose of capturing emissions from the affected facility subject to paragraph (b)(1) or (b)(2) of this section. The owner or operator may petition the Administrator for reestablishment of these parameters whenever the owner or operator can demonstrate to the Administrator's satisfaction that the affected facility operating conditions upon which the parameters were previously established are no longer applicable. The values of these parameters as determined during the most recent demonstration of compliance shall be maintained at the appropriate level for each applicable period. Operation at other than baseline values may be subject to the requirements of paragraph 276a(c).

(d) The owner or operator shall perform monthly operational status inspections of the equipment that is important to the performance of the total capture system (i.e., pressure sensors, dampers, and damper switches). This inspection shall include observations of the physical appearance of the equipment (e.g., presence of holes in ductwork or hoods, flow constrictions caused by dents or accumulated dust in ductwork, and fan erosion). Any deficiencies shall be noted and proper maintenance performed.

(e) The owner or operator may petition the Administrator to approve any alternative to monthly operational status inspections that will provide a continuous record of the operation of each emission capture system.

(f) If emissions during any phase of the heat time are controlled by the use of a DEC system, the owner or operator shall install, calibrate, and maintain a monitoring device that allows the pressure in the free space inside the EAF to be monitored. The monitoring device may be installed in any appropriate location in the EAF or DEC duct prior to the introduction of ambient air such that reproducible results will be obtained. The pressure monitoring device shall have an accuracy of ±5 mm of water gauge over its normal operating range and shall be calibrated according to the manufacturer's instructions.

(g) When the owner or operator of an EAF controlled by a DEC is required to demonstrate compliance with the standard under § 60.272a(a)(3) of this subpart, and at any other time the Administrator may require (under section 114 of the Clean Air Act, as amended), the pressure in the free space inside the furnace shall be determined during the melting and refining period(s) using the monitoring device required under paragraph (f) of this section. The owner or operator may petition the Administrator for reestablishment of the 15-minute integrated average of the pressure whenever the owner or operator can demonstrate to the Administrator's satisfaction that the EAF operating conditions upon which the pressures were previously established are no longer applicable. The pressure determined during the most recent demonstration of compliance shall be maintained at all times when the EAF is operating in a meltdown and refining period. Operation at higher pressures may be considered by the Administrator to be unacceptable operation and maintenance of the affected facility.

(h) During any performance test required under § 60.8, and for any report thereof required by § 60.275a(d) of this subpart, or to determine compliance with § 60.272a(a)(3) of this subpart, the owner or operator shall monitor the following information for all heats covered by the test:

(1) Charge weights and materials, and tap weights and materials;

(2) Heat times, including start and stop times, and a log of process operation, including periods of no operation during testing and the pressure inside an EAF when direct-shell evacuation control systems are used;

(3) Control device operation log; and

(4) Continuous monitor or Reference Method 9 data.

(Sec. 114 of the Clean Air Act, as amended (42 U.S.C. 7414))

§ 60.275a Test methods and procedures.

(a) Reference methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance with the standards prescribed under § 60.272a of this subpart as follows:

(1) Method 1 for sample and velocity traverses;

(2) Method 2 for velocity and volumetric flow rate;

(3) Method 3 for gas analysis;

(4) Either Method 5 for negative-pressure fabric filters and other types of control devices or Method 5D for positive-pressure fabric filters for concentration of particulate matter and associated moisture content; and

(5) Method 9 for the opacity of visible emissions.

(b) For Method 5 or 5D, the sampling time for each run shall be at least 4 hours. When a single EAF or AOD vessel is sampled, the sampling time for each run shall also include an integral number of heats. Shorter sampling times, when necessitated by process variables or other factors, may be approved by the Administrator. For Method 5 or 5D, the minimum sample volume shall be 4.5 dsm^3 (160 dscf).

(c) Visible emissions observations of modular, multiple-stack, negative-pressure or positive-pressure fabric filters shall occur at least once per day of operation. The observations shall occur when the furnace or vessel is operating in the melting or refining phase of a heat cycle. These observations shall be taken in accordance with Method 9, and, for at least three 6-minute periods, the opacity shall be recorded for any point(s) where

visible emissions are observed. Where it is possible to determine that a number of visible emission sites relate to only one incident of the visible emissions, only one set of three 6-minute observations will be required. In this case, Reference Method 9 observations must be made for the site of highest opacity that directly relates to the cause (or location) of visible emissions observed during a single incident. Records shall be maintained of any 6-minute average that is in excess of the emission limit specified in § 60.272(a) of this subpart.

(d) For the purpose of this subpart, the owner or operator shall conduct the demonstration of compliance with § 60.272a(a) of this subpart and furnish the Administrator a written report of the results of the test. This report shall include the following information:

(1) Facility name and address;

(2) Plant representative;

(3) Make and model of process, control device, and continuous monitoring equipment;

(4) Flow diagram of process and emission capture equipment including other equipment or process(es) ducted to the same control device;

(5) Rated (design) capacity of process equipment;

(6) Those data required under § 60.274a(h) of this subpart;

(i) List of charge and tap weights and materials;

(ii) Heat times and process log;

(iii) Control device operation log; and

(iv) Continuous monitor or Reference Method 9 data.

(7) Test dates and test times;

(8) Test company;

(9) Test company representative;

(10) Test observers from outside agency;

(11) Description of test methodology used, including any deviation from standard reference methods;

(12) Schematic of sampling location;

(13) Number of sampling points;

(14) Description of sampling equipment;

(15) Listing of sampling equipment calibrations and procedures;

(16) Field and laboratory data sheets;

(17) Description of sample recovery procedures;

(18) Sampling equipment leak check results;

(19) Description of quality assurance procedures;

(20) Description of analytical procedures;

(21) Notation of sample blank corrections; and

(22) Sample emission calculations.

(e) During any performance test required under § 60.8, no gaseous diluents may be added to the effluent gas stream after the fabric in any pressurized fabric filter collector, unless the amount of dilution is separately determined and considered in the determination of emissions.

(f) When more than one control device serves the EAF(s) or AOD vessel(s) being tested, the concentration of particulate matter shall be determined using the following equation:

$$C = \frac{\sum_{n=1}^{N} (CQ)_n}{\sum_{n=1}^{N} (Q)_n}$$

where:

C = concentration of particulate matter in mg/dsm³ (gr/dscf) as determined by Method 5 or 5D.

N = total number of control devices tested.

Q = volumetric flow rate of the effluent gas stream in dsm³/h (dscf/h) as determined by Method 2.

$(CQ)_n$, $(Q)_n$ = value of the applicable parameter for each control device tested.

(g) Any control device subject to the provisions of the subpart shall be designed and constructed to allow measurement of emissions using applicable test methods and procedures.

(h) Where emissions from any EAF(s) or AOD vessel(s) are combined with emissions from facilities not subject to the provisions of this subpart but controlled by a common capture system and control device, the owner or operator may use any of the following procedures during a performance test:

(1) Base compliance on control of the combined emissions;

(2) Utilize a method acceptable to the Administrator that compensates for the emissions from the facilities not subject to the provisions of this subpart, or;

(3) Any combination of the criteria of paragraphs (h)(1) and (h)(2) of this section.

(i) Where emissions from any EAF(s) or AOD vessel(s) are combined with emissions from facilities not subject to the provisions of this subpart, determinations of compliance with § 60.272a(a)(3) will only be based upon emissions originating from the affected facility(ies).

(j) Unless the presence of inclement weather makes concurrent testing infeasible, the owner or operator shall conduct concurrently the performance tests required under § 60.8 to demonstrate compliance with § 60.272a(a) (1), (2), and (3) of this subpart.

(Sec. 114 of the Clean Air Act, as amended (42 U.S.C. 7414))

§ 60.276a Recordkeeping and reporting requirements.

(a) Records of the measurements required in § 60.274a must be retained for at least 2 years following the date of the measurement.

(b) Each owner or operator shall submit a written report of exceedances of the control device opacity to the Administrator semi-annually. For the purposes of these reports, exceedances are defined as all 6-minute periods during which the average opacity is 3 percent or greater.

(c) Operation at a furnace static pressure that exceeds the value established under section 274a(g) and either operation of control system fan motor amperes at values exceeding ±15 percent of the value established under section 274a(c) or operation at flow rates lower than those established under section 274a(c) may be considered by the Administrator to be unacceptable operation and maintenance of the affected facility. Operation at such values shall be reported to the Administrator semiannually.

(d) The requirements of this subsection remain in force until and unless EPA, in delegating enforcement authority to a State under Section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected sources within the State will be relieved of the obligation to comply with this subsection, provided that they comply with the requirements established by the State.

(e) When the owner or operator of an EAF or AOD is required to demonstrate compliance with the standard under § 60.275a (h)(2) or (h)(3), the owner or operator shall obtain approval from the Administrator of the procedure(s) that will be used to determine compliance. Notification of the procedure(s) to be used must be postmarked 30 days prior to the performance test.

(Sec. 114 of the Clean Air Act, as amended (42 U.S.C. 7414))

(Approved by the Office of Management and Budget under Control Number 2060-0038)

10. Appendix A is amended by adding Method 5D to read as follows:

Appendix A—Reference Test Methods

* * * * *

Method 5D—Determination of Particulate Matter Emissions From Positive Pressure Fabric Filters

1. *Applicability and Principle.*

1.1 Applicability. This method applies to the determination of particulate matter emissions from positive pressure fabric filters. Emissions are determined in terms of

concentration (mg/m³) and emission rate (kg/h).

The General Provisions of 40 CFR Part 60, paragraph § 60.8(e) require that the owner or operator of an affected facility shall provide performance testing facilities. Such performance testing facilities include sampling ports, safe sampling platforms, safe access to sampling sites, and utilities for testing. It is intended that affected facilities also provide sampling locations that meet the specification for adequate stack length and minimal flow disturbances as described in Method 1. Provisions for testing are often overlooked factors in designing fabric filters or are extremely costly. The purpose of this procedure is to identify appropriate alternative locations and procedures for sampling the emissions from positive pressure fabric filters. The requirements that the affected facility owner or operator provide adequate access to performance testing facilities remain in effect.

1.2 Principle. Particulate matter is withdrawn isokinetically from the souce and collected on a glass fiber filter maintained at a temperature at or above the exhaust gas temperature up to a nominal 120 °C (120 − ±14 °C or 248 ±25 °F). The particulate mass, which includes any material that condenses at or above the filtration temperature, is determined gravimetrically after removal of uncombined water.

2. *Apparatus.*

The equipment requirements for the sampling train, sample recovery, and analysis are the same as specified in Sections 2.1, 2.2, and 2.3, respectively, of Method 5 or Method 17.

3. *Reagents.*

The reagents used in sampling, sample recovery, and analysis are the same as specified in Sections 3.1, 3.2, and 3.3, respectively, or Method 5 or Method 17.

4. *Procedure.*

4.1 Determination of Measurement Site. The configurations of positive pressure fabric filter structures frequently are not amenable to emission testing according to the requirements of Method 1. Following are several alternatives for determining measurement sites for positive pressure fabric filters.

4.1.1 Stacks Meeting Method 1 Criteria. Use a measurement site as specified in Method 1, Section 2.1.

4.1.2 Short Stacks Not Meeting Method 1 Criteria. Use stack extensions and the procedures in Method 1. Alternatively, use flow straightening vanes of the "egg-crate" type (see Figure 5D–1). Locate the measurement site downstream of the straightening vanes at a distance equal to or greater than two times the average equivalent diameter of the vane openings and at least one-half of the overall stack diameter upstream of the stack outlet.

4.1.3 Roof Monitor or Monovent. (See Figure 5D–2.) For a positive pressure fabric filter equipped with a peaked roof monitor, ridge vent, or other type of monovent, use a measurement site at the base of the monovent. Examples of such locations are shown in Figure 5D–2. The measurement site must be upstream of any exhaust point (e.g., louvered vent).

4.1.4 Compartment Housing. Sample immediately downstream of the filter bags directly above the tops of the bags as shown in the examples in figure 5D–2. Depending on the housing design, use sampling ports in the housing walls or locate the sampling equipment within the compartment housing.

4.2 Determination of Number and Location of Traverse Points. Locate the traverse points according to Method 1, Section 2.3. Because a performance test consists of at least three test runs and because of the varied configurations of positive pressure fabric filters, there are several schemes by which the number of traverse points can be determined and the three test runs can be conducted.

4.2.1 Single Stacks Meeting Method 1 Criteria. Select the number of traverse points according to Method 1. Sample all traverse points for each test run.

4.2.2 Other Single Measurement Sites. For a roof monitor or monovent, single compartment housing, or other stack not meeting Method 1 criteria, use at least 24 traverse points. For example, for a rectangular measurement site, such as a monovent, use a blanced 5 x 5 traverse point matrix. Sample all traverse points for each test run.

4.2.3 Multiple Measurement Sites. Sampling from two or more stacks or measurement sites may be combined for a test run, provided the following guidelines are met:

a. All measurement sites up to 12 must be sampled. For more than 12 measurement sites, conduct sampling on at least 12 sites or 50 percent of the sites, whichever is greater. The measurement sites sampled should be evenly, or nearly evenly, distributed among the available sites; if not, all sites are to be sampled.

b. The same number of measurement sites must be sampled for each test run.

c. The minimum number of traverse points per test run is 24. An exception to the 24-point minimum would be a test combining the sampling from two stacks meeting Method 1 criteria for acceptable stack length, and Method 1 specifies fewer than 12 points per site.

d. As long as the 24 traverse points per test run criterion is met, the number of traverse points per measurement site may be reduced to eight.

Alternatively, conduct a test run for each measurement site individually using the criteria in Sections 4.2.1 or 4.2.2 for number of traverse points. Each test run shall count toward the total of three required for a performance test. If more than three measurement sites are sampled, the number of traverse points per measurement site may be reduced to eight as long as at least 72 traverse points are sampled for all the tests.

The following examples demonstrate the procedures for sampling multiple measurement sites.

Example 1: A source with nine circular measurement sites of equal areas may be tested as follows: For each test run, traverse three measurement sites using four points per diameter (eight points per measurement site). In this manner, test run number 1 will include sampling from sites 1, 2, and 3; run 2 will include samples from sites 4, 5, and 6; and run 3 will include sites 7, 8, and 9. Each test area may consist of a separate test of each measurement site using eight points. Use the results from all nine tests in determining the emission average.

Example 2: A source with 30 rectangular measurement sites of equal areas may be tested as follows: For each of three test runs, traverse five measurement sites using a 3 x 3 matrix of traverse points for each site. In order to distribute the sampling evenly over all the available measurement sites while sampling only 50 percent of the sites, number the sites consecutively from 1 to 30 and sample all the even numbered (or odd numbered) sites. Alternatively, conduct a separate test of each of 15 measurement sites using Sections 4.2.1 or 4.2.2 to determine the number and location of traverse points, as appropriate.

Example 3: A source with two measurement sites of equal areas may be tested as follows: For each test of three test runs, traverse both measurement sites using Sections 4.2.3 in determining number of traverse points. Alternatively, conduct two full emission test runs of each measurement site using the criteria in Sections 4.2.1 or 4.2.2 to determine the number of traverse points.

Other test schemes, such as random determination of traverse points for a large number of measurement sites, may be used with prior approval from the Administrator.

4.3 Velocity Determination. The velocities of exhaust gases from postitive pressure baghouses are often too low to measure accurately with the type S pitot specified in Method 2 [i.e., velocity head <1.3 mm H_2O (0.05 in. H_2O)]. For these conditions, measure the gas flow rate at the fabric filter inlet following the procedures in Method 2. Calculate the average gas velocity at the measurement site as follows:

$$\bar{v} = \frac{Q_i}{A_o} \cdot \frac{T_o}{T_i}$$

Where:

$\bar{v}$ = Average gas velocity at the measurement site(s), m/s (ft/s).

Q_i = Inlet gas volume flow rate, m^3/s (ft^3/s).

A_o = Measurement site(s) total cross-sectional area, m^2 (ft^2).

T_o = Temperature of gas at measurement site, °K (°R)

T_i = Temperature of gas at inlet, °K (°R).

use the average velocity calculated for the measurement site in determining and maintaining isokinetic sampling rates. Note: All sources of gas leakage, into or out of the fabric filter housing between the inlet measurement site and the outlet measurement site must be blocked and made leak-tight.

Velocity determinations at measurement sites with gas velocities within the range measurable with the type S pitot [i.e., velocity head >1.3 mm H_2O (0.05 in. H_2O)] shall be conducted according to the procedures in Method 2.

4.4 Sampling. Follow the procedures specified in Section 4.1 of Method 5 or Method 17 with the exceptions as noted above.

4.5 Sample Recovery. Follow the procedures specified in Section 4.2 of Method 5 or Method 17.

4.6 Sample Analysis. Follow the procedures specified in Section 4.3 of Method 5 or Method 17.

5. *Calibration.*

Follow the procedures as specified in Section 5 of Method 5 of Method 17.

6. *Calculations.*

Follow the procedures as specified in Section 6 of Method 5 or Method 17 with the exceptions as follows:

6.1 Total volume flow rate may be determined using inlet velocity measurements and stack dimensions.

6.2 Average Particulate Concentration. For multiple measurement sites, calculate the average particulate concentration as follows:

$$\bar{C} = \frac{\sum_{i=1}^{n} m_i}{\sum_{i=1}^{n} Vol_i}$$

Where:

m_i = The mass collected for run i of n, mg(gr).

Vol_i = The sample volume collected for run i of n, Nm^3 (scf).

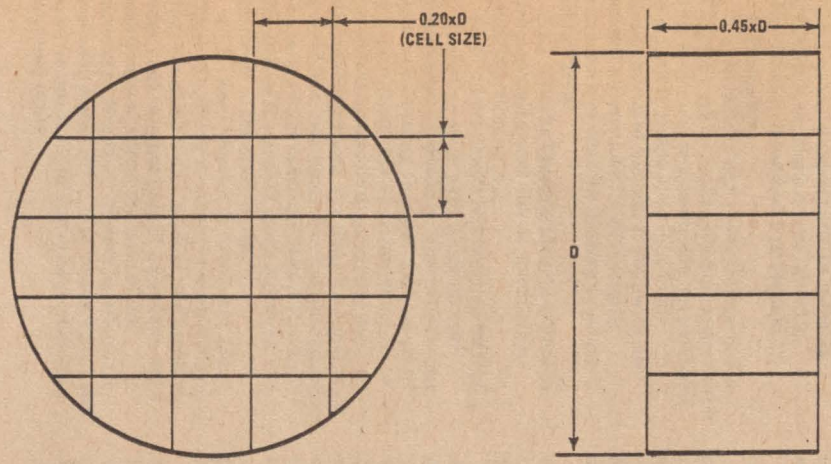
$\bar{C}$ = Average concentration of particulate for all n runs, mg/Nm^3 (gr/scf).

7. *Bibliography.*

The bibliography is the same as for Method 5, Section 7.

(Secs. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)))

BILLING CODE 6560-50-M



NOTE: POSITION STRAIGHTENERS SO THAT CELL SIDES ARE LOCATED APPROX. 45° FROM TRAVERSE DIA's.

Figure 5D-1. Example of flow straightening vanes.

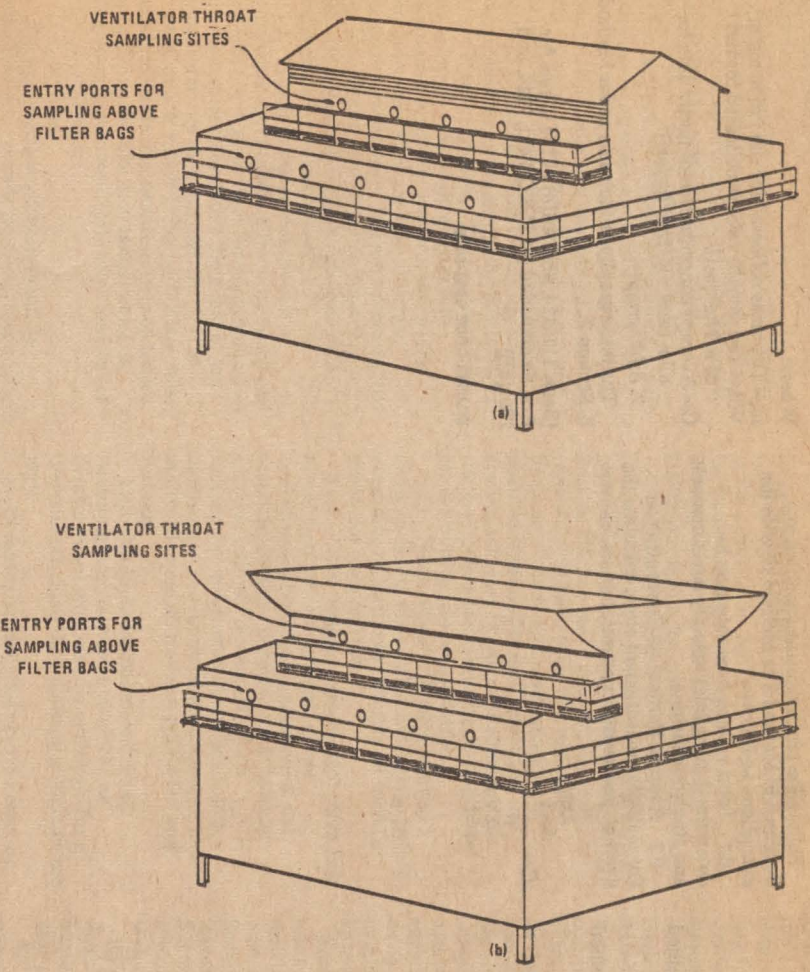


Figure 5D-2. Acceptable sampling site locations for: (a) peaked roof; and (b) ridge vent type fabric filters.

[FR Doc. 84-28555 Filed 10-30-84; 8:45 am]
BILLING CODE 6560-50-C

federal register

Wednesday
October 31, 1984

Part III

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

Amendments to Community Development Block Grants Regulations; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-84-1204; FR-1895]

Amendments to Community Development Block Grants Regulations

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend substantial portions of its Community Development Block Grants (CDBG) regulation at 24 CFR Part 570. The proposed rule revisions are intended to update and make more efficient the CDBG program, and to incorporate recently enacted legislative changes to Title I of the Housing and Community Development Act of 1974. The proposed rule revisions are discussed independently in the Supplementary Information portion of this Notice, within the context of each subpart of Part 570 that is affected.

DATE: *Comments Due:* December 31, 1984.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division, Office of Block Grant Assistance, Room 7280, Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-9267. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, approved November 30, 1983 (1983 Act), contains numerous amendments to Title I of the Housing and Community Development Act of 1974 (the Act) 42 U.S.C. 5301 *et. seq.*). Sections 101 through 110 of the 1983 Act include amendments that pertain specifically to the Department's Community Development Block Grants (CDBG) and Loan Guarantee programs. As a consequence, the Department's regulations at 24 CFR Part 570 that govern the CDBG and Loan Guarantee programs require extensive changes that are both technical and substantive in nature. This proposed rule would amend the CDBG and Loan Guarantee regulations that appear in Subparts A, C, D, J, K, M and O of Part 570 for the purposes of implementing the 1983 Act amendments. In addition, the proposed rule would update, clarify and/or make more efficient other regulatory provisions contained in these same Subparts that have not been altered by the 1983 Act amendments.

Subpart D (Entitlement Grants) of Part 570, describes the Department's policies and procedures that govern the making of CBDG grants to Entitlement communities. Subpart M (Loan Guarantees) governs the Department's making of loan guarantee assistance to metropolitan cities and urban counties. Subparts A (General Provisions), C (Eligible Activities), J (Grant Administration), K (Other Program Requirements) and O (Program Management) contain regulations that are applicable to all of the CDBG programs that are administered by HUD (and apply therefore, to Subparts D and M). The regulations contained in these Subparts generally do not apply to the State-administered CDBG program (which is governed by the provisions of Subpart I of Part 570), *except* to the extent that a regulation in the Subpart expressly indicates its application to the State-administered programs.

Note.—In a separate rulemaking proceeding, the Department is proposing to amend the regulations in Subpart I for the purpose of implementing the 1983 Act amendments that pertain specifically to the State-administered program. Also, at a later date, the Department will propose amendments to the regulations in Subpart F for the purpose of implementing the 1983 Act amendments that pertain specifically to the HUD-administered Small Cities program.

In order to facilitate understanding of the rule amendments proposed, each involved Subpart of Part 570 is discussed independently in this preamble.

II. Subpart A Amendments

The 1983 Act amended section 101(c) of the Act, which describes the primary objective of Title I, and also amended and added a number of terms that are defined at section 102 of the Act. The primary objective of Title I, and the definitions in section 102 are restated in Subpart A, at 24 CFR 570.2 and 570.3 respectively. The Department proposes to revise these sections to comport with the revised statutory sections. Also, the Department proposes to revise 24 CFR 570.1 (Purpose), to indicate that Subparts A, C, J, K and O apply to all Title I programs except as specifically modified or limited under a rule provision.

a. *Primary objective:* Notably, revised section 101(c) of the Act, and the rule at § 570.2, now requires in addition to the previously existing language, that (consistent with this title's primary objective) not less than 51 percent of a grantee's aggregate funds (received under § 106 and, if applicable, received as a result of a guarantee under section 108 of the Act), shall be used to support activities that benefit persons of low- and moderate-income.

b. *Definitions:* (i) "buildings for the general conduct of government"—Among the definitions added to Title I (at § 102(a)(21)), by the 1983 Act is the term "buildings for the general conduct of government." [Note: Under the Act, buildings for the general conduct of government are not CDBG eligible.] The Department proposes to restate this new definition with some modification, in Subpart A, at 24 CFR 570.3(d). In addition to the kinds of buildings that are expressly described in the statutory definition, the Department proposes to include "judicial buildings". This is because such buildings clearly serve the general conduct of government, and fit within the broad context of the statutory definition (which states ". . . or office buildings or other facilities in which the legislative or general administrative affairs of the government are conducted").

(ii) "CDBG funds"—The Department proposes to define this term for the first time, and to use it consistently throughout the regulations to emphasize that Community Development Block Grant rules apply to funds received as a result of a loan guarantee under Subpart M, surplus urban renewal funds provided under Subpart N, and program income, as well as to grant funds received by Entitlement grant recipients under Subpart D, HUD-administered Small Cities grant recipients under Subpart F, and States under Subpart I.

(iii) Income definitions—The 1983 Act added a new subsection to section 102 of the Act (section 102(a)(20)) that defines persons in various income groups. Consistent with the statutory definitions, the Department proposes to incorporate separate definitions into § 570.3 for each of the following terms:

—Low- and moderate-income household (or lower income household), at § 570.3(p);

—Low- and moderate-income person (or lower income person), at § 570.3(q);
—Low income household, at § 570.3(r);
—Low income person at § 570.3(s);
—Moderate income household, at § 570.3(v); and
—Moderate income person, at § 570.3(w).

The proposed definitions make clear that income limits used in the CDBG program to determine a person's or household's income group will correspond exactly to income limits that are used in the Section 8 Housing Assistance Payments program. The three identified groups are low- and moderate-income, moderate income, and low income. The distinction between low income and moderate income is particularly important in light of the new provisions of the statute regarding special assessments where minimum actions required of a grantee are different for the two income groups.

(iv) "Metropolitan city"—In accordance with revised section 102(a)(4) of Title I, the definition of metropolitan city would be redesignated § 570.3(u), and amended to (a) delete obsolete provisions, and (b) incorporate, verbatim, the new provision in the statute allowing new metropolitan cities to defer such classification in order to continue to participate as a part of an urban county.

(v) "Urban county"—The 1983 Act amended section 102(a)(6) of Title I which defines "urban county." Accordingly, the Department proposes to amend the definition of urban county, redesignated as § 570.3(dd), by (a) deleting obsolete provisions; and (b) incorporating, verbatim, new statutory provisions that permit a county to qualify as an urban county.

(c) *Purpose:* Section 570.1 identifies the various Subparts that comprise Part 570. Section 570.1(b) states that Subparts A, C, J, K and O apply to all of the CDBG programs administered by HUD, except to the extent that is expressly indicated by a rule provision.

III. Subpart C Amendments

Subpart C is proposed to be modified to:

(1) Reflect changes in the eligibility of certain activities contained in the 1983 Act Amendments;

(2) Include other requirements added or modified in the 1983 Amendments;

(3) Delete current standards for meeting the three national objectives from Subpart O, modify the standards as necessary to comply with the 1983 Amendments, and place them in Subpart C for use as criteria for determining compliance with the program requirements; and,

(4) Make a number of changes, not required by the statute, that are intended to either clarify existing policy, or to modify policy based on problems encountered in administering the program under current rules.

The 1983 Act amendments require significant revisions to several sections in Subpart C. The discussion below includes a section by section analysis of proposed revisions to §§ 570.200, 570.201, 570.202, 570.203, 570.206, 570.207, and 570.208. However in order to facilitate understanding the proposed revisions, the following paragraph provides an overview of the significant impact of the 1983 Act amendments upon the Department's responsibility for determining whether an assisted activity meets one of the broad national objectives stated in the Act.

Section 105(e) of the 1983 Act added section 105(c) to the Act and established for the first time several restrictions on qualifying a CDBG assisted activity as addressing the national objective of benefiting low- and moderate-income persons. While several of these restrictions were already contained in the regulations governing the Entitlement and HUD-administered Small Cities programs. They were only in the form of review standards and thus did not consitute concrete program requirements. The new statutory requirements impose substantial limitations on the Department's discretion in determining the circumstances under which an activity can be accepted as addressing the objective of benefiting low- and moderate-income persons. The 1983 Act amendments have elevated that objective to a higher level than the other two national objectives (aid in the prevention or elimination of slums or blight or meeting a community development need having particular urgency). Accordingly, the Department proposes to modify the standards in the current regulations as necessary to reflect new limitations now imposed by the statute. Also, in order to avoid confusion that would likely result from distinguishing in the regulations between standards that are statutorily required and those imposed administratively all of these review standards would be deleted and instead criteria would be established for determining compliance with the naitonal objectives. Thus Subpart C would now contain, at § 570.208, these criteria, while the standards currently set forth under Subpart O at § 570.901, would be deleted. Similar treatment would be given to the rules by which compliance with the primary objective would be determined.

(a) *General polices (§ 570.200): Section 570.200(a) currently requires that all activities that are CDBG financed* in whole or in part are subject to the rules and limitations as subsequently set forth in the Subpart. It is proposed that the word "assisted" be substituted for "financed" since CDBG funds can be used to assist an activity without directly funding it and HUD believes that any use of CDBG funds should be subject to the same basic rules. An example of such assistance would be where CDBG funds are placed in a financial institution as a collateral account for a loan made by that institution for a particular purpose. In such a case, the loans made by the private institution would be governed by the same rules as those applicable to loans made directly by the grantee.

Section 570.200(a)(2) would be reentitled "compliance with national objectives" and a new subparagraph (3) would be added designated "compliance with the primary objective." These changes are proposed in order to incorporate the new statutory requirement that at least 51% of grant funds be spent on activities that benefit low- and moderate-income persons and to clearly distinguish this from the requirement that each CDBG assisted activity must either qualify under that objective or under one of the other objectives of aiding in the prevention or elimination of slums or blight or meeting an urgent community development need. Subparagraph (3) also would contain requirements for counting CDBG expenditures for compliance with the primary objective. The rules currently at § 570.901(f)(3) would be transferred to appear under this new subparagraph. Also a new rule would be added to incorporate the provision of Section 105(e) of the 1983 Act Amendments which added section 105(c)(3) to the Act. This amendment limits the extent to which activities involving the acquisition or rehabilitation of property for housing can be considered to benefit low- and moderate-income persons. The proposed rule would also include activities that involve new construction of housing under this limitation. The Department believes that such activities fall within the meaning of the statutory language (i.e., "involves the acquisition . . . of property to provide housing") even if the CDBG funds are not used directly for the acquisition of the property involved.

Modifications are also proposed at § 570.200(c) to reflect the 1983 Act Amendments concerning limitations on special assessments. The statutory change limits a grant recipient's ability

to assess property owners to recover the non-CDBG funds for a partially assisted capital improvement to those cases where the recipient uses CDBG funds to pay the assessment on behalf of any such property owned and occupied by low- and moderate-income persons. A recipient can be excused from this limitation with respect to any property owned and occupied by moderate (but not low) income persons if the recipient certifes that it lacks sufficient CDBG resources to fully comply with the limitation. Paragraph (c) would incorporate this new limitation, clarify that the limitation does not apply to user fees imposed on an ongoing basis (such as user fees for water and sewer) even if such fees include some amount the recipient will apply to debt service or principal related to financing applicable improvements and would retain the regulatory prohibition against assessments being made under any circumstances to recover CDBG funds used for public improvements.

Subparagraph (g) would be amended to make clear that activities that are eligible under § 570.205 and 570.206 fall under the 20 percent limitation even if such activities are carried out by a subrecipient under § 570.204.

A new paragraph (j) would be added to make clear that the consitutional principle of separation of church and state serves to prohibit federal funds, including CDBG funds, from being used for religious purposes. Experience to date has indicated that there is much confusion as to whether CDBG funds can be used for such activities as historically preserving a church building being actively used as a church, or removing architectural barriers to the handicapped from such buildings. The proposal would make clear that such uses of CDBG funds are prohibited.

Subparagraph (k) would be added to incorporate the new requirement contained in the 1983 Act Amendments that persons displaced by certain CDBG assisted activities not currently covered by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), must be provided reasonable benefits. The statue now requires at section 104(j) of the Act that reasonable benefits be provided to any person involuntarily and permanently displaced as a result of the use of CDBG assistance to acquire or substantialy rehabilitate property.

The principal issues that HUD considered in developing its proposed rule to implement this provision were:

- What constitutes *involuntary and permanent* displacement?
- Should the provision be limited to the *direct* results of a CDBG assisted activity?
- How should *substantial rehabilitation* be defined for this purpose?
- What kind of *benefits* must be provided to qualified displacees?

Each of these issues is discussed below:

In considering the circumstances under which a person would be deemed to be involuntarily and permanently displaced for this purpose, it is first necessary to recognize that the Uniform Act coverage overlaps this new statutory provision in the case of displacement caused by acquisition by a State agency. Therefore, this provision would only affect acquisition by non-State agencies, most of which lack eminent domain powers. The Department reasons that only tenants can be displaced against their will be acquisition by non-State agencies that operate without the power of eminent domain. Similarily, in the case of rehabilitation activities which generically are not covered by the Uniform Act, owner-occupants could not be forced to accept rehabilitation assistance and thus only tenants could be involuntarily displaced by rehabilitation. The Department, therefore, proposes to limit the required provision of benefits for this purpose to residential or non-residential *tenants* who are displaced as a result of acquisition by a non-State agency to owners if the non-State agency acquires the property under powers of eminent domain, or to tenants displaced by rehabilitation by an entity.

The Department's extensive experience with federally assisted rehabilitation of residential properties indicates that the most difficult question concerning involuntary displacement of tenants lies in the affordability of the rents charged after rehabilitation. Often, property owners need to raise their rents in order to recover costs of extensive rehabilitation. Since much of the rehabilitation assisted under the CDBG program necessarily involves low- and moderate-income persons, the capacity of renters in buildings rehabilitated with CDBG assistance to absorb rent increases is limited, and some will move as a consequence. However, some will decide to move for other reasons. In order to distinguish renter households who must move as a direct consequence of CDBG assisted rehabilitation, therefore, the Department believes it is necessary to provide a standard of rent affordability in this provision, and that such standard should be consistent with the approach used in federal rent subsidy programs to determine the level of tenant contribution. Accordingly, this proposal would limit the provision of benefits to households who move because they cannot afford to pay the after rehab rent, to cases where such rent exceeds the greater of (1) what they were paying before rehab or (2) what their contribution would have to be if they were receiving rental assistance under the Section 8 program. Thus, the Department considers those who move as a result of such a rent increase following CDBG-assisted rehabilitation as being displaced by government action, and thereby eligible for benefits under this provision. The proposed rule also takes cognizance of another aspect of the afforability issue: The situation where a tenant household is required to move temporarily and the after-rehab rent might be affordable, but because the tenant is not reimbursed for the costs of the temporary move they decide to move permanently to another unit not in the same building. In such a case, benefits would be required to be provided them under this proposal.

The new provision requires that relocation benefits be provided to persons displaced *as a result* of the use of assistance received under Title I to acquire or substantially rehabilitate property. While not specifically mentioned in the provision, the Department considered whether benefits should be provided where displacement may have been caused indirectly by CDBG assisted activities. For example, where rehabilitation is concentrated, general economic improvement in the area may lead to increases in taxes and/or rents among other units that could make those units unaffordable to lower income occupants. However, the precise causal relationship between the assisted activity and displacement resulting from that activity is often very difficult to determine. In order to provide clear guidance to grantees and displacees, the Department proposes to limit this provision to displacement of tenants from units acquired or rehabilitated with CDBG assistance.

In considering how to define *substantial rehabilitation* for purposes of this requirement, the Department analyzed applicable definitions used under several federal programs involving residential rehabilitation. Most of these definitions relied to a considerable extent on the relative cost of rehabilitation in order to distinguish substantial from moderate rehabilitation. However, the circumstances under which persons are

displaced by rehabilitation are not always a function of the cost of the rehabilitation. For example, replacement of a central heating and cooling unit with a more efficient unit might not require that the unit be vacated nor that the rent be increased. On the other hand, a three bedroom unit could be converted during rehabilitation to a two bedroom unit, costing less than the heating/cooling unit replacement, but making the dwelling unit unsuitable for use by the pre-rehab occupants. Therefore, the Department believes that, in the context of this statutory provision, any rehabilitation that is of such nature that it is deemed to cause involuntary displacement should be considered to be "substantial", and proposes to implement this provision defining the circumstances under which benefits would be required without use of the term "substantial."

The issue of what constitutes *reasonable* benefits is one of the most critical issues in interpreting the new statutory provision. In this regard, it is useful to consider the legislative history of the provision. The House Bill (HR 1) contained a provision that would have required providing assistance "to the same extent required by the Uniform Act." This proposed provision was not adopted in the legislation enacted, which instead only requires "reasonable benefits" be provided. Therefore, it seems clear that the Congress did not intend to require such benefits to be the same as Uniform Act benefits. It appears, rather, that Congress used the term "reasonable benefits" in order to give grantees flexibility in the level and nature of benefits provided.

Therefore, the Department proposes to require that displacees be provided with reasonable moving costs, and in the case of residental displacees, with advisory and/ or financial assistance necessary to ensure the displaced households are able to obtain decent, safe and sanitary housing at a cost affordable to them. The level and type of such assistance would be determined by the grant recipient, in accordance with applicable public notification requirements (found at § 570.307 for entitlement grantees and at § 570.493(c)(4)(vi) for non-entitlement grant recipients.) The proposal would not require benefits beyond payment of moving costs for non-residential displacees, since it is expected that, in most instances, displaced businesses would be able to reflect increases in operational costs such as rents in the price they charge for goods and services. They therefore would not be so seriously affected as residential tenants by increased operating costs associated with the new location.

Public comment is especially sought on the above described aspects of this provision.

A new provision would be added to § 570.200, designated subsection (1), entitled "restrictions on change of use." This provision would govern in cases where a grant recipient uses CDBG funds to acquire or improve property for a particular use and, subsequently, changes the use of such property. A number of such cases have been identified through audits or HUD monitoring. Examples include the following: Property purchased with CDBG funds for low income housing but later used to develop a park; a CDBG funded neighborhood facility later converted to a citywide use; and a facility acquired using CDBG funds for purposes of providing day care services, but later sold for other purposes when a day care provider could not be found to use the facility. Currently, there are no rules that clearly restrict such conversion of use and the Department believes that restrictions need to be applied in order to ensure that CDBG funds serve their intended purposes. One alternative would be to prohibit any such conversions without HUD's approval, over a specified time period. Such a restriction would be similar to that employed under the legislation governing the Open Space Parks program, one of the programs superseded by CDBG. However, the Department found that to be an onerous and staff-intensive requirement. In order to provide reasonable restrictions in such cases, therefore, it is proposed that use conversion be allowed without prior HUD review and approval in any case where the new use would also meet all of the CDBG program requirements. Where the new use would not so qualify, conversion would only be allowed where (1) the citizens are given notice of and opportunity to comment on the conversion and (2) the grantee refunds the CDBG program in the amount of CDBG funds originally used for the property, or, where the property was acquired with CDBG funds and the current value exceeds the amount of funds used to acquire it, an amount at least equal to the value of the property at the time of its conversion.

(b) *Basic eligible activities (§ 570.201):* The 1983 Act amendment made a very significant change to the eligibility of public facilities and improvements. First, special requirements that previously had to accompany certain recreational uses in connection with a river and adjacent land, and parking, fire protection, and solid waste disposal facilities have been removed. Paragraph (c) would be modified to reflect such deletions. The law now makes eligible any public facility except for buildings for the general conduct of government. Paragraph (c) contains this exception (and Subpart A contains the definition of buildings that would be excluded from eligibility).

The 1983 Act amendments also modified section 105(a)(8) of the Act relating to the restriction on the amount of funds that may be used by a grantee for public services, by increasing the allowable percentage from 10% to 15%, dropping the Department's authority to waive the limit, and adding a provision (an exception) that would allow a higher percentage of funds to be used by grantees that used more than 15% for fiscal year 1983. Paragraph (e) of the regulations would be revised to incorporate these changes.

Paragraph (i) would include a refeerence to section 105(a)(1) of the Act that requires the provision of reasonable benefits to persons displaced by CDBG assisted acquisition or substantial rehabilitation. It would also be re-organized to include the authority to use CDBG funds for providing relocation assistance not required by law, which is currently contained in Subpart K at § 570.606(b).

Section 105(d) of the 1983 Act amendments also amended section 105(a)(15) of the Act to include the development of shared housing opportunities, other than by construction of new facilities. In analyzing this amendment in the context of current regulations, the Department believes that it is not necessary to amend the regulations to allow such development. Opportunities for shared housing are accomplished by rehabilitation (already eligible under § 570.202) and/or assisting needy persons in finding housing to share (which would constitute a public service eligible under § 570.201(e)). The Department invites public comment on whether any change would be needed in the regulations to enable shared housing activities to be carried out.

(c) *Eligible residential rehabilitation and preservation activities:* This subsection would be retitled and modified to be limited to residential properties. Rehabilitation of publicly owned commercial and industrial buildings and improvements, currently covered under this subsection, would be covered under proposed § 570.203, instead. The proposed rule would also make clear that smoke detectors and dead bolt locks fall under the category

of security devices which may be installed under this provision.

(d) *Special economic development activities (§ 570.203):* This subsection which implements sections 105(a) (14) and (17) of the Act would be amended to clarify that a determination of "necessity or appropriateness" is only required where assistance is to be provided to a for-profit business. A conforming change to paragraph (a) would be made to delete any reference to for-profit businesses. Paragraph (a) would also be amended to cover rehabilitation of publicly owned commercial or industrial buildings and improvements. (Where such properties are owned privately, rehabilitation assistance would be covered under paragraph (b).) This change is proposed in order to more clearly distinguish activities that fall under the general category of "special economic development activities", especially for purposes of complying with the national objectives. Paragraph (b) would be amended to require that grantees consider the extent of need of the for-profit business for the CDBG assistance, and the amount of assistance to be provided in comparison to the public benefit that is expected to result from such assistance. The Department believes that this is the minimum level of consideration that must be given in order to ensure that the accomplishment of program objectives maintains a higher priority than the gain of the private parties involved.

(e) *Eligible administrative costs (§ 570.206):* Paragraph (a)(1) of this section would be amended to clarify that the cost of *any* staff whose principal responsibility it is to manage or supervise other staff would be a "general management" cost subject to the 20% limitation. This would be true even for staff managing or supervising other staff engaged in activity delivery functions.

This proposal is an effort to more clearly define administrative costs so that HUD field staff and grantees will better understand which costs are subject to the 20% limitation. A report by the Department's Office of Inspector General claims that there has not been clear guidance on whether certain staff costs were considered administrative costs subject to the 20 percent limitation, or whether they were considered activity delivery costs. Consequently, grantees have exercised discretion in identifying such costs. The Inspector General emphasized the need to improve the guidelines for identifying administrative costs, and suggested that the natural point at which administrative costs should be distinguished from activity costs, is where management costs are distinguished from the direct costs of activity implementation. This proposed rule establishes criteria for determining the category under which staff costs should be placed. For example, a senior rehabilitation specialist's principal responsibility might be the oversight of other specialist's work, although a portion of his/her time could be devoted to the performance of technical functions. The costs associated with the (primarily) supervisory position would be considered administrative costs, while costs associated with non-supervisory positions would be categorized as activity delivery costs. Comments are particularly invited from the public on this approach.

(f) *Ineligible activities (§ 570.207):* Paragraph (a)(1) of this subsection would be amended to delete the description of buildings for the general conduct of government, and instead refer to the definition of such buildings contained at § 570.3(d).

Paragraph (b) would be amended by adding as paragraph (1)(ii) a clarification that fire protection equipment is considered to be an integral part of a public facility. This is necessary because the Act, as amended, no longer makes specific reference to individual items such as fire protection, which for years included equipment eligible for funding under this program. The current paragraph (b)(1)(ii) would be redesignated as (1)(iii) and would be amended to eliminate confusion that some have experienced over whether CDBG funds can be used to purchase equipment used in providing a public service when the only CDBG assistance to be given is for such equipment. It can. Similarly, paragraph (2) would be amended to clarify that CDBG funds can be used to pay for the cost of operating or maintaining a facility used for providing a public service even if that is the only CDBG assistance made available for such service.

Paragraph (b)(3) would be modified by redesignating paragraph (ii) as (iii), and by inserting a new paragraph (ii) to recognize that new housing construction assisted under the new Housing Development Grant program may also be assisted with CDBG funds.

(g) *Criteria for national objectives (§ 570.208):* A new subsection would be added to contain the criteria for determining whether CDBG assisted activities meet one or more of the three national objectives as required under § 570.200(a)(2). This subsection would replace the standards currently found at § 570.901 and used as review standards for this purpose. Many aspects of these review standards would be incorporated into the new criteria. Differences between those standards and the new criteria which are required to conform to Section 105(c) of the Act include:

—Changing "majority" to 51% in three provisions involving area benefit activities; and

—Changing the so-called "exception criteria" under which certain communities are able to qualify activities in areas having less than a majority of low- and moderate-income residents.

While the 1983 Act amendments only require changing "majority" to 51% in the provisions involving area benefit activities, substitution of "51%" for the terms "majority" and "principally," wherever those terms appeared previously is proposed for the purpose of clarity and uniformity.

New section 105(c)(1) of the Act places restrictions on the circumstances under which CDBG assisted activities described in section 105(a) (14) or (17) can be considered to fall under the national objective of benefiting low-and moderate-income persons. While these two sections generally describe assistance to for-profit businesses (implemented under § 570.203), section 105(a)(14) also describes activities that can be read more broadly and that therefore overlap other subsections of § 105. Examples of this include the acquisition of real property (also covered under section 105(a)(1) and implemented at § 570.201(a)) and construction of public facilities (also covered under section 105(a)(2) and implemented at § 570.201(c)). This makes it difficult to determine activities to which the new statutory limitations in section 105(c)(1) apply. As a further complication new section 105(c)(2) places a limitation on the kinds of areas that so-called "area benefit" activities can cover under the objective of low- and moderate-income benefit. Since some of the activities covered under section 105(c)(1) also benefit an area (*e.g.*, certain street improvements, and assistance to neighborhood commercial business), the Department believes that the provisions of section 105(c)(2) also apply to them.

HUD has analyzed the new statutory limitations, and the ground rules that it has traditionally used for determining whether activities are considered to address the objective of benefiting low- and moderate-income persons, and reached the following conclusions:

(1) The continued use of the concepts incorporated in the current standards at

§ 570.901(b)(1) would generally insure compliance with section 105(c)(1); and

(2) The so-called "exception criteria" to the area benefit ground rule needs to be tightened to comply with section 105(c)(2) of the Act.

Therefore, the proposed rule continues to apply the same principles currently in § 570.901(b)(1), but reorganizes them to improve their clarity and to ensure that the new statutory limitations are properly observed.

The current standards for the low- and moderate-income objective initially state a general principle which, while several examples are given, allows grantees flexibility determining how to apply that principle in any given circumstance concerning a CDBG assisted activity. Because of the new statutory limitations, this flexibility can no longer be afforded. Therefore, the proposed rule would provide for six basic criteria; the area benefit exception; and one other criterion that could be used in special circumstances to qualify an activity. Under this proposal, an activity not meeting the tests provided for in these stated criteria could not qualify as benefiting low- and moderate-income persons. The Department invites comment on this aspect of the proposed rules.

Under the proposal, the first criterion (§ 570.208(a)(1)) would set forth the requirements for activities that serve an area generally. Included under this criterion would be assistance to business establishments (*e.g.*, commercial) that serve predominately low- and moferat-income residential areas. This criterion would generally incorporate § 570.901(b)(1)(i) (A), (E), and (F) of the current rule, but would clarify the circumstances under which assistance to business or commercial establishments can qualify. It would make clear that the "area served" must be the entire area served by the activity and not just a portion thereof. For example if a commercial strip were located between two neighborhoods and served both of them, it would not suffice to show that one of those neighborhoods consisted predominately of low- and moderate-income persons. The proposal would also make clear that an activity need not be located in a low- and moderate-income area to qualify under this criterion. For example, where a low- and moderate-income neighborhood is situated in an area of the community that is frequently flooded, the appropriate treatment of that problem may be to install catch basins in adjacent areas that are not themselves low- and moderate-income areas.

Under the proposal, the area exception rule (currently at § 570.901(b)(1)(vi) would follow immediately after the area benefit criterion (at paragraph (a)(2)), since it would only apply as an exception to area benefit activities. It would be amended to reflect the 1983 Act Amendments.

The criterion at paragraph (a)(3) recognizes that some public facilities and many public services do not serve an area generally, but are designed to meet the needs of a particular segment of the area they serve. The proposal would make clear that such facilities or services do not qualify on the basis of the income characteristics of the total area they serve but rather on those of that particular segment of the population the activity is designed to serve. Thus, a child care facility located in a neighborhood that contains a high proportion of elderly persons might not qualify even though it is a predominately low- and moderate-income area based on overall statistics. On the other hand, a job training facility located in a higher income area of the community could qualify if it could be shown that it is designed particularly to serve the low- and moderate income persons of that area.

Paragraph (a)(4) retains the general groundrules currently found at § 570.901(b)(1)(i)(B), concerning activities creating or retaining jobs, but would also make clear that only activities eligible under § 570.203, special economic development activities can qualify directly under this criterion. HUD recognizes that other activities might also be undertaken having the objective of jobs creation or retention. However, these are usually either activities that can qualify on their own, such as job training for long term unemployed persons, or activities that have broader effects, as in the case of enlarging a sewer line that an industrial facility might need in order to expand its operations but which would also allow other development in nearby areas, the effects of which may be unclear or, if known, might more than offset the jobs creation or retention effects. The Department is concerned that focusing too much on the impact that a CDBG assisted activity might have on jobs can lead to overlooking other effects of the activity that should be considered in determining whether the activity principally benefits low- and moderate-income persons. This potential problem should be minimized as a result of limiting this criterion to activities that are eligible under § 570.203. Other activities, such as the construction of public facilities, undertaken with the objective of creating or retaining jobs, would have to be analyzed under the other criteria to determine whether their effects would be such as to principally benefit low- and moderate-income persons. If such an activity does not meet any of these tests, it could qualify under paragraph (a)(8), as an activity that must be undertaken in order for a business to create or retain low- and moderate-income jobs, but then only if the cost of the activity in question is not unreasonable in relation to the jobs that would be used to qualify under this national objective. Even with this proposed change, HUD is concerned that the amount of CDBG assistance provided by a grant recipient in order to create or retain jobs should have some reasonable bounds, and is, therefore, considering amending the rules to impose an upper limit, perhaps on a per-job basis. This proposal does not contain any specific provision in this regard, because the Department believes that further consideration needs to be given to the following questions before such a limitation is devised:

—Should a created job justify a greater CDBG expenditure than a retained job?

—What distinction, if any, should be made between a full-time and a part-time job in this regard?

—Should any allowance be made for assistance to businesses that are more capital-intensive than others, or to industrial facilities as opposed to commercial establishments, in determining whether the amount of CDBG assistance per job is reasonable?

Comment on these questions and any other aspect of using CDBG funds for jobs creation or retention is specifically invited. Additionally, HUD is interested in determining whether it is necessary or even practical to require that business establishments receiving CDBG assistance take on a responsibility to ensure that the majority of jobs be actually taken by persons from low- and moderate-income households. The new statutory provision at section 105(c)(1) states that, to qualify based on jobs, the activity must "involve employment of persons, the majority of which are persons of low- and moderate-income." The current regulations, however, allow such an activity to qualify if the majority of the jobs are "available" to low- and moderate-income persons, and set forth a number of factors which are to be used to determine whether a particular job is considered to be available to such persons. HUD believes that the current regulations meet the intent of the statutory provision and does not propose at this time to require anything further. Comment on this point is especially solicited.

Four changes are proposed to be made to the standard for residential rehabilitation, as currently written. These changes are contained in paragraph (a)(5) and include:

—Substitution of the phrase "rehabilitation of a structure for housing" for "residential rehabilitation" in order to cover the situation where a non-residential structure is being converted to a residential structure;

—Clarification that this standard applies to owner-occupied as well as rental housing;

—Clarification that rehabilitation of a structure containing only two dwelling units will qualify if one of the units is occupied by a low or moderate income household at an affordable rent after rehab, since otherwise it would have to be 100% occupied by such households to meet the general rule under this criterion;

—Clarification that under this standard it is the income of the entire household that determines whether the unit is occupied by low- and moderate-income persons; and

—Clarification regarding the use of CDBG funds to pay for activities directly supporting a recipient's Rental Rehab Program. As currently written, the CDBG rules would require that each structure rehabilitated under the Rental Rehab Program be occupied after rehab by low- and moderate-income person at affordable rent where CDBG funds are used to pay for supporting services such as loan processing or building inspections, or to augment Rental Rehab Program funds used to pay for the actual rehabilitation of rental units. Since the Rental Rehab Program itself contains a substantial number of safeguards and incentives that make it likely that far more than a majority of units rehabilitated under that program will be occupied by low- and moderate-income persons within a given community, and since grantees are statutorily precluded from using Rental Rehab Program funds for such administrative costs, or from paying the entire cost of the physical rehab work, it seems unnecessarily burdensome to the grantees for HUD to apply the CDBG rule of majority occupancy on an structure-by-structure basis in such circumstances. Public comment is particularly invited on this proposal.

A proposed change at paragraph (a)(6) would be made to make clear that an activity involving the acquisition of property for housing will be considered to benefit low- and moderate/income persons based only on the future occupancy of housing for such persons. This change is considered necessary to comply with the 1983 Act amendments to section 105(c)(3). Consistent with the Department's interpretation of this statutory provision mentioned in conjunction with proposed § 570.200(a)(3), assistance to support the new construction of housing is also covered under this standard.

The current provision at § 570.901(b)(1)(iii) would be retained in paragraph (a)(8). This provision allows certain activities that must be undertaken "prior to or as an integral part of" an activity that will principally benefit low- and moderate-income persons. As proposed, this criterion would make clear that the activity in question need not meet any of the other criteria as benefiting low- and moderate-income persons, and that the other activity for which it is undertaken may, but need not be, itself assisted with CDBG funds. It is also proposed that the example contained in the current regulations be dropped. The example currently used involves the extension of water and sewer lines to permit construction of lower income housing. This example would be eliminated for two reasons: first, using the new emphasis on "service area" as contained in the proposed criterion at paragraph (a)(1), it is possible that such a public facility would qualify under that proposed criterion directly (assuming that the extension of the water and sewer lines do not benefit any other area than the site on which the lower income housing would be built); and, secondly, because of the substantial decrease in the amount of lower income housing being newly constructed, compared to the level of several years ago when this example was placed in the regulations, it is no longer very realistic. [HUD is considering the use of another example, perhaps one where public improvements are made in order to entice a business establishment to expand without moving to a different site. However, there is a concern that the use of any example might serve to limit the provision to cases similar to the example given. Comment is solicited on whether an example would be helpful or limiting in this regard]. Finally, the proposed subparagraph would be clarified to state that the total amount of public assistance being provided for such a "prior-to-or-integral-part-of" activity, rather than just the CDBG assistance, must be compared with the low- and moderate-income benefits to be produced in determining whether the cost of such an activity is not unreasonable. This change would be made in order to ensure that use of this provision is limited to activities where the grantee's primary motivation is to facilitate proceeding with the activity that would directly qualify under one of the other criteria. Public comment on these points would be helpful in formulating a final rule.

Additional changes are proposed to clarify the current standards that relate to the use of funds for the benefit of low- and moderate-income persons. Such changes include:

—Deletion of the statement that in determining whether an activity benefits low- and moderate-income persons, the net effect of the activity will be considered. HUD believes that this statement is covered under the general ground rule preceding these criteria that indicates that activities meeting any of the criteria will be considered as addresssing the low- and moderate-income benefit provisions unless there is "substantial evidence to the contrary;"

—Clarification under proposed paragraph (a)(1) that reference to boundaries used by the Census Bureau would also include other officially recognized areas;

—Clarification under proposed paragraph (a)(3) that the presumption of benefit to low- and moderate-income persons currently given in the regulations to facilities for senior citizens or the handicapped would also apply to services provided for such persons; and

—Clarification that public services need not be provided exclusively to low- and moderate-income persons in order to meet the standard for that objective.

The Department proposes to make several changes concerning the criterion for preventing or eliminating slums or blight on an areawide basis.

The definition of a slum or blighted area would to be revised for clarity, and to delete deteriorated "improvements" as a factor in qualifying an area, for two reasons. There has been considerable confusion as to what is ment by the word improvements. Its use has also raised the issue of defining an otherwise standard area as slum or blighted solely because the public facilities were deteriorated. The Department's objective is to use a definition consistent with the common perception of slums or blight.

The description of qualifying activities would also be revised to make clear that such activities must address one or more of the conditions which contributed to the deterioration of the area. This revision would permit an activity to address a storm drainage problem, for example, if such a problem contributed to the deterioration of the area.

Also under this provision, the restrictions on rehabilitation would be broadened to encompass non-residential

rehabilitation to assure that rehabilitation is not merely cosmetic but addresses the slum or blight in the area. The reference to Existing Housing Quality Standards would be reworded to clarify that the criteria a grantee uses for determining whether residential structures are substandard must be such that a building that qualifies as substandard under those criteria would also fail to meet the minimum housing quality standards under the Section 8 Existing program.

IV. Subpart D Amendments

Subpart D (Entitlement Grants), which contains requirements for Entitlement grantees, is being revised to reflect the 1983 statutory amendments to the Housing and Community Development Act of 1974, as amended. Those amendments redefine a grantee's pre-submission requirements. The grantee must now provide additional information to citizens in the preparation of its statement of community development objectives and projected use of funds. The amendments also made a provision for the grantee to provide citizens with notice and an opportunity to comment on any substantial changes the grantee proposes to make in its use of grant funds from one activity to another.

The statutory amendments added additional certifications to be submitted with the final statement. Those certifications concern generally, the 51 percent overall benefit to low- and moderate-income persons requirements discussed in subpart C, the grantee's development of a community development plan, and restrictions on the grantee's authority to make assessments for non-Title I funded portions of public improvements. The following is a section-by-section description of the proposed changes.

a. *Presubmission requirements:* Section 570.301 sets forth the requirements a grantee must meet prior to making a submission to HUD for its annual entitlement grant. Section 570.301(a) paragraphs (3) and (4) have been added to incorporate the 1983 statutory amendments at section 104(a)(1) which establish additional requirements a grantee must meet prior to making its submission to HUD. They are:

1. Each entitlement grantee must now describe its past use of funds, *i.e.*, funds expended since the last submission of its annual statement to HUD;

2. The grantee must assess those expenditures in relation to:

a. The community development objectives the grantee identified in previous statements;

b. The criteria for meeting one of the three national objective standards as described in § 570.208 of these proposed regulations; and

c. Its certification that at least 51 percent of its CDBG funds shall, during the period specified by the grantee, be used in the aggregate for activities which benefit low- and moderate-income persons.

In implementing these requirements the Department proposes not to elaborate on the specific content of the grantee's description of its use of funds or the required assessments beyond that described in the statute. Given that the statute does not provide the Department with substantive review authority over the final statement, required descriptions or assessments, it would be inappropriate for the Department to do so. However, the Department proposes to continue to review final submissions to determine whether grantee's submission contains the required components including the final statement, required descriptions, assessments and certifications. The Department invites comments on whether additional specificity is desired concerning the content of the required assessments and the description of the grantee's past use of funds.

The 1983 statutory amendments provided for additional citizen participation requirements at section 104(a)(2) of the Act. One change was made to ensure that grantees provide citizens with information in a timely manner. In formulating its proposed regulation at § 570.301(b), the Department considered two alternative approaches. The first alternative was to specify a minimum time period in which the citizen participation requirements had to be met prior to a grantee's submission of the final statement to HUD. The advantage of a specified time period is that all parties, grantees and citizens, would clearly know how far in advance the grantee must present information, hold hearings, and accept comments, prior to the submission of the final statement to HUD. A disadvantage to a specified time period is that it establishes a minimum standard which grantees with more elaborate citizen participation mechanisms might be tempted to apply. A second disadvantage of a fixed time period is that it cannot take into account the wide diversity among grantees and their programs. Some grantees with complex programs and elaborate citizen participation mechanisms start their citizen participation process six or more months in advance of their submissions to HUD. Other grantees, with simpler programs, start their citizen participation process 60–90 days in advance of their submissions to HUD. For these reasons, the Department rejected this alternative as being to rigid and inflexible.

The second alternative considered, and the one proposed at § 570.301(b), establishes a more general standard that the grantee must carry out its citizen participation responsibilities in a manner which provides for the timely citizen examination, appraisal and comment of its statements. The Department believes that this general standard allows for the differences among entitlement grantees, both in their size and complexity of their programs. The Department invites comments on this standard.

The 1983 Act amendments added two provisions concerning the types of information a grantee must provide its citizens. The grantee must now inform citizens of:

1. The estimated amount of CDBG funds it intends to use for activities that will benefit low- and moderate-income persons; and

2. Its plans for minimizing displacement as a result of activities assisted with Title I funds, and its plans for assisting persons actually displaced.

Those provisions have been incorporated at § 570.301(b)(1) paragraphs (C), (D) and (E). The Department proposes to implement these two statutory provisions essentially as stated in the amendments, but with two additional clarifications. First, the Department proposes that the grantee identify those activities it believes are likely to result in displacement. Second, the grantee must describe the types and levels of assistance it will provide to displaced persons even if it has no immediate plans to carry out activities that are expected to cause displacement. The first clarification would provide affected citizens an opportunity to know which activities are likely to cause displacement. The second clarification is proposed because a grantee might, in good faith, have no intention of carrying out an activity which causes displacement, but nonetheless finds that during the implementation of its program displacement occurs. Thus, this clarification would require the grantee to consider, up-front, the types and levels of assistance it would provide to displaced persons given that activities causing displacement might occur. The Department invites comments on these provisions.

b. *Certifications:* Section 104(b) of the Act enumerates certifications that must be made by a grantee in order to receive

a grant. This section has been amended by the 1983 Act both to add new certification requirements and to amend previously existing certification requirements. The Department proposes to amend the rule at § 570.303 (Certifications) to incorporate the statutory amendments.

(i) Furtherance of fair housing—The 1983 Act amended section 104(b)(2), to require a grantee to certify that it "will affirmatively further fair housing," in addition to conducting and administering the grant in conformity with Pub. L. 88–352 and Pub. L. 90–284 (Title VI of the Civil Rights Act of 1964, and Title VIII of the Civil Rights Act of 1968, respectively). The Department proposes to amend its corresponding regulation at § 570.303(d) to incorporate the new statutory requirement.

(ii) 51 percent criterion—The Department proposes to add a new certification (designated § 570.303(f)) requiring each entitlement grantee to certify that it will use at least 51 percent of its CDBG funds during one, two, or three consecutive program years, specified by the grantee, for activities which benefit low- and moderate-income persons. This proposal would implement the 1983 Act amendment to section 104(b)(3) of the Act. The Department's proposed standards for activities qualifying as benefiting low- and moderate-income persons are described in § 570.208(a).

In developing this proposed certification, the Department considered the feasibility of allowing a grantee to amend the period covered by its certification. The Department considered the additional administrative requirements which would have to be imposed in order to ensure that citizens were informed of changes, and that the statutory requirement of 51 percent overall benefit would be met. The Department has concluded that such procedures would be burdensome and administratively infeasible. Additional complications arise because another 1983 Act amendment (adding a new provision at section 104(b)(4) of the Act) requires a grantee to develop a community development plan which covers the same period as the grantee's certification for the 51 percent overall benefit. Thus, any amendment to the period for calculation of overall benefit would also require corresponding changes to the period covered by the community development plan. Therefore, the Department does not propose any provision to allow an amendment of the one, two or three program year period initially chosen by the grantee for calculation of its 51 overall benefit to low- and moderate-income persons. The Department invites comments on this matter.

The statutory certification at section 104(b)(3) of the Act requires the grantee to certify for a period of not more than three years. For entitlement communities, the Department has interpreted this provision to mean one, two or three program years. The Department has chosen a program year period instead of either a calendar or fiscal year period because program years are the basis for submitting each annual statement, and the reporting period used in the grantee performance report.

(iii) Community development plan including short- and long-term objectives—As discussed above, the 1983 Act amendments to section 104(b)(4) of the Act, establish the requirement that each grantee must develop a community development and housing plan for the same period certified by the grantee for providing 51 percent overall benefit to low- and moderate-income persons. The plan must identify both short- and long-term objectives that comport with the primary objectives of Title I. The Department proposes a new certification requirement at § 570.303 paragraph (g) which implements the statutory language. In assessing possible regulatory alternatives for implementation of this certification, the Department considered the level of specificity needed in the certification to implement the statutory certification that the grantee develop a community development plan that identifies the grantee's community development and housing needs and specifies both short- and long-term objectives consistent with the final statement and developed in accordance with the primary objective of the Act and the requirements of this Part. The Department believes that it was the congressional intent that the community development plan was intended to be a locally developed document serving local needs. Accordingly, the Department believes that it is inappropriate, at this time, to specify the content of the community development plan beyond these parameters specified by the statute. The Department considered the need to specify minimum time frames for short- versus long-term objectives. However, in view of the fact that the period covered by the community development plan could be either a one, two or three program year period, the Department concluded there was no viable way of differentiating between the period to be covered by short- or long-term objectives. For similar reasons, the Department is interpreting the requirements that the community development plan cover the same period as the overall benefit certification to mean that the plan must at least cover the same period. It would be unrealistic to ask a grantee which selected a one year period to restrict a community development, plan, containing both short- and long-term objectives, to just a one year period.

(iv) Assessments for recovery of capital costs of public improvements—The 1983 Act added a certification requirement at section 104(b)(5) of the Act, setting forth limited circumstances under which a grantee could charge assessments to recover the capital costs of activities assisted in part with CDBG funds or loan guarantee assistance under Subpart M. The Department proposes to add two new certification requirements to § 570.303, designated paragraphs (h) and (i), to comport with the statute.

The proposed certification at paragraph (h) requires the grantee to certify that it will comply with the provisions of § 570.200(c)(2), which prescribes when special assessments may be used to recover capital cost. (See the preamble to Subpart C for a further discussion of this provision.) The certification at paragraph (i) is proposed as an optional certification where the grantee cannot comply with the provisions of § 570.200(c)(2), because it lacks sufficient resources from funds provided under Subpart D to allow it to pay for all of the assessments to be levied against properties owned and occupied by low- and moderate-income households for the non-Title I funded portion of the capital costs of an activity assisted with CDBG funds or loan guarantee assistance under Subpart M. A grantee submitting this (optional) certification, would be allowed by assess properties owned and occupied by moderate income persons for the non-Title I funded portion of such a project.

The remaining certifications have been renumbered. The Department solicits comments on these proposed certifications.

c. *Making of grants:* Section 570.304 governs the Department's acceptance of the final statement and certifications, the grant agreement, the grant amount, and conditional grants.

(i) *Certifications*—The Department proposes to amend § 570.304(a)(3) to clarify that the standard certifications, specified in § 570.303 and submitted by the grantee with the final statement, will be deemed satisfactory unless the

Secretary has conducted a performance review of the grantee's past performance under Subpart O, and has determined that the grantee has not complied with the requirements of this Part. The Secretary may also request additional assurances if it is determined that there is evidence, not directly involving the grantee's past performance under the program, which tends to challenge in a substantial manner the grantee's certification of future performance.

The current rule allows the Secretary to require additional information or assurance on the basis of independent evidence which tends to challenge the standard certifications submitted by the grantee.

The Department believes that the current rule is too broad and should be revised to be consistent, with respect to past performance, with its performance review procedures proposed in § 570.900(b). Requests for additional assurances on the basis of past performance should be based upon a performance review followed by a notification to the grantee of its performance deficiencies and provision of an opportunity for the grantee to respond to the substance of the apparent deficiencies. Following this, if the Department still concludes that the grantee's past performance has not been in compliance with the requirements of this Part, it is appropriate for the Department to require, as part of a corrective or remedial action authorized under § 570.910(b)(3), that the grantee submit additional certifications satisfactory to the Secretary.

The Department also believes that additional assurances are warranted when the Secretary determines that there is evidence, other than evidence based on the grantee's past performance under the program, which tends to challenge that recipient's future performance under a particular certification.

The Department invites public comment on these proposed clarifications.

(ii) *Conditional grant*—The Department proposes to amend § 570.304(d) (Conditional grant). As amended, this subsection would require a grantee, whose grant has been conditioned, to executed and return to HUD the grant agreement, which describes the basis, terms and conditions relating to the conditioned grant, within 60 days from the date of its transmittal. If the grantee does not return the execute contract agreement, HUD may deem the grantee's failure to execute and return the grant agreement as a rejection of the grant by the grantee. Also, such rejection would constitute just cause for HUD to determine that the funds provided for in the the grant agreement are available for reallocation in accordance with section 106(c) of the Act. This provision would clarify the procedures that govern where a grantee fails to execute a grant agreement. Also, under this proposal, a grantee could not attempt to forestall compliance with the grant condition by prolonged delay in executing the grant agreement. The Department invites comments on this provision.

d. *Amendments:* The Department proposes to move the regulation at § 570.301(b) to § 570.305. The current regulation addresses the situation where a grantee might elect not to carry out an activity contained in its final statement. This regulation requires a grantee, making changes in its activities from those in its final statement, to provide affected citizens an opportunity to comment on the proposed changes and to make the changes available to both citizens and HUD. The 1983 Act amended the Act by by adding a new provision (at section 104(a)(2)(E)) that allows a grantee to amend its final statement of activities, if the grantee first provides citizens with reasonable notice of, and an opportunity to comment on, *any substantial changes* (emphasis added), the grantee proposes to make in its use of funds from one activity to another.

This issue that the Department considers central to this proposed regulation at § 570.305 is how to define what constitutes a substantial change. At one extreme, a narrowly drawn rule which identifies specific categories of program changes such as well budget overruns or underruns could envelope what are in fact minor changes to a program or a program activity.

Characterizing such changes as substantial in a rule could have the result of needlessly burdening grantees with a citizen notification and comment process for minor budgetary changes which do not result in changes to the basic activity itself. On the other hand, a rule which is too broad and which fails to identify changes that affect the citizens an acitivity is designed to benefit would not comport with the statute. Accordingly, the Department proposes a rule which is in between those two extremes. The standard would require the grantee to provide citizens with reasonable notice and an opportunity to comment on proposed changes in its use of funds under the following conditions:

1. The amount to be expended for an activity is proposed to be changed from the final statement by more than 25 percent, plus or minus; or

2. The location of the activity is proposed to be changed from that described in the final statement; or

3. The grantee proposes to carry out an activity not described in the final statement.

The Department believes that under this proposed standard, any substantial change would be identified. The Department invites comments on this standard, or suggested alternatives which might achieve the objective of identifying substantial changes.

e. *Housing assistance plan:* Section 570.306 contains the requirements for the development, submission and approval of the Housing Assistance Plan (HAP). The Department proposes to eliminate § 570.306(d)(4) which provided a transition provision for fiscal year 1983 only and is now obsolete.

The 1983 Act amended section 104(c)(1)(A) of the Act to require a grantee to include in its survey of the condition of housing stock in the community, in addition to the previously existing requirements, the number of vacant and abandoned dwelling units. The Department's corresponding regulation at § 570.306(e)(1) currently requires a grantee to describe its "housing conditions by the number of occupied and vacant units in standard and substandard conditions." The Department proposes to revise this subparagraph by including abandoned dwelling units in the description of housing conditions. In so doing, it is recognized that there is little valid information in many communities that can be used to identify the extent of abandonment. However, communities are expected to use any such information, where it is available, in assessing its housing stock conditions.

f. *Displacement:* Section 570.307 (formerly § 570.305), prescribes requirements that a grantee must meet where one or more activities could result in displacement. In essence an entitlement grantee must develop, adopt and make public a statement of local policy governing the steps it will take to minimize displacement, mitigate the adverse effects of any such displacement on low- and moderate-income persons, and discuss the benefits it will provide to persons displaced as a result of assisted activities. The 1983 Act includes two statutory changes which broaden a grantee's responsibilities when it proposes or carries out CDBG assisted activities causing displacement. The first amendment pertains to citizen participation requirements that are discussed in Section IV(a)(i) of this preamble. The regulation proposed to

implement the other amendment would appear in Subpart C at § 570.200(k). That section requires the grantee to provide reasonable benefits to any person involuntarily and permanently displaced as a result of the use of CDBG assistance to acquire or substantially rehabilitate property. In addition, as also previously discussed, the Department is proposing to amend § 570.201(i)(2) regarding the eligibility of optional relocation benefits.

Accordingly, the Department proposes to revise § 570.307 to incorporate by reference, the amended provisions in 24 CFR §§ 570.200(k) and 570.201(i)(2), as well as the Uniform Act relocation benefit provisions of § 570.606(a) in order to ensure that the grantee's local public policy on displacement and relocation benefits comports with the information the grantee is required to provide citizens at § 570.301(a)(2)(i).

g. *Urban counties:* Section 570.308 (urban counties) (formerly § 570.307) describes the Department's policies and procedures for qualifying counties to receive entitlements as urban counties. Under the qualification process, a county may enter into cooperation agreements with certain non-entitled units of general local governments within its jurisdiction for the purpose of carrying out essential community development and housing assistance activities. The Department proposes an amendment to § 570.308(b) at a new paragraph (2) which will allow the Department to refuse to accept the cooperation agreement of a unit of general local government in an urban county where, based on past performance or other available information, the unit of general local government is likely to obstruct the implementation of essential comunity development or housing assistance activities; or where legal impediments to such implementation exist; or where participation by a unit of general local government in noncompliance with an applicable law would constitute noncompliance by the urban county. This provision is warranted, given the Departments's past experiences with several communities in urban counties. The Department's general policy has been that once it recognizes an urban county, the Department holds the urban county responsible for the administration of the CDBG program. The Department expects a cooperation agreement to give the urban county the essential powers necessary to meet all CDBG programs requirements. However, in isolated instances, participating units of general local governments, which executed cooperation agreements with urban counties, obstructed the implementation of Housing Assistance Plans or were found to be in noncompliance with Title VIII of the Civil Rights Act of 1968. The responsible urban counties in these cases were unable to bring about corrective actions. Under these circumstances, the Department fashioned corrective actions to attempt to deal with the program violations. However, the Department believes that the underlying problem can best be resolved if it refuses to accept cooperation agreements from communities which refuse to cooperate. The proposed amendment to § 570.308(b) squarely addresses this situation. The Department invites comments on this provision.

Section 570.308(d) governs the period of qualification of an urban county. The period of qualification remains in effect for three successive federal fiscal years. During this period no member unit of general local government in the urban county may withdraw from the urban county, nor be removed from the urban county for HUD's grant computation purposes. Also, no new unit of general local government covering additional area can be added during that three year period. The 1983 Act amended section 102(d) of the Act, by adding a new provision that allows an urban county to add a new unit of general local government, *provided that* the unit of local government loses its designation as a metropolitan city for that fiscal year. The Department proposes to revise paragraph (d) to add this exception to the general rule.

h. *Joint requests:* Section 570.309 (joint requests) was formerly § 570.308 and has been renumbered.

V. Subpart J Amendments

The Department proposes to amend a number of portions of the regulations in Subpart J (Grant Administration). Only some of these proposed rule revisions reflect 1983 Act amendments to the Act. Other amendments proposed reflect the Department's intention to strengthen requirements that are designed to minimize opportunities for fraud, waste and mismanagement. Still others, are designed to clarify, simplify, and consolidate grant requirements that are currently contained in Subparts J and O (Program Management). Accordingly, the Department's proposed revisions to Subpart J entail not only the addition of new rule provisions, but also the modification or redesignation of existing rules, as well as the deletion of others. Inasmuch as parts of proposed Subpart J would implement for CDBG programs the uniform administrative requirements contained in Office of Management and Budget (OMB) Circular A–102, it should be noted that OMB, in cooperation with all of the grantmaking agencies, including HUD, is reviewing the circular for possible revision and restructuring. Five agency-chaired teams have been organized for a logical review of the circular according to the grants process (and two special issue areas). The teams are addressing, Pre-award, post-award, after-the-grant, property and procurement, and entitlements (public assistance) programs. The result of the Government-wide effort will be a uniform set of grant terms and conditions which agencies will adopt verbatim in "common" regulations, and an accompanying set of OMB government-wide guidance instructing Federal agencies on significant grant management practices such as cash management and closeout.

The interagency teams developing the common regulations anticipate publishing proposed rules late this year, and final rules in mid-1985. In all likelihood some changes proposed to Subpart J will be affected by this government-wide effort. Consequently, when the agencies adopt common regulations in place of Circular A–102, Subpart J will be amended to include only those grant administration requirements unique to CDBG Entitlement grants.

The specific rule amendments being proposed at this time are addressed section-by-section in the discussion that follows. Each proposed section title precedes the discussion of the proposal's basis.

a. *Definitions:* Under this proposal, § 570.500 would be redesignated "definitions" and would, for purposes of Subpart J, define a number of terms commonly referred to in this subpart.

The terms that would be defined under new § 570.500, are (1) program income, (2) revolving fund and (3) subrecipient.

While these terms have been previously used in the regulations, some confusion has arisen because of the lack of specific definitions. Comment is invited on the definitions proposed, and on whether additional terms warrant specific definition under the rule.

Note.—Section 570.500 is currently entitled "designation of public agency". It would be deleted under this proposal, because the salient provisions it contains would be incorporated in other newly proposed sections, *(i.e.,* new §§ 570.500 and 501.501).

b. *Responsibility for grant administration:* Proposed § 570.501 would expand and provide greater prominence to a provision currently at § 570.500, which places the ultimate

responsibility on the recipient for the proper administration of the grant in accordance with all program requirements.

Note.— The provision governing a "grant agreement" currently contained in § 570.501 is proposed for elimination, because it duplicates similar information contained in § 570.304(b) for the Entitlement program and § 570.433(b)(2) for the Small Cities program.

c. *Applicability of OMB Circulars:* Section 570.502 would describe the applicability of OMB Circulars A–87, A–102, A–110 and A–122 to grant recipients and subrecipients. The current regulations at § 570.610 provide incomplete information on the applicability of the circulars. Consistent with the applicability sections of the Circulars, subrecipients that are governmental entities, such as local public agencies and public housing authorities, are subject to the A–87 and A–102 requirements and standards, whereas all other subrecipients are subject to the A–110 and A–122 requirements and standards.

Note.—The provision governing "method of payment" currently containd in § 570.502 would be deleted under this proposal, because it essentially duplicates information that is contained in OMB Circular A–102, Attachment J, "Grant Payment Requirements".

d. *Agreements with subrecipients:* Section 570.503 would establish the requirement that the recipient execute with each subrecipient, prior to the disbursement of any grant funds to the subrecipient, a written agreement containing, at a minimum, provisions covering the items listed in this section. This responds to the need for increased recipient control over grant supported activities carried out by subrecipients, as noted in the HUD Office of Inspector General report on "Monitoring and Controlling of Operating Agencies," dated May 28, 1982.

Note.— The information on "cash withdrawals" currently contained in this section is proposed for elimination because paragraph (a) of the current regulation essentially duplicates the standard for cash withdrawals in OMB Circular A–102, Attachment G, paragraph 2.e., and the requirements in paragraph (b) are proposed for relocation to (proposed) § 570.504, (program income). It should be noted that the cash withdrawal standard in A–102, Attachment G, paragraph 2.e. does not apply to lump sum distributions made under the authority of section 104(g) of the Act, as implemented by § 570.513.

e. *Program income:* Proposed § 570.504 would consolidate program income requirements that are now set out in existing §§ 570.503(b) (cash withdrawals), 570.506(c)—(e) (program income), and 570.512(c) (grant closeouts). In addition, newly proposed § 570.504 reflects 1983 Act amendments to section 104(i) of the Act, that authorize the retention of program income by units of local government (at § 570.504 (b)(1) and (b)(2)). Finally, proposed § 570.504(d) would clarify how an urban county can dispose of program income derived from activities within a jurisdiction of a unit of general government that has since become a nonparticipant in the urban county's program. Under this proposal, the urban county could elect to permit a unit of general local government, that has become en entitlement community in its own right or is participating in the Small Cities or State's programs, to retain the program income for its own CDBG program.

Note.—The current provisions in § 570.504 that contain "restrictions of fund commitment and expenditure," are proposed for elimination because similar information is set forth in § 570.304(d) for the Entitlement program, and § 570.433(b)(3) for the Small Cities program.

f. *Disposition of real property:* Proposed § 507.505 would establish requirements governing the disposition of real property acquired in whole or in part with grant funds, that would serve in lieu of paragraph 3 of Attachment N of OMB Circulars A–102 and A–110. Paragraph 3 has not been made applicable to the CDBG program because its requirements do not comport with section 105(a)(7) of the Act in cases where real property acquired with CDBG funds is being disposed of for a use which qualifies under one of the criteria for meeting the national objectives of the Act. In such cases, recipients and subrecipients would have the right to dispose of real property at a price that is less than fair market value.

Note.— Current § 570.505 "financial management systems", is proposed for elimination because the reference it contains to Attachment G of OMB Circular A–102, would now be contained in proposed § 570.503 (applicability of OMB circulars).

g. *Records to be maintained:* Proposed § 570.506 would supplant provisions in §570.907, "records to be maintained by recipients", currently located in Subpart O. As discussed in section VIII of this preamble, Subpart O is now proposed to cover performance reviews, rather than the broader subject of program management. Consequently, the recordkeeping and reporting requirements that are now in Subpart O would be consolidated with other grant management requirements in Subpart J.

The proposed recordkeeping requirement places responsibility on the recipient to maintain sufficient records to enable the Secretary to determine whether all program requirements have been met. In the absence of adequate records, the Department may conclude that a program requirement has not been met. Accordingly, there is some concern that more specific description should be provided to grantees to ensure that the records they maintain will enable the Department to conclude that program requirements have been met. Comment is solicited as to whether the regulations should contain a more detailed treatment of the records grantees will be expected to maintain. In this regard, the Department believes that, at minimum, the following records are needed for a grantee to demonstrate compliance with program requirements.

(a) Records providing a full description of each activity carried out (or being carried out) in whole or in part with CDBG funds, including its location (if the activity has a geographical locus), the amount of CDBG funds budgeted, obligated and expended for the activity, and the provision in Subpart C under which it is eligible.

(b) Records demonstrating that each activity undertaken meets one of the criteria set forth in § 570.208. At a minimum, such records shall include the following information:

(1) For each activity determined to benefit low and moderate income persons based on the area served by the activity:

(i) The boundaries of the service area;

(ii) The income characteristics of households and unrelated individuals in the service area;

(iii) If the percent of low income persons in the service area is less than 51 percent, data showing that the area qualifies under the exception criteria set forth at § 570.208(a)(2);

(2) For each activity (including single-family rehabilitation) determined to benefit low and moderate income persons based on the incomes of the households directly benefiting from the activity where the activity involves that submission of an application or the completion of a personal record.

(i) The size of each household receiving benefit; and

(ii) The income of each such household.

(3) For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use predominantly by low and moderate income persons, documentation explaining how the grantee determined that at least 51% of the users would be low and moderate income persons.

(4) For each multi-family rehabilitation activity determined to benefit low and moderate income persons:

(i) The local definition of "affordable to low and moderate income households";

(ii) The rent charged (or to be charged) after rehabilitation, for each dwelling unit in each structure rehabilitated; and

(iii) The total number of dwelling units in each structure rehabilitated and the percent of units in each structure which are occupied by low and moderate income households after rehabilitation.

(5) For each activity determined to benefit low and moderate income persons based on jobs to be created for or retained by low and moderate income persons:

(i) The number of jobs created to date and the number of additional jobs expected to be created;

(ii) The nature of the jobs created to date (number skilled, semi-skilled, and unskilled, and for semi-skilled jobs, any special education or experience required) and the nature of additional jobs expected to be created; and

(iii) Any other evidence that a majority of jobs will be filled by low or moderate income persons, such as:

(A) Accessibility of the jobs to areas where substantial numbers of low and moderate income persons reside; and

(B) Any special outreach and/or training to be offered for jobs to be created.

(6) For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area; and

(ii) Description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the criteria in § 570.208(b).

(7) Prevention or elimination of slums or blight in a slum or blighted area:

(i) The local definition of "substandard";

(ii) A pre-rehabilitation inspection report describing the deficiencies in each structure to be rehabilitated; and

(iii) Details and scope of CDBG assisted rehabilitation, by structure.

(8) For each activity determined to aid in the prevention or elimination of slums or blight based on the elimination of specific conditions of blight or physical decay not located in a slum or blighted area:

(i) A description of the specific condition of blight or physical decay treated; and

(ii) For rehabilitation carried out under this category, a description of the specific conditions detrimental to public health and safety which were corrected.

(9) For each activity determined to meet a community development need having a particular urgency:

(i) The nature and degree of seriousness of the condition requiring assistance;

(ii) Evidence that the recipient certified that the CDBG activity was designed to address the urgent need;

(iii) Information on the timing of the development of the serious condition; and

(iv) Evidence confirming that other financial resources to alleviate the need were not available.

(c) Records, which demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(f), 570.201(i), 570.202(b)(3), 570.203(b), 570.204(a)(2) and 570.206(f).

(d) Records which demonstrate compliance with § 570.200(m) regarding change of use of property acquired or improved with CDBG assistance.

(e) Records which demonstrate compliance with the citizen participation requirements prescribed in §§ 570.301(a)(2) and 570.305 for Entitlement recipients, or §§ 570.431 for HUD-administered Small Cities recipients.

(f) Records which demonstrate compliance with the requirements in § 570.307 for Entitlement recipients and in Subpart F for HUD-administered Small Cities recipients regarding the development, adoption, dissemination and implementation of a local policy on displacement.

(g) Fair housing and equal opportunity records containing:

(1) The fair housing analysis described in § 570.904(c), documentation of the actions the recipient has carried out with its housing and community development resources to remedy or ameliorate any conditions limiting fair housing choice in the recipient's community and documentation of any other official actions the recipient has taken which demonstrate its support for fair housing.

(2) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds.

(3) Data on employment in each of the recipient's operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO–4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in units funded in whole or in part under this Part.

(4) Data indicating the race and ethnicity of households (and the gender of single heads of households) displaced as a result of CDBG funded activities, together with the address and census tract of the housing units to which each displaced household relocated. "Displacement" is defined in § 570.612(a).

(5) Documentation of actions undertaken to meet the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) relative to the hiring and training of lower income residents and the use of local businesses.

(6) Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of $10,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women's business enterprises as defined in Executive Order 12138, the amount of the contract or subcontract, and documentation of affirmative steps taken pursuant to OMB Circular A–102, Attachment O, paragraph 9 and Executive Orders 11625, 12432 and 12138 to assure minority businesses and women's business enterprises are utilized when possible as sources of supplies, equipment, construction and services.

(7) Documentation of the affirmative actions the recipient has taken to overcome the effects of prior discrimination, where the recipient has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.

(h) Financial records, in accordance with the applicable OMB Circulars listed in § 570.502.

(i) Agreements and other records related to lump sum disbursements to private financial institutions for financing rehabilitation as prescribed in § 570.513; and

(j) Records required to be maintained in accordance with other applicable laws and regulations set forth in Subpart K of this part.

Note.—Existing § 570.506 "program income," contains provisions that would be covered in other proposed sections of Subpart J. Specifically, existing subsection 570.506(a) provisions would be addressed in proposed § 570.500 (difinitions), where

"program income" is defined; existing subsection (b) content would be addressed in proposed § 570.502 (applicability of OMB circulars); and existing § 570.506 (c), (d), and (e) provisions would be addressed in proposed § 570.504 (program income).

h. *Reports:* Proposed § 570.507 establishes requirements that would govern the content and time of submission of a recipient's performance and evaluation report. This section would also require a recipient to make the report available to citizens for comment in advance of its submission to HUD. Finally, under the proposed rule, recipients may be required to submit other reports and information to HUD, if the Department finds this action necessary to carry out the law.

The requirement that a recipient make its report available to citizens for comment before the report's submission to HUD is designed to comport with 1983 Act amendments to section 104(d) of the Act. The proposed time frame requirement for a report's submission should provide a recipient with ample opportunity to meet the citizen participation requirement.

Note.—Existing § 570.507 "procurement standards", is proposed for elimination because it esentially references Attachment O of OMB Circular A–102, and that reference will now be contained in proposed § 570.503.

I. *Public access to program records:* Proposed § 570.508 reflects a 1983 Act amendment to section 104(a)(2)(D) of the Act, that requires a grantee to provide citizens or, as appropriate, units of general local government, with access to records regarding the past use of grant funds.

Note.—Existing § 570.508 (bonding and insurance) requires compliance by recipients with Attachment B of OMB circular No. A–102. This requirement would be contained in proposed § 570.502(a)(2).

j. *Grant closeout procedures:* Proposed § 570.509 would revise the Department's procedures governing grant closeouts. These procedures would closely track the closeout procedures described in OMB Circular A–102, Attachments L. The proposed rule would also eliminate inconsistencies that now exist between OMB Circular A–102, Atachment P, and the Department's audit procedures described in current § 570.509. Under the proposed rule, emphasis would be placed on the (1) final performance report and (2) grant closeout agreement, as the bases for closeouts and the cancellation of any unused grant funds.

Note.—Under this proposal, current § 570.509 "audit" would be eliminated because subparagrapgh (b) of this section conflicts with OMB Circular A–102, Attachment P, and because the provisons of § 570.509(a) are now embraced in proposed § 570.502 (which references the duplicative requirements in OMB Circular A–102, Attachment C.

k. *Transferring projects from urban cities to metropolitan cities:* The 1983 Act amended section 106(c)(3) of the Act to allow a metropolitan city to assume responsibility for a project or projects operated by the urban county in which that metropolitan city had previously participated. The statute provides that upon request the Secretary may transfer unobligated funds from the urban county to the metropolitan city. Proposed § 570.510 would establish the requirements for implementing this statutory provision.

Three elements are involved in implementing section 106(c)(3) of the Act. These are the execution of a transfer agreement between the affected metropolitan city and urban county; the transfer of funds from one letter of credit to the other; and the monitoring and auditing of the project. Proposed § 570.510(a) describes the required elements of the agreement between the metropolitan city and the urban county. Paragraph (b) would describe the procedures used by HUD to effect the transfer of funds from the urban county account to the metropolitan city account. Paragraph (c) would discuss responsibility of the two grantees for resolution of monitoring an audit findings.

Note.—Current § 570.510 "retention of records" contains provisions that would be supplanted, under this proposal, by the reference to OMB Circular A–102, Attachment C, in proposed § 570.502. Also, §§ 570.511 and 570.512 are proposed to be reserved. Section 570.511 has previously been reserved. Section 570.512 (grant closeouts) is proposed to be replaced by § 570.510, as discussed previously.

1. *Lump sum drawdown:* HUD proposes to amend § 570.513 (lump sum drawdowns) to comport with legislative amendments to section 104(i) of the Act enacted in 1981 and 1983. HUD review and approval of lump sum drawdown agreements would not be required in the amended § 570.513. Section 104(i) of the Act, as amended in 1977, required HUD approval of lump sum drawdowns which met statutory criteria. The 1981 Amendments eliminated this requirement of HUD approval from section 104 by striking the following language from paragraph (2) of section (g), which was previously designated as subsection (i): "At the time of application, the Secretary shall review and approve all agreements with lending institutions which receive funds from community rehabilitation programs. Such approval shall be made on a case-by-case basis, and upon a determination by the Secretary that the agreement with the lending institution meets minimum benefit standards as listed in this paragraph."

This lump sum provision allows those receiving CDBG funds to draw a lump sum from their letter of credit to establish a rehabilitation loan fund in a financial institution to be used in conformance with these regulations. The regulation states that the fund may be used in conjunction with various rehabilitation financing techniques where there is a fixed or contingent repayment obligation. This would permit use of the fund in connection with deferred payment loans where the obligation is forgiven over a period of time and there is repayment only upon a specific event (such as the refusal of an owner to rent to a subsidized tenant). However, the use of the fund to give outright grants to property owners is not permitted.

Paragraph (c)(2) of the new § 570.513 would instead require that, upon execution of an agreement, a copy, including amendents if any, must be provided to the HUD Field Office for its recordkeeping and monitoring purposes.

Paragraph (c)(3) of the new § 570.513 requires not only that the first loan be made within 45 days after receipt of the payment, but that substantial disbursements from such funds occur within 180 days of the receipt of the payment. HUD will consider disbursement of 25 percent of the fund as meeting this requirement.

Paragraph (c)(4) requires recipients to review and compare, on a yearly basis, program activity under the lump sum agreement accomplished with that anticipated.

Paragraph (c)(8)(i) would require the recipient to include in the agreement a provision requiring the private financial institution(s) to pay interest on the deposit.

Paragraph (c)(8)(ii) would require that, in addition to payment of interest, at least one of the following benefits must be provided by the financial institution:

(a) Leverage of the deposited funds, so that the financial institution(s) will commit private funds for loans in the rehabilitation program in an amount substantially in excess of the amount of the lump sum deposit;

(b) Commitment of private funds by the financial institution for rehabilitation loans at below market interest, at higher than normal risk, or with longer than normal repayment periods; or

(c) Provision of administrative services in support of the rehabilitation program by the participating financial institutions at no cost or lower than actual cost.

Paragraph (e) would provide that no recipient shall enter into a new agreement or extend an existing agreement during any period of time in which an audit disallowance or monitoring finding on a previous lump sum drawdown agreement remains unresolved.

Paragraph (f) of the new § 570.513 would require that the recipient provide the HUD Field Office with written notification of the amount of CDBG funds to be distributed to the private financial institution prior to such distribution.

Paragraph (g) would requre the recipient to maintain in its files a copy of the written agreement and related documents concerning performance by the financial institution pursuant to the agreement. HUD Field Offices would audit the lump sum agreements as an essential element of their monitoring activities.

VI. Subpart K Amendment

Subpart K (Other Program Requirements), contains provisions designed to ensure that grants are administered in compliance with applicable Federal laws in addition to Title I of the Act (*e.g.*, civil rights laws, and laws designed to protect the environment). The Department proposes to amend three sections contained in Subpart K, as follows:

(a) Section 570.606 (relocation and acquisition) would be amended by deleting the paragraph (b) provision in its entirety. This provision, concerns the use of CDBG funds, at the option of a grantee, for relocation assistance to persons displaced by activities that are not subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4630). Under this proposal, the provision in subparagraph (b) would be incorporated without substantive change, into (proposed) § 570.201(i) of Subpart C (relocation). This change is being made in recognition that Subpart K is intended to contain only requirements imposed outside of Title I of the Act.

(b) Section 570.612 (displacement), contains a "definition" paragraph (wherein "displacement" is defined), and a paragraph describing HUD's policies and procedures (by reference to specific sections of Part 570), in furtherance of section 902 of the Housing and Community Development Amendments of 1978 (Pub. Law 95–557). Section 902 provides that, in the administration of federal housing and community development programs, involuntary displacement of persons from their neighborhoods should be minimized. Under this proposal, each of the above-described paragraphs would be reworded to conform to other sections of Part 570 that set forth policies and procedures for relocation and displacement.

(c) A new section, designated § 570.613, and entitled Executive Order (E.O.) 12372, would be added to Subpart K under this proposal. This new section would describe applicable requirements of Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs. The E.O. was issued on July, 1982, and amended on April 8, 1983. The Department issued its corresponding regulations at 24 CFR Part 52 on June 24, 1983. (48 FR 29216). The E.O. allows each State to establish its own process for review and comment on proposed federal financial assistance programs. The E.O. applies to the CDBG entitlement and UDAG programs only where the grantee proposes to use funds for the planning or construction of water or sewer facilities.

VII. Subpart M Amendments

Subpart M (Loan guarantees) sets out the Department's policies and procedures governing the issuance of loan guarantee assistance to units of general local government entitled to receive a grant under section 106(b) of the Act. The Department proposes to amend various provisions in § 570.702 (application requirements) as follows:

The term "Area Office" where it appears in § 570.702(b), shall be replaced by the term "Field Office" in order to accurately identify HUD field offices, as they have been redesignated. In addition, § 570.702(b) is being revised substantively to incorporate an additional submission requirement as a result of a 1983 Act amendment to section 108 of the Act. An applicant would be required to certify that it has made efforts to obtain financing for the activities without the use of the Federal loan guarantee, it will maintain documentation of such efforts, and it cannot carry out the activities in a timely manner without such guarantee. The purpose of this requirement is to encourage communities to leverage private financing for eligible activities. Communities are expected to make a good faith effort, consistent with timely execution of the activities, to obtain financing without the Federal guarantee. However, the Department does not intend to subject communities to an overly burdensome or time consuming requirement to prove that, absent the guarantee, financing could not have been obtained or the activity could not proceed. This certification requirement would be designated § 570.702(b)(5), and existing paragraph (b)(5) would be redesignated as (b)(6).

The Department also proposes to substantively revise § 570.702(d)(3). Section 570.702 describes HUD's procedures for the review and approval of applications. Paragraph (d)(3) currently indicates five separate bases upon which the Secretary may disapprove an application, or may approve loan guarantee assistance for an application, or may approve loan guarantee assistance for an amount less than requested. The Department proposes to add a sixth basis, under which an application could be disapproved or the amount reduced, if the activities to be undertaken with the guaranteed loan funds fail to comply with one of the national objectives of the Act. This basis for review and possible rejection or modification of an application, would appropriately complement other regulations already in Part 570, that require applicants to describe how each activity to be assisted meets one of the national objectives.

Finally, the Department proposes to add a new paragraph (f) to § 570.702 pertaining to "relocation and acquisition". Under this provision, an applicant, as a condition to receiving loan guarantee assistance, would be required to comply with requirements identical to those set forth at 24 CFR Part 42 (which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C 4601 *et seq.*). The Uniform Act applies to the use of Title I grant funds, which must be pledged as security for the loan guarantee and are frequently used to repay guaranteed loans. Since the guaranteed loan represents either an actual or contingent claim on grant funds, it is appropriate that the use of graranteed loan funds be subject to the same requirements as apply to the use of grant funds.

VIII. Subpart O Amendments

Subpart O is proposed for revision to more accurately comport with section 104(d)(1) of the Act concerning the Department's performance review of Entitlement and HUD-administered Small Cities programs, and to more directly cover performance reviews of Urban Development Action Grant (UDAG) programs as provided under section 119(g) of the Act. These sections of the Act were not amended by the

1983 Act. Also, Subpart O revisions are designed to make more understandable the Department's review process and to establish clearer review criteria for measuring performance. Finally, the content of Subpart O would now be limited to the Department's performance review authorities, responsibilities and remedies. [Administrative requirements currently contained in Subpart O, such as recordkeeping and reporting requirements, are proposed to be consolidated with other administrative requirements in Subpart J, as discussed in section V of this preamble.] What follows is a section-by-section analysis of Subpart O as it would be amended.

(a) Proposed § 570.900 (general), discusses the various statutory bases the Department has for conducting its performance reviews, and establishes the Department's procedure for conducting those reviews. The steps that would be taken to follow-up on findings and determinations resulting from performance reviews are also described. It should be particularly noted that under the proposed review procedure if HUD determines that a grant recipient has not met a civil rights review criterion, the recipient will be provided an opportunity to demonstrate that it has nonetheless met the applicable civil rights requirement. Furthermore, if HUD finds that a recipient has failed to comply with a program requirement, or has failed to carry out its activities or, if applicable, its housing assistance plan in a timely manner, the recipient will be provided an opportunity to contest the finding.

The Department also proposes, in this section, that a recipient's failure to maintain required records in the manner prescribed may result in HUD's finding that the recipient has apparently failed to meet the applicable program requirement. For example, the CDBG Entitlement program requires that a recipient hold a public hearing as part of the process in its development of the Community Development Statement and Projected Use of Funds. In its review, HUD would determine whether the recipient had met this requirement. HUD would base its determination on the records the recipient had maintained. If a recipient did not maintain records of the hearing, HUD would find that the recipient had failed to meet the applicable public hearing requirement. The burden would then shift to the recipient to demonstrate that it had in fact met the public hearing requirement.

This is not to say that such records alone constitute compliance, but rather that the Department will rely upon such required records, along with any independent evidence it may have, in determining whether the recipient has undertaken the specified actions.

Note.—The current provisions of § 570.900 (performance standards) include administrative requirements for grant recipients. Those provisions and their proposed disposition are as follows:

1. Paragraph (a) of the current regulations discusses the operating procedures a recipient should follow for relocation under the CDBG program. The Department's relocation requirements under the Uniform Relocation and Real Property Acquisition Policies Act of 1970, are now at proposed § 570.606. Additional program requirements for CDBG funded activities which cause displacement are at proposed § 570.200(k).

2. Paragraph (b) restates the applicabililty of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and duplicates the provisions of § 570.606. This paragraph would be deleted.

3. Paragraph (c) discusses equal opportunity recordkeeping requirements. All recordkeeping requirements would be consolidated in § 570.506].

(b) Proposed § 570.901 (review for compliance with the primary and national objectives and other requirements of this Part) describes the areas the Department will review, in carrying out the Secretary's responsibility under section 104(d)(1) of the Act, to determine if the recipient has carried out its activities and certifications in accordance with the requirements and the objectives of the Act and with other applicable laws. With the exception of the fair housing and equal opportunity regulations, which for the most part prohibit discrimination, the regulations implementing the various program requirements describe the specific actions a recipient must take to be in compliance. Therefore, the Department is not proposing review criteria for the program requirements listed in proposed § 570.901, with the exception of the fair housing and equal opportunity review criteria described in proposed § 570.904.

Note.—The current provisions of § 570.901 (review for compliance with primary objectives), would be supplanted by the proposed rule. The performance standards in the current provisions are revised and relocated to proposed §§ 570.200 and 570.208.

(c) Proposed § 570.902 (review to determine if CDBG funded activities were carried out in timely manner), sets out specific performance criteria that would be used in determining a grant recipient's timeliness in carrying out CDBG funded activities.

Section 104(d)(1) of the Act requires that the Secretary review an entitlement or HUD-administered Small Cities recipient's performance to determine whether the recipient has carried out its CDBG funded activities in a timely manner. The Department proposes two performance criteria for Entitlement recipients. The first criterion would apply to cumulative expenditures over the life of the program. A recipient that has in its letter-of-credit an amount equal to less than 1.25 times its current program year's grant amount two months before the end of the program year would be presumed to be carrying out its CDBG activities in a timely manner. In arriving at the 1.25 program year criterion the Department analyzed the drawdown rates of all Entitlement recipients and found that approximately 15 percent of the grantees did not meet the proposed threshold. HUD believes it should focus its attention concerning timeliness on a relatively small segment of recipients, determine what factors are the basis for their apparently slow performance and require these grantees to develop schedules and timetables or take other appropriate measures to improve their overall performance.

The second criterion the Department proposes would presume that a recipient that has received at least two consecutive entitlement grants was carrying out its CDBG activities in a timely manner if the amount of grant funds disbursed from its letter-of-credit during the previous twelve months was equal to or greater than one-half of the amount of entitlement grant funds made available to it for its current program year. The Department proposes this second criterion in order to identify an otherwise timely grantee whose performance may have fallen off precipitously during any one program year. Accordingly, this second criterion would complement the first criterion by identifying a problem in its incipient stages.

For the HUD-administered Small Cities program, the Department proposes a criterion which presumes a HUD-administered Small Cities recipient is carrying out its CDBG activities in a timely manner if the recipient is substantially meeting its approval schedule.

HUD believes that the three proposed performance criteria will provide recipients with clear performance guidelines. Each recipients will be able to judge where its progress stands in relation to the applicable criterion.

The Department is soliciting comments on the specific numerical standards proposed for Entitlement

recipients, as well as the overall approach described.

For Entitlement recipients, the Department is not establishing timeliness criteria for individual CDBG activities. The Department believes that if an Entitlement recipient's overall progress is satisfactory, the Department should not become involved in making judgments on the basis of timeliness, with the local administration of individual activities.

Note.—Currently, § 570.902 is reserved.

(d) Proposed § 570.903 (review to determine if the Housing Assistance Plan (HAP) is being carried out in a timely manner), sets out HUD's procedures and policies governing its review of Housing Assistance Plan (HAP) performance for entitlement recipients. The proposed criteria at § 570.903 would replace the current HAP performance criteria at § 570.909(e)(2). The HAP review standard has been rewritten to establish clearer criteria for HAP performance that parallel the general review process outlined in § 570.900(b).

Under the proposed rule, a recipient which substantially meets its annual HAP goals for the first and second years and meets its overall three year goals (including the provision of rental subsidies in reasonable proportion to the need of each household type as defined in the HAP) will be presumed to be carrying out its HAP in a timely manner. However, because a recipient has little control over the overall availability of Federal housing assistance resources, HUD proposes a second level presumption. When a recipient does not meet its HAP goals, HUD will subsitute in its review amount of Federal housing assistance resources that were actually available for any goals a recipient has for such resources. If a recipient's performance substantially meets such substitute values, and the recipient has not impeded the provision of housing assistance, HUD will also presume that the recipient carried out its HAP in a timely manner. If the recipient does not meet either of the performance criteria, the burden shifts to the recipient to demonstrate that it has been carrying out its HAP in a timely manner. HUD would expect the recipient to describe those factors which prevented it from meeting those HAP goals it failed to meet and to describe what actions it took to facilitate achieving its HAP goals.

Note.—Currently, § 570.903 is reserved.

(e) Proposed § 570.904 (fair housing and equal opportunity review criteria) sets forth review criteria which would be used to assist in determining if an Entitlement or HUD-administered Small Cities grant recipient has carried out its program in compliance with the civil rights requirements. As described in paragraph (a), if the review criteria are met, the Department will presume that the recipient has carried out its program in compliance with civil rights requirements, unless there is independent evidence to the contrary, or the recipient has failed to comply with an assurance that the Secretary required in order to accept the recipient's prior civil rights certification. The civil rights review criteria are intended to provide to recipients a means to determine, in advance, whether their program will satisfy civil rights requirements. Therefore, for each such requirement HUD has proposed a measurable situation where a recipient can safely assure that HUD will presume that the civil rights requirement in question has been met—in other words a "safe harbor." In the absence of independent evidence to the contrary, when these review criteria are met, the Department will *not* examine performance any further. Where a recipient does not meet the test for a "safe harbor," or when a prior assurance has not been compiled with, HUD will provide the recipient with an opportunity to demonstrate that it has met the program rquirements nevertheless. The Secretary's final determination of whether there has been such compliance will be made based on all available evidence. The following is a discussion of the proposed review criteria for equal employment opportunity; equal opportunity in services, benefits and participation; fair housing; and use of minority and women's business firms. The Department invites comments on the proposed criteria.

The Department proposes at § 570.904(b)(1), review criteria for equal employment opportunity. The first criterion (paragraph (i)) can be met either on the basis of the number of minorities and females, respectively, who are newly hired for permanent full-time positions or on the basis of the number of minorities and females, respectively, who are currently employed in such positions. While the Department believes that new hires are generally more representative of a grant recipient's equal employment opportunity efforts, the option of looking at current employment is proposed because in recent years many local governments have had little opportunity to hire for permanent full-time positions. Whether looking at new hires or current employment, the criteria will be applied on the basis of aggregate figures across all of the recipient's operating agencies receiving any CDBG funds. In contrast, the second criterion (paragraph (ii)) is oriented toward each separate operating agency receiving any CDBG funds. This criterion is met if there has been no action by the recipient in any such operating agency that excluded minorities or females from particular job categories. The job categories are shown on the Equal Employment Opportunity Commission's EEO–4 form, a copy of which is prepared for each operating agency receiving CDBG funds and is submitted to HUD. Submission of this report is required under § 570.507(b) of proposed Subpart J.

The Department proposes, at § 507.904(b)(2), review criteria for equal opportunity in services, benefits and participation. Under these criteria, the Department will look at expenditures by each operating agency receiving CDBG funds to see if, over a period of at least three years, any minority group (i.e., Blacks, American Indians and Alaskan Natives, Hispanics, and Asian and Pacific Islanders) is receiving substantially less benefit than would be expected given that group's proportionate need for an activity provided by the agency. Because information on the specific need of each minority group for an activity is often not generally available, a surrogate criterion for need is also provided—the percentage of the minority group in the recipient's low—and moderate-income population. The Department considered using the percentage of the minority group in the total population of the community, but concluded that such a percentage would generally understate the group's degree of need. It is widely believed that the need for public facilities and services is higher on a per capita basis among minority groups that it is for non-minorities. It is also generally known that minority groups have higher percentages of low—and moderate-income persons than the non-minority balance. Using a minority group's percentage of the community's low—and moderate-income population should result in a more accurate indicator of that group's degree of need, for purposes of this program. The Department will calculate and provide to recipients, data on the percentage of each minority group in the recipient's low—and moderate-income population based on an analysis of information from the U.S. Census. For any recipient where that information is not available, data on the percentage of each minority group in the recipient's total population will be provided instead.

Paragraph (ii) describes the process the Department would follow in determining if this review criteria has been met. The Department would look first only at the expenditure of *CDBG* funds. If the criterion is not met based solely on expenditures of CDBG funds, the review will be broadened to encompass at expenditures from *all* sources of funds within the recipient's control, including Federal, State and local funds. If the criterion is still not met, the recipient will be provided an opportunity to provide satisfactory reasons for the substantial disparity in the level of services or benefits.

The following is an example of how this review criterion would be used. Assume that over a three-year period a recipient's community development department received $200,000 in CDBG funds for a direct benefit activity. The Department would compare the extent that each minority group appears to be benefiting from the expenditure of these CDBG funds with each group's proportionate need for the activity. If information on such proportionate needs is not generally available, the Department would make the comparison using as a surrogate for need the percentage of each minority group in the recipient's low—and moderate-income population. If that information is also not available, then the percentage of each minority group in the recipient's entire population will be used as the surrogate. If these calculations show that any minority group appears to be substantially underserved in comparison to its proportionate needs, the Department would broaden its review to look at expenditures from all sources of funds by the community development department for the activity over the same period in order to determine the extent to which each minority group is benefiting from all expenditures. If it still appears that one or more minority groups is being substantially underserved in comparison to its proportionate needs, the recipient would be provided an opportunity to provide satisfactory reasons for this situation. If the recipient is unable to provide such reasons, the Department would work with the recipient, and take any other appropriate steps, to ensure that over time, the underserved minority group receives its proportionate share of the services and benefits provided by the community development department.

The Department proposes at § 570.904(c), criteria for reviewing a recipient's performance in meeting its fair housing certifications. The Department proposes that, absent independent evidence to the contrary, a recipient will be considered to have affirmatively furthered fair housing if:

(1) The recipient has conducted an analysis to determine the impediments to fair housing choice within its community. The Department defines the term "fair housing choice" as the ability of persons of similar income level to have available to them a like range of housing choices regardless of race, color, creed, sex or national origin; and

(2) Based upon the conclusions of the required analysis, the recipient demonstrates that it has carried out appropriate official actions related to housing and community development to remedy or ameliorate any conditions found to limit fair housing choice in the recipient's community.

In developing these criteria, the Department considered the feasibility of specifying certain minimum actions each grantee must carry out in order to meet its fair housing certification. The problem with proposing specific minimum actions is that those minimum actions are unlikely to be tailored to the needs of each recipient. In reality, the demographic makeup and housing patterns of each recipient are unique. Thus, HUD concluded that the criteria should take into account the differences among recipients, and that a recipient's actions should be tailored to the conditions existing in the community. Thus, HUD proposes criteria which require each recipient to identify impediments to fair housing choice in its community and to undertake actions appropriate to resolve or ameliorate those conditions. The Department is specifically interested in receiving comments on whether the review criteria for affirmatively furthering fair housing should be broadened and whether it sufficiently describes actions which recipients have historically taken to carry out their affirmative responsibility.

The Department proposes review criteria at § 570.904, paragraph (d), titled "Actions to Utilize Minority and Women's Business Firms." The Department proposes to review a recipient's performance to determine if the recipient has administered its CDBG activities in a manner to encourage the establishment, utilization and expansion of minority and women's business enterprises as described in Executive Orders 11625, 12432, and 12138, and OMB Circular Number A–102, Attachment O, Section 9.

In reviewing a recipient's performance, the Department will presume that a recipient has carried out its CDBG program in furtherance of the objectives of the Executive Orders and in accordance with requirements of OMB Circular A–102, Attachment O, Section 9, with respect to minority and women's business enterprises *if* during the review period (a) the amount of the CDBG funds, awarded through contracts and subcontracts of $10,000 or more to minority and womens firms for supplies, equipment, construction and services, divided by the total amount of all such contracts to all firms, approximates the percentage of minority and women's business enterprises in the recipient's Metropolitan Statistical Area (MSA); and (b) the proportion of such contracts and subcontracts awarded by the recipient to minority and women's business enterprises exceeds such proportion in the preceding review period.

In some cases, data may not be available from the Bureau of Census, the Small Business Administration or the Minority Business Development Agency to determine the percentage of minority and women's business enterprises. In such cases, the Department will consider a recipient's estimate of that percentage if it is based upon an acceptable survey or other acceptable data.

Where no such data is available or acceptable, in order to carry out the intent of the Executive Orders and OMB Circular A–102, the Department will presume that the recipient has carried out its program in accordance with these requirements if the proportion of contract and subcontract dollars for contracts of $10,000 or more awarded to minority and women's business enterprises has increased over the prior year.

While the Department would expect to see an increase each year in the proportion of minority and women's business enterprises, or in the proportion of dollars awarded to them, where a recipient believes that such an increase is unreasonable given the nature of the CDBG program, the activities undertaken or the MBE and WBE actions already taken, the Department may determine that no further increase shall be required for the review criterion.

If the recipient does not meet the proposed review criteria, HUD will provide the recipient an opportunity to demonstrate what affirmative actions it has taken in meeting the requirements of OMB Circular A–102, Attachment O, Section 9, and the effects of these actions.

The Department proposes this standard with the objective of providing recipients with a "safe-harbor." The Department believes that each grantee

should be provided the maximum flexibility to develop and to implement affirmative actions which the recipient feels are best suited to utilizing and increasing minority and women's businesses serving the recipient's jurisdiction. The Department believes the proposed standard serves that objective. The Department invites comments on the method selected for establishing the "safe-harbor" concept specifically, and the proposed standard generally.

Note.—Currently, § 570.904 is reserved.

(f) Proposed § 570.905 (review for continuing capacity to carry out CDBG funded activities in a timely manner) outlines a further review HUD will undertake where it has been determined that a recipient failed to carry out its CDBG activities and certifications in accordance with the requirements and criteria described in (proposed) §§ 570.901, or 570.902.

Section 104(d) of the Act requires that the Secretary review an entitlement or a HUD-administered Small Cities recipient's performance to determine whether the recipient has a continuing capacity to carry out its CDBG funded activities in a timely manner. The current regulations provide for the review of continuing capacity at § 570.909(h). The proposed rule at § 570.905 would clarify that HUD will only review a recipient's continuing capacity if the Department has found that the recipient has failed to carry out its CDBG activities and certifications in accordance with the requirements and criteria described in § 570.901 or 902. Thus, the emphasis of this aspect of HUD's review would be on determining whether known problems are likely to affect the recipient's future performance.

Note.—Existing § 570.905 concerns "reports to be submitted by recipients." These requirements would be removed from Subpart O, and included in revised Subpart J at § 570.507.

(g) Proposed § 570.906 (review of urban counties) redesignates and modifies somewhat the provision currently in the regulation at § 570.909(d). The provision would be rewritten to more clearly stipulate that HUD holds the urban county responsible, as the recipient, for the performance of its participating units of general local government.

Note.—Existing § 570.906 "performance report" would be removed from Subpart O, and included, as revised, in Subpart J at § 570.507.

(h) Sections 570.907 through 570.909 would be reserved under this proposal.

Note.—Existing § 570.907 "records to be maintained by recipient" would be removed from Subpart O, and included, as revised, in Subpart J at § 570.506. Provisions of existing § 570.908 (evaluation by HUD) relating to the review of a recipient's records are covered in OMB circular number A-102, Attachment C. Section 570.908(c) provisions have been moved to § 570.507(d). Existing § 570.909 (Secretarial review of recipient's performance) contains provisions that, as they would be amended under this proposal, are now covered in §§ 570.901 through 570.906.

(i) Proposed § 570.910 (corrective and remedial actions) would make essentially editorial changes to existing § 570.910 which describes the corrective or remedial actions HUD may require the recipient to take if the recipient fails to satisfactorily demonstrate that it has carried out its program in a manner which meets program requirements. The action of requesting the recipient to submit additional information has been dropped from this section because such requests would occur at an earlier stage of the performance review process. The action of adjusting, reducing or withdrawing an Urban Development Action Grant has been relocated to proposed § 570.911.

(j) Proposed § 570.911 (reduction, withdrawal, or adjustment of a grant or other appropriate action) makes editorial changes to existing § 570.911 which implements the Secretary's authority under the Act to reduce, withdraw, or adjust a recipient's grant or take other actions as appropriate. The proposed rule makes clear that the Department would not undertake a reduction, withdrawal, or adjustment or undertake other action as authorized, until it first provided the recipient an opportunity to voluntarily undertake corrective or remedial actions. The Department would also provide a recipient an opportunity for an informal hearing before undertaking any sanction.

(k) Proposed § 570.912 (nondiscrimination compliance), sets out the steps that would be taken by Department if it determines that a recipient has failed to comply with § 570.602 (which implements section 109 of the Act). Under this proposal, the Department's current regulation, at § 570.912, would remain substantially unchanged, but would be revised to make conforming changes to cross-referenced sections. Other minor editorial changes are also proposed.

(l)(1) Proposed § 570.913 (other remedies for noncompliance), implements section 111 of the Act, which describes the Department's authority when the Secretary determines that a recipient has failed to substantially comply with the requirements of the Act. The current rule provisions that give effect to section 111 of the Act, are at § 570.913, and the proposed regulation would retain this designation. However, § 570.913 would be modified for clarity and to more closely follow the statutory provisions.

IX. Technical Amendments to the 1983 Act

The proposed rule, in large part, reflects 1983 Act amendments to Title I of the Act. In accordance with section 7(o)(2) of the Department of Housing and Urban Development Act (HUD Act), this proposal was submitted to the appropriate Congressional committees for review before its publication in the **Federal Register.** After that submission, the Congress enacted legislation containing technical and conforming amendments to the 1983 Act (Housing and Community Development Technical Amendments Act of 1984, Pub. L. 98-479, approved October 17, 1984) (the technical amendments Act). As a result of several of these amendments, the Department will need to further revise CDBG regulations that are embraced within this proposed rule. However, because Congress adjourned soon after enacting the technical amendments, the Department could not make the necessary revisions to its proposed rule in this proceeding and still observe the prepublication review requirements in section 7(o) of the HUD Act during this post session of Congress. In the alternative, this section of the preamble indentifies where amendments to the Title I provisions have occurred which will ultimately affect this rule making. Interested persons should review the technical amendments Act to acquire a full understanding of the legislative changes.

(a) *Definitions:* Sections 102(a)(4) and 102(a)(6) of the Act define the terms "metropolitan city" and "urban county", respectively. These terms are defined in the proposed regulations at 24 CFR 570.3(u) and 570.3(v), respectively. The definitions of these terms have been further revised by the technical amendments Act in a manner which affects only a few metropolitian cities and urban counties. The change in the term "metropolitan city" permits local governments attaining metropolitan city status in fiscal year 1984 or 1985 to defer such status in order to be included in an urban county CDBG program, regardless of whether the local government was previously included in the urban county. The change in the term "urban county" clarifies the conditions under which counties gaining or losing population

under certain circumstances may qualify as an urban county. The Department's final rule will make changes to the proposed definitions to comport with the revised statute.

(b) *Provision of public services:* Section 105 of the Act [Eligible Activities] includes the "provision of public services" as an activity which may be assisted with CDBG funding. The 1983 Act amendments included a provision that increased from 10% to 15% the allowable percentage of assistance to a unit of general local government that can be used for such activities. An even higher amount can be used if the grantee used a higher percentage or amount of its assistance for such activities in fiscal year 1983. Under the technical amendments Act, this maximum amount may be the percentage or amount of assistance used by the grantee for such activities in either fiscal year 1982 *or* 1983, whichever method of calculation yields the higher amount. The Department's corresponding public services provision appears at 24 CFR 570.201(e), and the "greater than 15 percent of assistance" exception to the rule appears at § 570.201(e)(3). The rule provision will be amended in the final rule to comport with the 1982 or 1983 criterion in the statute.

(c) *Area exception rule:* The 1983 Act amended section 105 of the Act, in part, by adding a new paragraph (c)(2) which includes an "area exception rule." The provision permitted communities to carry out area benefit activities, designed to benefit low- and moderate-income persons, in areas where such persons do not constitute at least 51 percent of the population, provided that the community has *no* areas within its jurisdiction that meet the 51 percent criterion. The Department's rule incorporating the statutory area exception rule appears at proposed § 570.208(a)(2). However, the area exception rule has been revised anew as a consequence of the technical amendments Act. As newly amended, section 105(c)(2) permits metropolitan cities and urban counties (but not States) to have area benefit activities counted as benfiting low- and moderate-income persons if those activities *either* serve an area in which at least 51% of the residents are low- and moderate-income persons *or* serve an area which falls within the top one-quarter of all areas within the community's jurisdiction in terms of the degree of concentration of low- and moderate-income persons. In either case, the activity must also be clearly designed to meet identified needs of low- and moderate-income residents of the area. The technical amendments Act further provides that this change shall take effect immediately, that it shall be implemented through interim instructions issued by the Department and that the Department, issue a final regulation on this matter no later than June 1, 1985. The Department will issue the interim instructions shortly.

X. Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

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

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the CDBG program, but rather modifies and updates program administrative and procedural requirements to comport with recently enacted legislation.

This rule was listed as item 218 (CPD–6–84) in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902) at page 15949 under Executive Order 12291 and the Regulatory Flexibility Act.

The programs affected by this rule and their program numbers in the Catalog of Federal Domestic Assistance are as follows:

14.218, Community Development Block Grant Entitlement
14.219, Community Development Block Small Cities
14.221, Urban Development Action Grant
14.225, Secretary's Discretionary Fund/ Territories Program
14.227, Secretary's Discretionary Fund/ Community Development Technical Assistance Grants

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 44 U.S.C. 3504(h) the collection of information requirements that are included in this regulation have been submitted for approval to the Office of Management and Budget for review. Please send any comments regarding the collection of information requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for HUD.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: Housing and community development, Loan programs: Housing and community development, Low and moderate income housing, New communities, Pocket of poverty, Small cities.

Accordingly, the Department proposes to amend 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. Subpart A of Part 570 would be revised to read as follows:

Subpart A—General Provisions.

Sec.
570.1 Purpose.
570.2 Primary objective.
570.3 Definitions.
570.4 Allocation of funds.
570.5 Waivers.

Subpart A—General Provisions.

§ 570.1 Purpose.

(a) This part describes policies and procedures applicable to the following programs authorized under Title I of the Housing and Community Development Act of 1974, as amended:

(1) Entitlement grants program (Subpart D);

(2) Small Cities program: HUD administered CDBG nonentitlement funds (Subpart F);

(3) State's program: State-administered CDBG nonentitlement funds (Subpart I);

(4) Secretary's Fund program (Subpart E);

(5) Urban Department Action Grant program (Subpart G); and

(6) Loan Guarantees (Subpart M).

(b) Subparts A, C, J, K, and O apply to all programs in paragraph (a) except as modified or limited under the provisions of these subparts or the applicable program regulations.

§ 570.2 Primary objective.

The primary objective of Title I of the Housing and Community Development Act of 1974, as amended, and of the community development program of each grantee under the Title is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, not less than 51 percent of CDBG funds received by the grantee under Subpart D, F and I shall be used in accordance with the applicable requirements of those Subparts for activites that benefit persons of low and moderate income.

§ 570.3 Definitions.

(a) "Act" means Title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 *et seq.*).

(b) "Age of housing" means the number of existing year-round housing units constructed in 1939 or earlier, based on data compiled by the United States Bureau of the Census referable to the same point or period of time available from the latest decennial census.

(c) "Applicant" means a State, unit of general local governemt, or an Indian tribe which makes application pursuant to the provisions of Subparts, E, F, G or M.

(d) "Buildings for the general conduct of government" means city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various nonlegislative functions or services provided by government at decentralized locations.

(e) "CDBG funds" means Community Development Block Grant funds, including funds received in the form of grants under Subpart D, F or I, loans guaranteed under Subpart M, urban renewal surplus grant funds under Subpart N, and program income defined in § 570.500(a) or § 570.494, as applicable.

(f) "Chief Executive Officer" of a State or unit of local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit of local government are: The elected mayor of a municipality; the elected county executive of a county; the chairman of a county commission or board in a county that has no elected county executive; the official designated pursuant to law by the governing body or a unit of general local government.

(g)(1) "City" means, for purposes of Entitlement Community Development Block Grant and Urban Development Action Grant eligibility:

(i) Any unit of general local government which is classified as a municipality by the United States Bureau of the Census or

(ii) any other unit of general local government which is a town or township and which, in the determination of the Secretary: (A) Possesses powers and performs functions comparable to those associated with municipalities; (B) is closely settled (except that the Secretary may reduce or waive this requirement on a case by case basis for the purposes of the Action Grant program); and (C) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census which have not entered into cooperation agreements with such town or township for a period covering at least 3 years to undertake or to assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government. And,

(2) For purposes of Urban Development Action Grant eligibility only, "city" means Guam, the Virgin Islands, and Indian tribes which are eligible recipients under the State and Local Government Fiscal Assistance Act of 1972 and located on reservations or in Alaskan Native Villages.

(h) "Discretionary grant" means a grant made from the Secretary's Fund in accordance with Subpart E.

(i) "Entitlement amount" means the amount of funds which a metropolitan city is entitled to receive under the Entitlement grant program, as determined by formula set forth in section 106 of the Act.

(j) "Extent of growth lag" means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of such metropolitan city or urban county, if such metropolitan city or urban county has a population growth rate between 1970 and the date of the most recent population count available from the United States Bureau of the Census referable to the same point or period in time equal to the population growth rate for such period of all metropolitan cities.

(k) "Extent of housing overcrowding" means the number of housing units with 1.01 or more persons per room based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time.

(l) "Extent of poverty" means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time and the latest reports from the Office of Management and Budget. For purposes of this Part, the Secretary has determined that it is neither feasible nor appropriate to make adjustments at this time in the computations of "extent of poverty" for regional or area variations in income and cost of living.

(m) "HUD" means the Department of Housing and Urban Development.

(n) "Identifiable segment of the total group of lower income persons in the community" means female-headed households, and members of a minority group which includes Black, American Indian/Alaskan Native, Hispanic, Asian/Pacific Islander, and other groups normally identified by race, color or national origin.

(o) "Indian tribe" means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos and any Alaska Native village, of the United States which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).

(q) "Low and moderate income household" or "lower income household" means a household having an income equal to or less than the Section 8 lower income limits as determined by HUD under the provisions of 24 CFR Part 813 for the Section 8 Housing Assistance Payment programs.

(g) "Low and moderate income person" or "lower income person" means a member of a family having an income equal to or less than the Section 8 lower income limit as determined by HUD under the provisions of 24 CFR Part 813 for the Section 8 Housing Assistance Payment programs. Unrelated individuals shall be considered as one person families for this purpose.

(r) "Low income household" means a household having an income equal to or

less than the Section 8 very low income limit as determined by HUD under the provisions of 24 CFR Part 813 for the Section 8 Housing Assistance Payments program.

(s) "Low income person" means a member of family having an income equal to or less than the Section 8 very low income limit as determined by HUD under the provisions of 24 CFR Part 813 for the Section 8 Housing Assistance Payments program. Unrelated individuals shall be considered as one person families for this purpose.

(t) "Metropolitan area" means a metropolitan statistical area, as established by the Office of Management and Budget.

(u) "Metropolitan city" means:

(1) A city, within a metropolitan area, which is a central city of such area as defined by the Office of Management and Budget or

(2) Any other city, within a metropolitan area, which has a population of fifty thousand or more. A unit of general local government eligible to be classified as a metropolitan city for fiscal year 1985 while its population is included in an urban county for such fiscal year may, upon submission of written notification to the Secretary, defer its classification as a metropolitan city for all purposes for fiscal years 1985 and 1986 if such unit of general local government continues to have its population included in such urban county.

(v) "Moderate income household" means a household having an income equal to or less than the Section 8 lower income limit and greater than the Section 8 very low income limit, as determined by HUD under the provisions of 24 CFR Part 813 for the Section 8 Housing Assistance Payments program.

(w) "Moderate income person" means a member of a family having an income equal to or less than the Section 8 lower income limit and greater than the Section 8 very low income limit, as determined by HUD under the provisions of 24 CFR Part 813 for the Section 8 Housing Assistance Payments program. Unrelated individuals shall be considered as one person families for this purpose.

(x) "Nonentitlement amount" means the amount of funds which is allocated for use in a State's nonentitlement areas as determined by formula set forth in section 106 of the Act.

(y) "Nonentitlement area" means an area which is not a metropolitan city and not included as part of an urban county.

(z) "Population" means the total resident population based on data compiled and published by the United States Bureau of the Census available from the latest census or which has been upgraded by the Bureau to reflect the changes resulting from the Boundary and Annexation Survey, new incorporations and consolidations of governments pursuant to § 570.4, and which reflects, where applicable, changes resulting from the Bureau's latest population determination through its estimating technique using natural changes (birth and death) and net migration, and is referable to the same point or period in time.

(aa) "Secretary" means the Secretary of Housing and Urban Development.

(bb) "State" means any State of the United States, or an instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(cc) "Unit of general local government" means any city, county, town, township, parish, village or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands. Such term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), a community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968.

(dd) (1) "Urban county" means any county within a metropolitan area which has qualified for a three-year period, pursuant to § 570.308, and which, at the time of qualification, is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government and either:

(i) Has a combined population of two hundred thousand or more (excluding the population of metropolitan cities and Indian tribes therein) in such unincorporated areas and in its included units of general local government:

(A) In which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded or

(B) With which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing activities, or

(ii) Has population in excess of one hundred thousand, a population density of five thousand persons per square mile, and contains within its boundaries no incorporated places as defined by the United States Bureau of the Census.

(2) Notwithstanding the combined population amount set forth in paragraph (dd)(1)(i) above, a county shall also qualify as an urban county if

(i) Such county complies with all other requirements in paragraph (dd)(1)(i) above;

(ii) Has, according to the most recent available decennial census data, a combined population between 190,000 and 199,999 inclusive;

(iii) Has a growth rate of such combined population of not less than 15 percent during the most recent 10 year period measured by applicable censuses; and

(iv) Has submitted data satisfactorily to the Secretary that it has a current combined population of not less than 200,000.

(ee) "Urban Development Action Grant" (UDAG) means a grant made by the Secretary pursuant to section 119 of the Act and Subpart G of this part.

§ 570.4 Allocation of funds.

(a) The determination of eligibility of units of general local government to receive entitlement grants, the entitlement amounts, the allocation of appropriated funds to States for use of nonentitlement areas, the reallocation of funds, and the allocation of appropriated funds for discretionary grants under the Secretary's Fund shall be governed by the policies and procedures described in sections 106 and 107 of the Act.

(b) The definitions in § 570.3 shall govern in applying the policies and procedures described in sections 106 and 107 of the Act.

(c) In determining eligibility for entitlement and in allocating funds under section 106 of the Act for any Federal Fiscal Year, the Department will recognize corporate status and geographical boundaries and the status of metropolitan areas and central cities effective as of July 1 preceding such Federal Fiscal Year, subject to the following limitations:

(1) With respect to corporate status as certified by the applicable State and available for processing by the Census Bureau as of such date;

(2) With respect to boundary changes or annexations, as accepted for use by the Office of Revenue Sharing (ORS) for the same fiscal year and available for processing by the Census Bureau as of such date, except that any such boundary changes or annexations which result in the population of a unit of general local government reaching or exceeding 50,000 shall be recognized for this purpose whether or not such changes are accepted for use by the ORS; and

(3) With respect to the status of Metropolitan Statistical Areas and central cities, as officially designated by the Office of Management and Budget as of such date.

(d) In determining whether a county qualifies as an urban county, and in computing entitlement amounts for urban counties, the demographic values of population, poverty, housing overcrowding, and age of housing of any Indian tribes located within the county shall be excluded. In allocating amounts to States for use in nonentitlement areas, the demographic values of population, poverty, housing overcrowding and age of housing of all Indian tribes located in all nonentitled areas shall be excluded. It is recognized that all such data on Indian tribes are not generally available from the United States Bureau of the Census and that missing portions of data will have to be estimated. In accomplishing any such estimates the Secretary may use such other related information available from reputable sources as may seem appropriate, regardless of the data's point or period of time and shall use the best judgement possible in adjusting such data to reflect the same point or period of time as the overall data from which the Indian tribes are being deducted, so that such deduction shall not create an imbalance with those overall data.

(e) Amounts remaining after closeout of a grant which are required to be returned to HUD under the provisions of § 570.509, Grant closeouts, shall be considered as funds available for reallocation unless the appropriation under which the funds were provided to the Department has lapsed.

§ 570.5 Waivers.

The Secretary may waive any requirement of this part not required by law whenever it is determined that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purposes of the Act.

2. Subpart C of Part 570 would be revised to read as follows:

Subpart C—Eligible Activities

Sec.

570.200 General policies.
570.201 Basic eligible activities.
570.202 Eligible residential rehabilitation and preservation activities.
570.203 Special economic development activities.
570.204 Special activities by subrecipients.
570.205 Eligible planning and policy-planning-management-capacity building activities.
570.206 Eligible administrative costs.
570.207 Ineligible activities.
570.208 Criteria for national objectives.

Subpart C—Eligible Activities

§ 570.200 General policies.

(a) *Determination of eligibility.* An activity may be assisted in whole or in part with Community Development Block Grant (CDBG) funds only if all of the following requirements are met:

(1) *Compliance with Section 105 of the Act.* Each activity must meet the eligibility of Section 105 of the Act as further defined in this Subpart.

(2) *Compliance with national objectives.* Grant recipients under the Entitlement and HUD-administered Small Cities programs must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the three broad national objectives of benefit to low- and moderate-income families or aid in the prevention or elimination of slums or blight; the projected use of funds may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Consistent with the foregoing, each recipient under the Entitlement and HUD-administered Small Cities programs must ensure, and maintain evidence, that each of its activities assisted in whole or in part with CDBG funds meets one of the three broad national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are contained at § 570.208

(3) *Compliance with the primary objective.* The Act establishes as its primary objective the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this objective, Entitlement and HUD-administered Small Cities grantees must ensure that, over a period of time specified in their certification not to exceed three years, not less than 51% of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under § 570.208(a) for benefiting low and moderate income persons. In determining the percentage of funds expended for such activities:

(i) Cost of administration and planning cited in § 570.205 and § 570.206 will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the CDBG funds and, accordingly shall be excluded from the calculation;

(ii) Funds deducted by HUD for repayment of urban renewal temporary loans pursuant to § 570.802(b) shall be excluded;

(iii) Funds expended for the repayment of loans guaranteed under the provisions of Subpart M shall also be excluded;

(iv) Funds expended for activities that qualify under § 570.208(a) and that involve the acquisition, new construction or rehabilitation of property to provide housing shall be counted for this purpose only to the extent that such housing, on completion, is or will be initially occupied by low and moderate income households; and

(v) Funds expended for any other activities qualifying under § 570.208(a) shall be counted for this purpose in their entirety.

(4) *Compliance with environmental review procedures.* The environmental review and clearance procedures set forth at 24 CFR Part 58 must be completed for each activity (or project as defined in 24 CFR Part 58), as applicable.

(5) *Cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with the requirements of OMB Circulars A–87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments" or A–122, "Cost Principles for Non-profit Organizations," as applicable. All items of cost listed in Attachment B, Section C of those Circulars are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such Circulars and are otherwise eligible under this Subpart. However, preagreement costs are limited to those costs described at § 570.200(h).

(6) *Other requirements.* Each activity must comply with all requirements of this Part as they may apply under Subparts D, E, F, and G.

(b) *Special policies governing facilities.* The following special policies apply to:

(1) *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the CDBG program may be provided with program funds even if it is part of a multiple use building containing ineligible uses, if:

(i) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(ii) The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

(2) *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges, such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities, are not permitted.

(c) *Special assessments under the CDBG program.* The following policies relate to the use of special assessments under the CDBG program:

(1) *Definition of special assessment.* The term "special assessment" means a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public facility improvement, such as streets, water or sewer lines, curbs, and gutters. The amount of the fee represents the pro rata share of the capital costs of the public improvement levied against the benefiting properties or a one-time charge made as a condition of access to the public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, nor does it include periodic charges based on the use of public facilities, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public facility.

(2) *Special assessments to recover capital costs:*

(i) Where CDBG funds are used to pay the entire cost of a public improvement, no special assessments will be allowed.

(ii) Where CDBG funds are used to pay only a portion of a public improvement, special assessments may be used to recover only the non-CDBG portion and only provided that the grant recipient uses CDBG funds to pay the special assessment in behalf of all properties owned and occupied by low and moderate income households; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income households if the grant recipient certifies that it does not have sufficient CDBG resources to pay the assessments in behalf of all of the low and moderate income owner-occupant households. Funds collected through such special assessments are not program income.

(3) *Other uses of CDBG funds for special assessments.* Program funds may be used to pay all or part of special assessments levied against properties owned and occupied by low and moderate income households when such assessments are used to recover the capital cost of public improvements financed solely from sources other than CDBG funds, provided that:

(i) The assessment represents that property's share of the capital cost of the improvement; and

(ii) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this Part other than § 570.200(a)(2).

(d) *Consultant activities.* Consulting services are eligible for assistance under this Part for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

(1) *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with CDBG funds. In no event, however, shall such compensation exceed the maximum daily rate of compensation for a GS–18 as established by Federal law. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation.

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the Procurement Standards of Attachment O of OMB Circular No. A–102 and are not subject to the GS–18 limitation.

(e) *Recipient determinations required as a condition of eligibility.* In several instances under this Subpart, the eligibility of an activity depends on a special local determination. Recipients shall miantain documentation of all such determinations. A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.202(b)(3), 570.203(b), 570.204, and 570.206(f). A written determination is also required for certain relocation costs under § 570.201(i).

(f) *Means of carrying out eligible activities.* (1) Activities eligible under this Subpart, other than those authorized under § 570.204(a), may be undertaken, subject to local law, either:

(i) By the recipient through:

(A) Its employees; or

(B) Procurement contracts governed by the requirements of Attachment O of OMB Circurlar A–102; or

(ii) Through agreements with subrecipients;

(2) Activities made eligible under § 570.204(a) may only be undertaken by subrecipients specified in that section.

(g) *Limitation on planning and administrative costs.* No more than 20 percent of the sum of any grant plus program income shall be expended for planning and administrative costs, as defined in §§ 570.205 and 570.206 respectively, including such costs incurred by subrecipients under § 570.204. Recipients of Entilement grants under Subpart D will be considered to be in conformance with this limitation if expenditures for planning and administration during the most recently completed program year did not exceed 20 percent of the sum of the Entitlement grant made for that program year and the program income received during the program year.

(h) *Reimbursement for pre-agreement costs.* Prior to the effective date of the grant agreement, a recipient may obligate and spend local funds for the purpose of environmental assessments required by 24 CFR Part 58, for the planning and capacity building purposes authorized by § 570.205(b), for engineering and design costs associated with an activity eligible under § 570.201 through § 570.204, for the provisions of information and other resources to residents pursuant to § 570.206(b), and for relocation and/or acquisition activities carried out pursuant to § 570.606. After the effect date of the grant agreement, the recipient may be reimbursed with funds from its grant to cover those costs, provided such locally funded activities were undertaken in compliance with the requirements of this Part and 24 CFR Part 58.

(i) *Urban Development Action Grant.* Grant assistance may be provided with Urban Development Action Grant funds, subject to the provisions of Subpart G, for:

(1) Activities eligible for assistance under this Subpart; and

(2) Notwithstanding the provisions of § 570.207, such other activities as the Secretary may determine to be consistent with the purposes of the Urban Development Action Grant program.

(j) *Constitutional prohibition.* CDBG funds may not be used for the acquisition, construction, reconstruction, rehabilitation, or operation of religious structures used for religious purposes.

(k) *Displacement benefits.* Section 104(j) of the Act requires that benefits be provided to persons displaced by certain CDBG-assisted activities for which the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) does not apply. This provision identifies those activities for which benefits are payable under Section 104(j), the benefits required to be provided, and the circumstances under which persons will be entitled to receive such benefits.

(1) Benefits must be provided for displacement resulting from the CDBG assisted acquisition of property, when it is acquired by any entity not defined as a "State agency" pursuant to Section 101(3) of the Uniform Act, or rehabilitation of property by any entity.

(2) To be eligible to receive benefits under this provision, persons must be occupying the affected property on a tenant basis at the time of or immediately preceding the acquisition or rehabilitation, (or as an owner in the case where the property is acquired by a non-State agency under the power of eminent domain), and must be:

(i) Required to permanently vacate the structure they are occupying on such property, of

(ii) In the case of a residential tenant in a structure being rehabilitated, unable to afford to occupy a unit in the structure following rehabilitation either because the rental cost would not be affordable or because they are required to vacate the structure temporarily but are not reimbursed for all reasonable additional out-of-pocket expenses occasioned by the temporary move.

(3) Benefits required to be provided under this paragraph shall consist of the following:

(i) Payment of reasonable moving expenses;

(ii) Provision of advisory services as needed to help in moving; and

(iii) For a residential tenant, financial and/or advisory assistance sufficient, in the determination of the grantee, to enable the tenant to obtain decent, safe and sanitary housing at an affordable rental cost to the tenant. In providing advisory assistance to displaced persons to obtain such housing, grant recipients shall advise them of their individual rights under the Federal Fair Housing Law (Title VIII), and of replacement housing opportunities in such manner that, wherever feasible, the displaces have a choice between relocating within their own neighborhood and other neighborhoods consistent with the grant recipient's responsibility to affirmatively further fair housing.

(4) For purposes of this paragraph, the term "persons" includes individuals, families, non-profit organizations, businesses and farms.

(5) For purposes of this paragraph, rental cost shall be considered to be affordable if the rent (plus the high cost of utilities when not included in the rental rate) does not exceed the greater of the rent plus utilities paid by the tenant prior to the acquisition or displacement activity or the amount of the total Tenant Payment that would apply to the tenant under 24 CFR 813.107(a).

(l) *Restrictions on change of use.* During any period covered by a grant agreement under this Part, a grantee may not change the use of any property acquired or improved with CDBG assistance from that for which the acquisition or improvement was made, unless:

(1) The grantee provides citizens with reasonable notice of, and opportunity to comment on, any such proposed change; and

(2) The new use of such property meets all applicable requirements of this Part; or

(3) The grantee reimburses the CDBG account in the amount of the CDBG funds expended for such acquisition or improvements, or, in the case where CDBG funds were used to acquire property, the current fair market value of the property, whichever is greater.

§ 570.201 Basic eligible activities.

Grant assistance may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by a public agency or private nonprofit entity, by purchase, lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 570.207(a)

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 570.504.

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in § 570.207(a), carried out by the recipient or other public or private nonprofit entities. In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Nonprofit entities and subrecipients including those specified in § 570.204 may acquire title to public facilities such as senior centers, centers for the handicapped, or neighborhood facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies in § 570.200(b).

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* Provision of public services (including labor, supplies, and materials) which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare, or recreational needs. In order to be eligible for CDBG assistance, public services must meet each of the following criteria:

(1) A public service must be either (i) a new service, or (ii) a quantifiable increase in the level of a service above that which has been provided by or in behalf of the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) in the twelve calendar months prior to the submission of the statement. (An exception to this requirement may be made if HUD determines that the decrease in the level of a service was

the result of events not within the control of the unit of general local government.)

(2) The amount of CDBG funds used for public services, including services provided by subrecipients under § 570.204(c), shall not exceed 15 percent of each grant except as provided in paragraph (e)(3) of this section. For Entitlement grants under Subpart D, compliance is based on the amount of CDBG funds obligated for public service activities in each program year compared to 15% of the Entitlement grant made for that program year.

(3) A recipient which obligated more CDBG funds for public services than 15 percent of its grant funded from Federal Fiscal Year 1983 appropriations, (excluding any assistance received pursuant to Pub. L. 98–8), may obligate more CDBG funds that 15 percent of its grant for public services so long as the amount obligated in any program does not exceed the percentage or amount obligated in Fiscal Year 1983, whichever method of calculation yields the higher amount.

(f) *Interim assistance.* (1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the recipient has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carrried out as soon as practicable:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and

(ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the recipient determines that such an emergency conditions exists and requires immediate resolution, CDBG funds may be used for:

(i) The activities specified in paragraph (f)(1) of this section, except for the repair of parks and playgrounds;

(ii) For the clearance of streets, including snow removal and similar activities, and

(iii) The improvement of private properties.

(3) All activities authorized under paragraph (f)(2) of this section are limited to the extent necessary to alleviate emergency conditions.

(g) *Payment of non-Federal share.* Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of CDBG activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this Subpart.

(h) *Urban renewal completion.* Payment of the cost of completing an urban renewal project funded under Title I of the Housing Act of 1949 as amended. Further information regarding the eligibility of such costs is set forth in § 570.801. (i) *Relocation.* (1) Relocation payments and assistance for displaced persons (individuals, families, businesses, organizations, and farms) where required under the provisions of § 570.606(a) and 570.200(k).

(2) Pursuant to Section 105(a)(11) of the Act, optional relocation payments and assistance for persons (individuals, families, businesses, organizations and farms) displaced by an activity that is not subject to §§ 570.606(a) or 570.200(k). Relocation payments and other assistance may be at levels above those established under §§ 570.606(a) or 570.200(k). Unless such payments and assistance are made pursuant to State or local law, the grantee shall make such payments only upon the basis of a written determination that such payments are appropriate and shall adopt a written policy available to the public setting forth the relocation payments and assistance it elects to provide and providing for equal payments and assistance within each class of displacees.

(j) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be utilized for the relocation of indivduals, and families displaced by program activities assisted under this Part.

(k) *Removal of architectural barriers.* Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities, and improvements. Specifications for accessible environments are provided in the Uniform Federal Accessibility Standard.

(l) *Privately owned utilities.* CDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

(m) *Construction of housing.* CDBG funds may be used for the construction of housing assisted under section 17 of the United States Housing Act of 1937.

§ 570.202 Eligible residential rehabilitation and preservation activities.

(a) *Types of buildings and improvements eligible for rehabilitation assistance.* CDBG funds may be used to finance the rehabilitation of:

(1) Privately owned buildings and improvements for residential purposes; and

(2) Low-income public housing and other publicly owned residential buildings and improvements.

Specific information on historic properties is included in paragraph (d) of this section.

(b) *Types of assistance.* CDBG funds may be used to finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section:

(1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties for use or resale for residential purposes;

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(3) Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds if such financing is necessary or appropriate to achieve the locality's community development objectives;

(4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;

(5) Improvements to increase the efficient use of water through such means as water saving faucets and shower heads and repair of water leaks;

(6) Connection of residential structures to water distribution lines or local sewer collection lines;

(7) For rehabilitation carried out with CDBG funds, costs of:

(i) Initial homeowner warranty premiums;

(ii) Hazard insurance premiums, except where assistance is provided in the form of a grant; and

(iii) Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to § 570.605.

(8) Costs of tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under section 312 of the Housing Act of 1964, as amended, under section 810 of the Act, or under section 17 of the United States Housing Act of 1937; and

(10) Assistance for the rehabilitation of housing under section 17 of the United States Housing Act of 1937.

(c) *Code enforcement.* Code enforcement in deteriorating or deteriorated areas where such enforcement together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.

(d) *Historic preservation.* CDBG funds may be used for the rehabilitation, preservation or restoration of historic properties, whether publicly or privately owned. Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local Inventory of Historic Places, or designated as a State or local landmark or historic district by appropriate law or ordinance. Historic preservation does not include, however, the expansion of properties for ineligible uses, such as buildings for the general conduct of government.

(e) *Renovation of closed school buildings.* CDBG funds may be used to renovate closed school buildings for use as an eligible facility or to rehabilitate such buildings for housing.

§ 570.203 Special economic development activities.

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this Subpart which may be carried out as part of an economic development project. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

(a) The acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the recipient or public or private nonprofit subrecipients.

(b) The provision of assistance to private for profit businesses, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any other activity necessary or appropriate to carry out an economic development, project, excluding those described as ineligible in § 570.207(a). In determining whether the assistance to the for-profit entity is necessary or appropriate to the economic development project, the grantee shall consider the extent of need of the for profit business of such assistance, and the amount of the assistance to be provided in relation to the public benefit that would result.

§ 570.204 Special activities by subrecipients.

(a) *Eligible activities.* The recipient may grant CDBG funds to any of the three types of subrecipients specified in paragraph (c) of this section, to carry out a neighborhood revitalization, community economic development, or energy conservation project. Such a project may include activities listed as eligible under this Subpart, and activities not otherwise listed as eligible under this Subpart, except those described as ineligible in § 570.207(a), when the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.

(b) *Recipient responsibilities.* Recipients under Subparts D, F, or G are responsible for ensuring that CDBG funds are utilized by subrecipients in a manner consistent with the requirements of this part and other applicable Federal, State, or local law. Grantees are also responsible for carrying out the environmental review and clearance responsibilities.

(c) *Eligible subrecipients.* The following are subrecipients authorized to receive grants under this section.

(1) *Neighborhood-based nonprofit organizations.* A neighborhood-based nonprofit organization is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within the neighborhood. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with CDBG funds are to be carried out. A neighborhood is defined as:

(i) A geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(ii) The entire jurisdiction of a unit of general local government which is under 25,000 population; or

(iii) A neighborhood, village, or similar geographical designation in a New Community as defined in § 570.403(a)(1).

(2) *Section 301(d) Small Business Investment Companies.* A Section 301(d) Small Business Investment Company is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making.

(3) *Local Development Corporations.* A local development corporation is:

(i) An entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2961) or the Community Economic Development Act of 1981 (42 U.S.C. 9801 *et seq.*);

(ii) An entity eligible for assistance under section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696);

(iii) Other entities incorporated under State or local law whose membership is representative of the area of operation of the entity (including nonresident owners of businesses in the area) and which are similar in purpose, function, and scope to those specified in paragraph (c)(3) (i) or (ii) of this section; or

(iv) A State development entity eligible for assistnace under Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695).

§ 570.205 Eligible planning and policy-planning-management-capacity building activities.

(a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and implementing actions, including, but not limited to:

(1) Comprehensive plans;

(2) Community development plans;

(3) Functional plans, in areas such as:

(i) Housing, including the development of a Housing Assistance Plan;

(ii) Land use;

(iii) Economic development;

(iv) Open space and recreation;
(v) Energy use and conservation;
(vi) Floodplain and wetlands management in accordance with the requirements of Executive Orders 11988 and 11990;
(vii) Transportation;
(viii) Utilities; and
(ix) Historic preservation.
(4) Other plans and studies such as:
(i) Small area and neighborhood plans;
(ii) Capital improvements programs;
(iii) Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under §§ 570.201–570.204);
(iv) The reasonable costs of general environmental and historic preservation studies. However, costs necessary to comply with 24 CFR Part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this Part, are eligible as part of the cost of such activities under §§ 570.201–570.204 and are therefore not planning costs for the purposes of § 570.200(g).
(v) Strategies and action programs to implement plans, including development of codes, ordinances and regulations necessary to implement such plans; and
(vi) Support of clearinghouse functions, such as those specified in Executive Order 12372.
(b) Policy—planning—management—capacity building activities which will enable the recipient to:
(1) Determine its needs;
(2) Set long-term goals and short-term objectives, including those related to environmental design;
(3) Devise programs and activities to meet these goals and objectives;
(4) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and
(5) Carry out management, coordination and monitoring of activities necessary for effective planning implementation.

§ 570.206 Eligible administative costs.

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities financed in whole or in part with funds provided under this part and, where applicable, housing activities covered in the recipient's Housing Assistance Plan (HAP).

(a) *General management, oversight, and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation, and similar costs associated with management, but excluding activity delivery costs which are eligible as part of the cost of carrying out the activity under § 570.201 through § 570.204. Such costs include, but are not limited to, necessary expenditures for the following:
(1) Salaries, wages, and related costs of the recipient's staff, the staff of local public agencies, or other staff engaged in general management, coordination, monitoring, and evaluation (General management for this purpose, includes those staff whose principal responsiblity it is to manage or supervise other staff, even if such other staff are engaged in functions considered to constitute activity delivery costs.);
(2) Travel costs incurred for official business in carrying out the program;
(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and
(4) Other costs for goods and services required for administration of the program, including such goods and services as rental and maintenance of office space, insurance, utilities, office supplies, and rental or purchase of office equipment.
(b) *Public information.* The provision of information and other resources to residents and citizens organizations participating in the planning, implemenation, or assessment of activities being carried out with CDBG funds.
(c) *Fair housing counseling. Provision of fair housing counseling services and other activities designed to further the fair housing objectives of Title VIII of the Civil Rights Act of 1968 and the housing objective of promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of lower-income persons.*
(d) *Assistance to facilitate performace and payment bonding.* Provision of assistance to facilitate performance and payment bonding necessary for contractors carrying out activities assisted with CDBG funds including payment of bond premiums on behalf of contractors.
(e) *Indirect Costs.* Costs may be charged to the CDBG program under a cost allocation plan prepared in accordance with OMB Circular A–87 or A–122 as applicable.
(f) *Submission or applications for Federal programs.* Preparation of documents required for submission to HUD or States to receive funds under the CDBG and UDAG programs. In addition, CDBG funds may be used to prepare applications for other Federal programs where the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.
(g) *Administrative expenses to facilitate housing.* The construction of new housing or direct financing of new housing or existing housing is not an eligible use of CDBG funds, except as described in § 570.207(b)(3). However, CDBG funds may be used for necessary administrative expenses in planning or obtaining financing for housing units as follows: for Entitlement grantees, assistance authorized by this paragraph is limited to units which are identified in the grantee's HUD approved Housing Assistance Plan; for Small Cities grantees, assistance authorized by the paragraph is limited to facilitating the purchase of occupancy of existing units which are to be occupied by lower income households, or the construction of rental or owner units where at least 20 percent of the units in each project will be occupied at affordable rents/costs by lower income persons. Examples of eligible actions are as follows:
(1) The cost of conducting preliminary surveys and analysis of market needs;
(2) Suite and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and "sketch drawings", but excluding architectural, engineering, and other details ordinarily required for construction purposes, such as structural, electrical, plumbing, and mechanical details;
(3) Reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 housing assistance payments program pursuant to 24 CFR Part 880–883;
(4) Fees associated with processing of applications for mortgage or insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA);
(5) The cost of insuance and administration of mortgatge revenue bonds used to finance the acquisition, rehabilitation or construction of housing, but excluding costs associated with the payment or guarantee of the principal or interest on such bonds; and
(6) Special outreach activities which result in greater landlord participation in

Section 8 existing or similar program for lower income persons.

(h) *Section 17 of the United States Housing Act of 1937.* Reasonable costs equivalent to those described in paragraphs (a), (b), (e), and (f) of this section for overall program development, management, coordination, monitoring, and evaluation, and similar costs associated with management of the Rental Rehabilitation and Housing Development programs authorized under section 17 of the United States Housing Act of 1937, whether or not such activities are otherwise financed in whole or in part with funds provided under this part.

§ 570.207 Ineligible activities.

The general rule is that any activity that is not authorized under the provisions of §§ 570.201–206 of this subpart is ineligible to be carried out with CDBG funds. This section identifies two specific activities that are ineligible and provides guidance thought to be necessary in determining the eligibility of several other activities frequently associated with housing and community development.

(a) The followng activities may not be carried out using CDBG funds:

(1) Buildings or portions thereof, used predominantly for the general conduct of government as defined at § 570.3(d) cannot be assisted with CDBG funds. This does not exclude, however, the removal of architectural barriers under § 570.201(k) and historic preservation under § 570.202(d) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be utilized in the provision of a building or facility for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible.

(2) *General government expenses.* Except as otherwise specifically authorized in this Subpart or under OMB Circular A–87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.

(3) *Political activities.* CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally financed in whole or in part with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(b) The following activities may not be carried out with CDBG funds unless authorized under provisions of § 570.203 or as otherwise specifically noted herein, or when carried out by a subrecipient under the provisions of § 570.204.

(1) *Purchase of equipment.* The purchase of equipment with CDBG funds is generally ineligible.

(i) *Construction equipment.* The purhcase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A–87 or A–122 as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under § 570.201(c).

(ii) *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under § 570.201(c).

(iii) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG funds may be used, however to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A–87 or A–122, as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service pursuant to § 570.201(e).

(2) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities' interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDGB funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under § 570.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for whch CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

(3) *New housing construction.* For the purpose of this paragraph, activities in support of the development of low or moderate income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing preconstruction costs set forth in § 570.206(g), are not considered as activities to subsidize or finance new residential construction. Assistance may not be used for the construction of new permanent residential structures or for any program to subsidize or finance such new construction, except:

(i) As provided under the last resort housing provisions set forth in 24 CFR Part 42;

(ii) As authorized under § 570.201(m); or

(iii) When carried out by a subrecipient pursuant to § 570.204(a).

(4) *Income payments.* The general rule is that assistance shall not be used for income payments for housing or any other purpose. Examples of ineligible income payments include: Payments for income maintenance, housing allowances, down payments, and mortgage subsidies.

§ 570.208 Criteria for national objectives.

The following criteria shall be used to determine whether a CDBG funded activity complies with one or more of the national objectives as required under § 570.200(a)(2):

(a) Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to benefit low and moderate income persons. (The grantee shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low income persons):

(1) An activity other than residential rehabilitation which serves an area generally, which meets the identified needs of low and moderate income residents of such area, and where at least 51% of the residents are low and moderate income persons. Such an area need not be coterminous with census

tract or other officially recognized boundaries, but must be the entire area served by the activity. An activity meeting this requirement need not be located in the service area. Public improvements or direct assistance for business or commercial establishments located in primarily nonresidential area qualify under this criterion where the service area of such establishments is a predominately residential area in which at least 51% of the residents are low and moderate income.

(2) For metropolitan cities and urban counties, an activity that would otherwise qualify under paragraph (a)(1) except that the areas served contains less than 51% low and moderate income residents will also be considered to meet the objective of benefiting low and moderate income persons where the grantee community has no areas within its jurisdiction where low and moderate income persons constitute at least 51%. In such circumstances the activity must serve an area having a larger proportion of low and moderate income persons than not less than 75% of the other areas in the jurisdiction of the grantee community.

(3) Facilities or services which because of their specialized nature do not serve an area generally, but which are used by persons at least 51% of whom are low or moderate income. Such facilities or services designed for and used by senior citizens or the handicapped will be presumed to meet this criterion.

(4) Special economic development activities eligible under § 570.203 which create or retain permanent jobs, at least 51% of which are available or will be available to low and moderate income persons. Jobs are considered to be available to low and moderate income persons based on the nature and extent of the skills, education, and experience required to qualify for the jobs, training opportunities which would make such jobs available to low and moderate income persons who would not otherwise qualify, advertising and recruiting efforts directed toward low and moderate income persons and the accessibility of the jobs to areas where substantial numbers of low and moderate income persons reside.

(5) Rehabilitation of a structure for housing, including owner occupied as well as rental housing, which, upon completion, will be occupied by low and moderate income households. For rental housing, such occupancy must be at affordable rents. If the structure contains two dwelling units at least one of the units must be so occupied, and if the structure contains more than two dwelling units, this criterion requires that at least 51% of the units be so occupied. The grantee shall adopt and make public its criteria for determining "affordable rents" for this purpose. When CDBG funds are used to assist rehabilitation eligible under § 570.202(b)(9) or (10) in direct support of the recipient's Rental Rehabilitation Program authorized under 24 CFR Part 511, such funds shall be considered to benefit low and moderate income persons where not less than 51% of the units assisted, or to be assisted, on a Rental Rehab program-wide basis, are for low and moderate income persons.

(6) An activity involving acquisition of property for housing, including any assistance to support the new construction of housing, where at least 51% of the units will be occupied by low and moderate income households; provided that when the CDBG assistance is used for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly housing project, no less than 20 percent of the units need to be occupied by low and moderate income households, except that in the case of a project where less than 51% of the units will be so occupied, the proportion of total development cost of the project to be borne by CDBG funds may be no greater than the proportion of the total number of units in the project which will be occupied by low and moderate income households.

(7) A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities and improvements.

(8) An activity which does not itself meet any of the criteria above, but which must be carried out prior to or as an integral part of another activity which meets one of those criteria whether or not it is assisted directly with CDBG funds, provided that the total public contribution is not unreasonable in relation to the low and moderate income benefit to be provided.

Activities which aid in the prevention or elimination of slums or blight. Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if:

(i) The area, delineated by the recipient, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;

(ii) There is a substantial number of deteriorated or deteriorating buildings throughout the area;

(iii) Documentation is maintained by the recipient on the boundaries of the area and the conditions which qualified the area at the time of its designation; and

(iv) The assisted activity is designed to address one or more of the conditions which contributed to the deterioration of the area. Rehabilitation carried out in an area meeting the above requirements will be considered to address the area's slum or blight only where each building rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making a building substandard have been eliminated before less critical work on the building is undertaken. At a minimum, the local definition for this purpose must be such that residential buildings that are considered as substandard would also fail to meet the Existing Housing Quality Standards (24 CFR 882.109).

Note.— Despite these restrictions, any rehabilitation activity which benefits low and moderate income persons pursuant to paragraph (a)(5) of this section can be undertaken without regard to the area in which it is located or the extent or nature of rehabilitation assisted.

(2) *Activities to address slums or blight on a spot basis.* Acquisition, demolition, rehabilitation, relocation, and historic preservation activities designed to eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation for other low and moderate income persons is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

(3) *Urban renewal completion.* Activities included in the urban renewal plan most recently approved by HUD under Title I of the Housing Act of 1949, as amended (42 U.S.C. 1450 *et seq.*) which are necessary to complete an urban renewal project will meet this objective.

(c) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, and activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which

recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the certification by the recipient.

(d) *Area benefit activities.* For purposes of determining compliance with the national objectives, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.

(e) *Planning and administrative costs.* Program funds expended for planning and administrative costs under § 570.205 and § 570.206 will be considered to address the national objectives.

3. Subpart D of Part 570 would be revised to read as follows:

Subpart D—Entitlement Grants

Sec.

570.300 General.
570.301 Presubmission requirements.
570.302 Submission requirements.
570.303 Certifications.
570.304 Making of grants.
570.305 Amendments.
570.306 Housing assistance plan.
570.307 Displacement.
570.308 Urban counties.
570.309 Joint requests.

Subpart D—Entitlement Grants

§ 570.300 General.

This subpart describes the policies and procedures governing the making of Community Development Block grants to Entitlement communities. The policies and procedures set forth in Subpart A, C, J, K, and O of this part also apply to Entitlement grantees.

§ 570.301 Presubmission requirements.

Prior to the submission to HUD for its annual grant, the grantee must:

(a) Develop a proposed statement of community development objectives and projected use of funds, including the following items:

(1) The community development objectives the grantee proposes to pursue; and

(2) The community development activities the grantee proposes to carry out with anticipated CDBG funds, including all funds identified in paragraph (b)(1(i) of this section, to address its identified community development objectives. Each such activity must:

(i) Meet the applicable requirements of 24 CFR Part 570 Subpart C; and

(ii) Be described in sufficient detail, including location, to allow citizens to determine the degree to which they may be affected.

(3) A description of the grantee's use of CDBG funds expended since the preparation of the grantee's last annual statement pursuant to this section; and

(4) The grantee's assessment of the relationship of the expenditures described in (a)(3) of this section to:

(i) The community development objectives identified in previous statements applicable to such expenditures;

(ii) The requirements of 24 CFR 570.200(a)(2), by describing the extent to which the grantee's expenditures were for activities which principally benefitted low and moderate income persons, aided in the prevention or elimination of slums or blight or met other community development needs having a particular urgency; and

(iii) The grantee's certification that at least 51 percent of its CDBG funds would, in the aggregate during the period specified by the grantee, be used for activities that benefit low and moderate income persons.

(b) In a manner which provides for the timely citizen examination, appraisal, and comment on its statements, meet the following citizen participation requirements:

(1) Furnish citizens with information concerning:

(i) The amount of CDBG funds expected to be available (including the annual grant, program income, surplus from urban renewal settlement, and proceeds from HUD guaranteed loans) for comunity development and housing activities;

(ii) The range of activities that may be undertaken with those funds pursuant to the criteria in 24 CFR Part 570 Subpart C;

(iii) The estimated amount of those funds proposed to be used for activities that will benefit low and moderate income persons;

(iv) The proposed CDBG activities likely to result in displacement and the grantee's plans (consistent with the grantee's policies developed pursuant to § 570.307) for minimizing such displacement of persons as a result of its proposed activities; and

(v) The types and levels of assistance the grantee plans to make available to persons displaced by CDBG funded activities, even if the grantee expects no displacement to occur.

(2) Hold at least one public hearing to obtain the views of citizens on the grantee's housing and community development needs (grantees may elect to hold additional hearings and to cover other subjects through such public hearings, such as obtaining views on specific community development or housing activities); and

(3) Publish community-wide its proposed statement of community development objectives and projected use of funds so as to afford affected citizens an opportunity to examine the statement's contents, and to provide comments on the proposed statement and on the grantee's community development performance.

(c) Prepare its final statement of community development objectives and projected use of funds. Once the grantee has completed the citizen participation requirements in paragraph (b) of this section, the grantee must consider any such comments and views received and if the grantee deems appropriate modify the proposed statement. The grantee shall make the final statement available to the public. The final statement may include activities which do not either benefit low and moderate income persons or prevent or eliminate slums and blight only if the grantee identifies such activities in the final statement and certifies that such activities are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available.

(d) Submit and receive approval of its Housing Assistance Plan in accordance with § 570.306.

(Approved by the Office of Management and Budget under Control No. 2506–0077)

§ 570.302 Submission requirements.

(a) *Content.* In order to receive its annual CDBG Entitlement grant, a grantee must submit the following:

(1) Standard Form 424;

(2) A copy of the grantee's final statement of community development objective and projected use of funds, covering the same items as listed in § 570.301(a); and

(3) Certifications satifactory to the Secretary covering all of the items listed in § 570.303.

(b) *Timing of submissions.* (1) In order to facilitate continuity in its program, the grantee should submit its final statement to HUD at least 30 days prior to the start of its community development program year, but in no event will HUD accept a submission for a grant earlier than December 1 or later than the first working day in September of the Federal Fiscal Year for which the grant funds are appropriated.

(2) A program year shall run for a twelve month period. A grantee may, however, either shorten or lengthen its

program year, provided HUD receives written notice of a lengthened program year at least two months prior to the date the program year would have ended if it had not been lengthened, or HUD receives notice of a shortened program year at least two months prior to the end of the shortened program year.

(Approved by the Office of Management and Budget under Control No. 2506–0077)

§ 570.303 Certification.

The grantee shall submit certifications that:

(a) It possesses legal authority to make a grant submission and to execute a community development and housing program;

(b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the grantee to submit the final statement and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the grantee to act in connection with the submission of the final statement and to provide such additional information as may be required.

(c) Prior to submission of its final statement to HUD, the grantee has:

(1) Met the citizen participation requirements of § 570.301(b);

(2) Prepared its final statement of community development objectives and projected use of funds in accordance with § 570.301(c) and made the final statement available to the public;

(d) The grantee will affirmatively further fair housing, and the grant will be conducted and administered in compliance with:

(1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000d *et seq.*); and,

(2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90–284; 42 U.S.C. 3601 *et seq.*).

(e) It has developed its final statement of projected use of funds so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. [The final statement of projected use of funds may also include activities which the grantee certifies pursuant to § 570.301(c) are designed to meet other community development needs having a particular urgency.]

(f) In the aggregate, at least 51 percent of all CDBG grant funds, as defined at § 570.3(e), to be expended during the one, two or three consecutive program years specified by the grantee will be for activities which benefit low and moderate income persons, as described in criteria at 24 CFR 570.208(a).

(g) It has developed a community development plan, which at a minimum, covers the same one, two or three program years pursuant to paragraph (f) of this section. At a minimum the community development plan must:

(1) Identify the grantee's community development needs and housing needs; and

(2) Specify both short- and long-term community development objectives, consistent with the grantee's final statement, that have been developed in accordance with the primary objective of the Act and the requirements of this Part.

(h) It will comply with the requirements of 24 CFR 570.200(c)2) with regard to the use of special assessments to recover the capital costs of activities assisted in whole or in part with CDBG funds.

(i) (Where applicable, the grantee may also include the following additional certification.) It lacks sufficient resources from funds provided under this subpart or program income to allow it to comply with the provisions of § 570.200(c)(2), and it must therefore assess properties owned and occupied by moderate income persons, to recover the non-CDBG funded portion without paying such assessments in their behalf from CDBG funds.

(j) It is following a current housing assistance plan which has been approved by HUD pursuant to § 570.306.

(k) It will comply with the other provisions of the Act and with other applicable laws.

§ 570.304 Making of grants.

(a) *Acceptance of final statement and certifications.* The final statement and certifications will be accepted by the responsible HUD Field Office unless it is determined that one or more of the following requirements have not been met.

(1) *Completeness.* The submission shall include all of the components required in § 570.302(a).

(2) *Timeliness.* The submission must be received within the time period established in § 570.302(b)(1).

(3) *Certifications.* The certifications made by the grantee will be deemed satisfactory to the Secretary if made in conformance with § 570.303, unless the Secretary has determined pursuant to 24 CFR 570 Subpart O that the grantee has not complied with the requirements of this Part, or determined that there is evidence, not directly involving the grantee's past performance under this program, which tends to challenge in a substantial manner the grantee's certification, of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

(b) *Grant agreement.* The grant will be made by means of a grant agreement executed by both HUD and the grantee.

(c) *Grant amount.* The Secretary will make a grant in the full Entitlement amount, generally within the last 30 days of the grantee's current program year unless:

(1) The final statement of certifications are not received by the first working day in September or are not acceptable under paragraphs (a) (1) and (3) of this section in which case the grantee will forfeit the entire entitlement amount; or

(2) The grantee's performance does not meet the performance requirements or criteria prescribed in Subpart O and the grant amount is reduced.

(d) *Conditional grant.* The Secretary may make a conditional grant in which case the obligation and utilization of grant funds for activities may be restricted. Conditional grants may be made where there is substantial evidence that there has been, or there will be, a failure to meet the performance requirements or criteria described in Subpart O. In such case, the conditional grant will be made by means of a grant agreement, executed by HUD, which includes the terms of the condition specifying the reason for the conditional grant, the actions necessary to remove the condition and the deadline for taking those actions. The grantee shall execute and return such and agreement to HUD within 60 days of the date of its transmittal. Failure of the grantee to execute and return the grant agreement wtihin 60 days may be deemed by HUD to constitute rejection of the grant by the grantee and shall be cause for HUD to determine that the funds provided in the grant agreement are available for reallocation in accordance with section 106(c) of the Act. Failure to satisfy the condition may result in a reduction in the Entitlement amount pursuant to Subpart O.

§ 570.305 Amendments.

Prior to amending the amount projected in the final statement to be expended for an activity by more than 25 percent, plus or minus; changing the location of an activity from that described in the final statement; or carrying out an activity; not described in

the final statement, the grantee must first provide citizens with reasonable notice and an opportunity to comment on such proposed changes in its use of funds. The grantee shall consider any such comments and if the grantee deems appropriate, modify the changes. The grantee shall make available to the public and shall submit to HUD a description of any changes adopted, Standard Form 424 and certifications satisfactory to the Secretary covering § 570.303(d) (1) and (2), (e), (h), (i), (j) and (k). With respect to grants made prior to Fiscal Year 1982, the term "statement" shall be read to mean "application."

§ 570.306 Housing assistance plan.

(a) *Purpose.* In its housing assistance plan (HAP), each metropolitan city and urban county surveys its housing conditions, assesses the housing assistance needs of its low and moderate income (lower income) households, specifies goals for the number of dwelling units and lower income households to be assisted, and indicates the general locations of proposed assisted housing for lower inome persons.

(b) *Use.* A grantee's HAP is a basis upon which HUD approves or disapproves assisted housing in the grantee's jurisdiction and against which HUD monitors a grantee's provision of assisted housing.

(c) *Grantee's responsibility.* Each grantee is responsible for implementing its HAP expeditiously. This includes the timely achievement of goals for assisted housing. Each grantee is expected to use all available resources and, when needed, to take all actions within its control to implement the approved HAP. Performance under the HAP is one of the factors considered in grantee performance reviews conducted as provided in Subpart O of this Part. Subpart O also provides further requirements relating to the responsibility of the grantee in implementing its HAP.

(d) *General.* (1) The HAP consists of the five components described in paragraph (e) of this section. The HAP shall be submitted to HUD by and authorized representative of the grantee.

(2) Each city or county which expects to receive an Entitlement grant shall submit a HAP between September 1 and October 31 prior to its submission of the final statement requierd by § 570.302 of this Part. The HAP will be considered in effect from October 1 through September 30 for purposes of crediting performance against the goals established regardless of the specific date that HUD approves the HAP. A grantee which has a three year goal which will be in effect for the fiscal year in which the final statement is to be submitted need only submit and annual goal and may incorporate by reference (to the extent that there have been no significant changes) the other required portions of the HAP.

Any new entitlement community which was not made aware of its entitlement status by August 31 shall be considered unable to comply with the October 31 deadline and may submit an interim HAP in accordance with the requirements of paragraph (e)(6) of this section in lieu of the requirements of paragraphs (e)(1) through (e)(5).

(e) *Housing conditions, needs, goals, and locations*—(1) *Conditions.* The grantee shall describe the condition of the current housing stock in the community by providing a statistical profile (including an identification of data sources and data time frames) by tenure type (renter and owner), which describes housing conditions by the number of occupied, vacant and abandoned dwelling units in standard and substandard condition. The grantee shall develop its own definition of substandard housing which, at a minimum, shall include units which do not meet the Section 8 Existing Housing Quality Standards (24 CFR 882.109) and shall include such definition in its submission. In addition, the grantee shall identify the number of its occupied, vacant and abandoned substandard housing units which it considers to be suitable for rehabilitation, and include its definition of suitable for rehabilitation in the HAP submission.

(2) *Needs.* (i) The grantee shall assess the housing assistance needs of lower income households currently residing in the community by tenure and, for households requiring rental subsidies, by household type (elderly, small family and non-elderly individuals, and large family), including households expected to be involuntarily displaced by public and private action over the three year period of the HAP. The grantee shall also assess the housing assistance needs of lower income households that could reasonably be expected to reside in the community. Such households are those that could be expected to reside in the community as a result of existing and projected employment opportunities or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary, and the estimate shall consider changes in population known to have occurred since the last Census. For elderly households, the estimate of those that are expected to reside in the community must be based on the number known to be seeking assisted housing in the community or using the community's health services. In no case shall the estimate of all households expected to reside be less than zero.

(ii) A narrative statement accompanying the needs shall indicate the composition of the needs of lower income persons including separate numerical estimates, by tenure and household type, for households to be involuntarily displaced, households expected to reside, and total minority households. This narrative statement shall also include the source and data of the data used in developing the needs assessment. In addition, the narrative shall include a description which summarizes any special housing conditions and/or any special housing needs of particular groups of lower income households in the community. Such description shall include but need not be limited to, discussion of the special housing needs and/or conditions of individual minority groups, impact of conversion of rental housing to condominium or cooperative ownership, handicapped persons, and single heads of household. All handicapped single person households (elderly and nonelderly) as well as two person households which include one elderly person and one handicapped person, must be included in the elderly category, but separately identified in the narrative. All other nonelderly handicapped persons must be included with small or large family households, according to the size of their households.

(3) *Three year goal.* (i) The grantee shall specify a realistic three year goal by tenure type for goals which are designed to improve the condition of the housing stock, and also by household type for the number of households to be assisted with rental subsidies. The three year goal must include all assisted housing resources which can be expected to be available to the grantee. In addition, the grantee shall identify the maximum number of HUD assisted rental units it will accept during that three year period of each housing type (for example, new, rehabilitation, existing) in an amount at least equal to the total number of HUD assisted rental goals by household type.

(11) Goals relating to improving the condition of the housing stock should be based on an evaluation of the data presented in the housing conditions portion of the HAP as well as other current data available to the grantee.

(iii) The goals relating to households to be assisted with rental subsidies must be proportional to need by household type, except that HUD may approve or

require a different proportion in cases of:

(A) Disproportionate provision of assisted housing under a previous HAP;

(B) Significant displacement of a particular household type;

(C) Adjustments for projects of feasible size;

(D) Natural disasters; or

(E) Meeting the requirements of 105 (f) and (h) of the Housing Act of 1949, as amended (42 U.S.C. 1450 *et seq.*).

(iv) The majority of goals for the rehabilitation of dwelling units must assist lower income households. For this purpose, publicly assisted rehabilitation of a dwelling unit shall be deemed to assist a lower income household when the dwelling unit, after rehabilitation, is *owned and occupied by,* or if rented, is occupied at affordable rents by, a lower income household.

(v) Each grantee shall include a narrative describing those *specific* actions which the grantee will take to address any special housing conditions or needs identified in § 570.306(e)(2)(ii) above as well as any actions determined necessary to ensure the timely achievement of its three year goals (including a discussion of any expected or known impediments and planned remedies).

(4) *Annual goal.* (i) The grantee shall specify an annual goal which must include all assisted housing resources which can be expected to be available to the grantee; be established considering feasible project size; and constitute reasonable progress towards meeting the three year goal. In addition, the grantee shall indicate its preference for the distribution of HUD's assisted rental housing by housing type, (for example, new, rehabilitation, existing).

(ii) In its annual goal, the grantee shall also describe the *specific* actions (including any new problems encountered and planned remedies) it will take during the year to meet its annual goal and, as appropriate, its three year goal. The grantee must also include a description of the provisions that it will make to assure that a majority of dwelling units to receive rehabilitations subsidy will assist lower income households.

(5) *General locations.* (i) A grantee having goals for new construction or substantial rehabilitation shall identify general locations of proposed projects with the objective of furthering community revitalization, promoting housing opportunity, enabling persons that are to be involuntarily displaced to remain in their neighborhoods, avoiding undue concentrations of assisted housing in areas containing high proportions of lower income persons, and assuring the availability of public facilities and services.

(ii) The grantee may, at its option, designate any of the general locations identified pursuant to paragraph (e)(5)(i) above as *High Priority* areas. (Under provisions of HUD's assisted housing ranking procedures, a higher rating can be obtained under the ranking criteria with respect to responsiveness of proposed projects to preferences and priorities of applicable HAPs.)

(iii) Each general location identified under paragraph (e)(5)(i) above must contain at least one site which conforms to the Departmental regulations and policies relating to the site and neighborhood standards established for the appropriate HUD assisted housing program. The HAP must identify at least one such site for each location specified.

(iv) Identification of the general locations must be accomplished by attaching a map to the HAP except that the HUD Field Office may accept a listing where it determines that the development of a map would present a hardship for the grantee.

(6) *Interim HAP.* A newly entitled grantee which has not been notified by HUD in sufficient time to meet the October 31 HAP submittal deadline (see § 570.306(d)(3)) shall submit an interim HAP at least 45 days prior to the submission of its final statement. Such submission shall include a narrative description of the condition of the housing stock; a narrative assessment of the housing assistance needs of lower income households; a realistic annual goal indicating the number of dwelling units by housing type, and lower income households by household type, to be assisted during the balance of the fiscal year; and a listing of general locations of proposed new construction and substantially rehabilitated housing for lower income persons. This HAP submission will be effective through September 30 of the year in which it is submitted.

(f) *Amendments to the HAP.* The grantee shall notify HUD within 45 days of any changes it makes to its HAP.

(g) *HUD review of HAPs, Interim HAPs, and Amendments.* HUD will review these HAP submissions to assure that the requirements of this regulation have been met, and will approve them unless the grantee's stated conditions and needs are plainly inconsistent with significant facts or data generally available; the grantee's proposed goals and activities are plainly inappropriate to meeting those conditions or needs; or the HAP fails to comply with other provisions of these regulations. Within 30 days of the date that the submission is received, HUD will notify the grantee in writing that the submission has been approved, disapproved, or that a final decision is still pending (in which case HUD may take no more than 30 additional days to decide whether to approve or disapprove the submission). In the event that HUD has not notified the grantee in writing within 30 days of receipt, the submission shall be considered fully approved.

(Approved by the Office of Management and Budget under Control No. 2506–0063)

§ 570.307 Displacement.

(a) The grantee shall develop, adopt, and make public a statement of local policy indicating:

(1) The benefits the grantee will provide, including those benefits required under 24 CFR 570.606(a) and 24 CFR 570.200(k) and any additional benefits that the grantee elects to provide under 24 CFR 570.201(i)(2) to persons displaced as a result of CDBG assisted activities; and

(2) Where one or more CDBG activities are expected to result in displacement, the steps that will be taken, consistent with other goals and objectives of the CDBG program, to minimize displacement of persons from their homes and neighborhoods and to mitigate the adverse effects of any such displacement on low and moderate income persons.

(b) These actions, together with implementation of local policy, will demonstrate compliance with the general policy on displacement described in 24 CFR 570.612(b).

§ 570.308 Urban counties.

(a) *Determination of qualification.* The Secretary will determine the qualifications of counties to receive entitlements as urban countries upon receipt of qualification documentation from countries at such time, and in such manner and form as prescribed by HUD. The Secretary shall determine eligibility and applicable portions of each eligible county for purposes of fund allocation under section 106 of the Act on the basis of information available from the U.S. Bureau of the Census with respect to population and other pertinent demographic characteristics, and based on information provided by the county and its included units of general local government.

(b) *Qualification as an urban county.* (1) A county will qualify as an urban county if such county meets the definition at § 570.3(dd). As necessitated by this definition, the Secretary shall determine which counties have authority to carry out essential community development and housing

assistance activities in their included units of general local government without the consent of the local governing body and which counties must execute cooperation agreements with such units to include them in the urban county for qualification and grant calculation purposes.

(2) At the time of urban county qualification, HUD may refuse to recognize the cooperation agreement of a unit of general local government in an urban county where, based on past performance and other available information, there is substantial evidence that such unit does not cooperate in the implementation of the essential community development or housing assistance activities or where legal impediments to such implementation exist, or where participation by a unit of general local government in noncompliance with the applicable law in 24 CFR Part 570 Subpart K would constitute noncompliance by the urban county. In such a case, the unit of general local government will not be permitted to participate in the urban county, and its population or other needs characteristics will not be considered in the determination of whether the county qualifies as an urban county or in determining the amount of funds to which the urban county may be entitled.

(c) *Essential activities.* For purposes of this section, the term "essential community development and housing assistance activities" means community renewal and lower income housing activities, specifically urban renewal and publicly assisted housing. In determining whether a county has the required powers, the Secretary will consider both its authority and, where applicable, the authority of its designated agency or agencies.

(d) *Period of qualification.* (1) The qualification by HUD of an urban county shall remain effective for three successive federal fiscal years regardless of changes in its population during that period, except as provided under paragraph (f) of this section.

(2) During the period of qualification, no included unit of general local government may withdraw from nor be removed from the urban county for HUD's grant computation purposes, and no unit of general local government covering additional area may be added to the urban county, except where a unit of general local government loses it designation of metropolitan city.

(3) If some portion of an urban county's unincorporated area becomes incorporated during the three year urban county qualification period, the newly incorporated unit of general local government shall not be excluded from the urban county nor shall it be eligible for a separate grant under Subpart D, F, or I of this part until the end of the urban county's current three year qualification period, unless the urban county fails to receive a grant for any year during that qualification period.

(e) *Grant ineligibility of included units of general local government.* (1) An included unit of general local government cannnot become eligible for an Entitlement grant as a metropolitan city during the period of qualification of the urban county (even if it becomes a central city of the metropolitan area or its population surpasses 50,000 during that period). Rather, such a unit of general local government shall continue to be included as an integral part of the urban county for the remainder of the urban county's qualification period, and no separate grant amount shall be calculated for the included unit.

(2) An included unit of general local government which is part of an urban county shall be ineligible to apply for grants under Subpart F, or to be a recipient of assistance under Subpart I, during the entire period of urban county qualification.

(f) *Failure of an urban county to receive a grant.* Failure of an urban county to receive a grant during any year shall terminate the existing qualifications of that urban county, and that county shall requalify as an urban county before receiving an Entitlement grant in any successive Federal fiscal year. Such termination shall release units of general local government included in the urban county, in subsequent years, from the prohibition to receive grants under paragraphs (d)(3), (e)(1) and (e)(2) of this section. For this purpose an urban county shall be deemed to have received a grant upon having satisfied the requirements of sections 104(a), (b) and (c) or the Act, without regard to adjustments which may be made to this grant amount under sections 104(d) of 111 of the Act.

(g) *Notifications of the opportunity to be excluded.* Any county seeking to qualify for an Entitlement grant as an urban county for any Federal fiscal year shall notify each unit of general local government which is located, in whole or in part, within the county and which would otherwise be included in the urban county, but which is eligible to elect to have its population excluded from that of the urban county, that it has the opportunity to make such an election, and that such an election, or the failure to make such an election, shall be effective for the three year period for which the county qualifies as an urban county. These notifications shall be made by a date specified by HUD. A unit of general local government which elects to be excluded from participation as a part of the county shall notify the county and HUD in writing by a date specified by HUD.

§ 570.309 Joint requests.

(a) *Joint requests and cooperation agreements.* (1) Any urban county and any metropolitan city located, in whole or in part, within that county may submit a joint request to HUD to approve the inclusion of the metropolitan city as a part of the urban county for purposes of planning and implementing a joint community development and housing program. Such a joint request shall only be considered if submitted at the time the county is seeking its three year qualification or requalification as an urban county. Such a joint request shall, upon approval by HUD, remain effective for the period for which the county is qualified as an urban county. An urban county may be joined by more than one metropolitan city, but a metropolitan city located in more than one urban county may only be included in one urban county for any program year. A joint request shall be deemed approved by HUD unless HUD notifies the city and the county of its disapproval and the reasons therefore within 30 days of receipt of the request by HUD.

(2) Each metropolitan city and urban county submitting a joint request shall submit an executed cooperation agreement to undertake or to assist in the undertaking of essential community development and housing assistance activities, as defined in § 570.308(c).

(b) *Joint grant amount.* The grant amount for a joint recipient shall be the sum of the amounts authorized for the individual Entitlement grantees, as described in section 106 of the Act. The urban county shall be the grant recipient.

(c) *Effect of inclusion.* Upon urban county qualification and HUD approval of the joint request and cooperation agreement, the metropolitan city shall be considered a part of the urban county for purposes of program planning and implementation for the period of the urban county qualification, and shall be treated the same as any other unit of general local government which is a part of the county.

(d) *Submission requirements.* In requesting a grant under this Part, the urban county shall make a single submission which meets the submission requirements of this Subpart D and covering all members of the joint recipient.

4. Subpart J of Part 570 would be revised to read as follows:

Subpart J—Grant Administration

Sec.
570.500 Definitions.
570.501 Responsibility for grant administration.
570.502 Applicability of OMB Circulars.
570.503 Agreements with subrecipients.
570.504 Program income.
570.505 Disposition of real property.
570.506 Records to be maintained.
570.507 Reports.
570.508 Public access to program records.
570.509 Grant closeout procedures.
570.510 Transferring projects from urban counties to metropolitan cities.
570.511 Reserved.
570.512 Reserved.
570.513 Lump sum drawdowns for financing of property rehabilitation activities.

Subpart J—Grant Administration

§ 570.500 Definitions.

For the purposes of this Subpart, the following terms shall apply:

(a) "Program income" means amounts received by the recipient or a subrecipient generated from the use of CDBG funds.

(1) Program income includes, but is not limited to the following:

(i) Proceeds from the disposition by sale or long term lease of real property purchased with CDBG funds;

(ii) Income from the temporary use or leasing of properties acquired with CDBG funds pending the disposition or use for which the property was acquired;

(iii) Payments of principal and interest on loans made using CDBG funds;

(iv) Interest earned on funds held in a revolving fund account; and

(v) Interest earned on program income pending disposition of such income.

(2) Program income does not include interest earned (except for interest described in § 570.513) on cash advances from the U.S. Treasury. Such interest shall be remitted to HUD for transmittal to the U.S. Treasury and will not be reallocated under § 570.4.

(b) "Revolving fund" means a separate fund (with a set of accounts that are independent of other program accounts) established for the purposes of carrying out specific activities which, in turn, generate payments to the fund for reuse in carrying out such activities.

(c) "Subrecipient" means a public or private nonprofit agency, authority or organization, or an entity described in § 570.204(c), receiving CDBG funds from the recipient to undertake activities eligible for such assistance under Subpart C. The term does not include contractors providing supplies, equipment, construction or services subject to the procurement requirements in Attachment O of OMB Circular A–102 or A–110, as applicable.

§ 570.501 Responsibility for grant administration.

The recipient is responsible for ensuring the administration of CDBG funds in accordance with all program requirements. The use of subrecipients of contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts and for taking appropriate action when performance problems arise, such as those actions described in § 570.910. Where a unit of general local government is participating with or as part of an urban county or as part of a metropolitan city, the recipient is responsible for applying to such unit the same requirements as are applicable to subrecipients.

§ 570.502 Applicability of OMB Circulars.

(a) Recipients, and subrecipients which are governmental entities (including public agencies), shall comply with the requirements and standards of OMB Circular A–87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments" and with the following Attachments to OMB Circular No. A–102:

(1) Attachment A, "Cash Depositories", except for Paragraph 4 concerning deposit insurance;

(2) Attachment B, "Bonding and Insurance";

(3) Attachment C, "Retention and Custodial Requirements for Records";

(4) Attachment G, "Standards for Grantee Financial Management Systems";

(5) Attachment I, "Monitoring and Reporting Program Performance", Paragraph 2;

(6) Attachment J, "Grant Payment Requirements";

(7) Attachment N, "Property Management Standards", except for Paragraph 3 concerning the standards for real property;

(8) Attachment O, "Procurement Standards"; and

(9) Attachment P, "Audit Requirements".

In addition, recipients receiving grant funds under the Letter of Credit—*Treasury Financial Communications System* shall comply with the requirements of Paragraph 3.b. in Attachment H, "Financial Reporting Requirements," concerning the submission of a report of federal cash transactions.

(b) Subrecipients, except subrecipients which are governmental entities, shall comply with the requirements and standards of OMB Circular No. A–122, "Cost Principles for NonProfit Organizations" and the following Attachments to OMB Circular No. A–110:

(1) Attachment A, "Cash Depositories", except for Paragraph 4 concerning deposit insurance;

(2) Attachment B, "Bonding and Insurance";

(3) Attachment C, "Retention and Custodial Requirements for Records";

(4) Attachment F, "Standards for Financial Management Systems";

(5) Attachment H, "Monitoring and Reporting Program Performance," Paragraph 2;

(6) Attachment N, "Property Management Standards," except for Paragraph 3 concerning the standards for real property; and

(7) Attachment O, "Procurement Standards".

§ 570.503 Agreements with subrecipients.

(a) Prior to disbursing any CDBG funds to a subrecipient, the recipient shall sign a written agreement with such subrecipient.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

(1) *Statement of work and budget.* The agreement shall describe each task to be undertaken by the subrecipient, including a schedule for completing each task. It shall also include a budget indicating the amount of CDBG funds allocated to the subrecipient for each task described in the statement of work. The statement of work and budget shall be in sufficient detail to provide a sound basis for the recipient to effectively monitor performance under the agreement.

(2) *Records and reports.* The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements, as described in §§ 570.506 and 570.507.

(3) *Program income.* The agreement shall include the program income requirements set forth in § 570.504(c).

(4) *OMB circulars.* The agreement shall require the subrecipient to comply with applicable OMB circulars, as described in § 570.502.

(5) *Other program requirements.* The agreement shall subrecipient to carry out each activity in compliance with all Federal laws and regulations described in Subpart K of these regulations, except that:

(i) The subrecipient does not assume the recipient's environmental responsibilities described at § 570.604;

(ii) Only a subrecipient that is a "State agency" is required to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as described at § 570.606; and

(iii) The subrecipient does not assume the recipient's responsibility for initiating the review process under Executive Order 12372, as described at § 570.613.

(6) *Suspension and termination.* The agreement shall specify that suspension or termination may occur in the event of default, inability, or failure to perform on the part of the subrecipient, or when the recipient and subrecipient agree to terminate the agreement in whole or in part.

(7) *Reversion of assets.* The agreement shall specify that upon its termination the subrecipient shall transfer to the recipient any CDBG funds on hand at the time of termination and any accounts receivable attributable to the use of CDBG funds. It shall also specify that if the subrecipient ceases to use any asset acquired with CDBG funds for the the purpose described in the agreement, the subrecipient shall either pay to the recipient the fair market value of the asset or transfer control of the asset to the recipient.

§ 570.504 Program income.

(a) *Recording program income.* The receipt and expenditure of program income as defined in § 570.500(a) shall be recorded as part of the financial transactions of the grant program.

(b) *Disposition of program received by recipients.* (1) Program income received prior to grant closeout may be retained by the recipient if such income is treated as additional CDBG funds subject to all applicable requirements governing the use of CDBG funds.

(2) If the recipient chooses to retain program income, such income shall affect withdrawals of grant funds from the U.S. Treasury as follows:

(i) Program income in the form of repayments to, or interest earned on, a revolving fund as defined in § 570.500(b), shall be substantially disbursed from such fund before additional cash withdrawals are made from the U.S. Treasury for the same activity. This rule does not prevent a lump sum disbursement to finance the rehabilitation of privately owned properties as provided for in § 570.513.

(ii) All other program income shall be substantially disbursed for eligible activities before additional cash withdrawals are made from the U.S. Treasury.

(3) Program income on hand at the time of closeout shall continue to be subject to the eligibility requirements in Subpart C and all other applicable provisions of this Part until such program income is expended.

(4) Income received subsequent to closeout shall be treated by HUD as miscellaneous revenue of the recipient and is not program income subject to the provisions of this Part: Except that, if at the time of closeout the recipient has another ongoing CDBG grant, funds received subsequent to closeout shall be treated as program income of the ongoing grant program.

(c) *Disposition of program income received by subrecipients.* The written agreement between the recipient and the subrecipient, as required by § 570.503, shall specify whether program income received is to be returned to the recipient or retained by the subrecipient. Where program income is to be retained by the subrecipient, the agreement shall specify the activities that will be undertaken with the program income and that all provisions of the written agreement shall apply to such activities. When the subrecipient retains program income, transfers of grant funds by the recipient to the subrecipient shall be adjusted according to the principles described in paragraphs (b)(2) (i) and (ii) of this section.

(d) *Disposition of certain program income received by urban counties.* Program income derived from activities carried out by an urban county within the jurisdiction of a unit of general local government that has since become a nonparticipant in the county's program shall be treated as program income for use in the urban county's program; that urban county may elect to permit the unit of general local government, upon its termination of urban county participation, to retain the program income for use in its own CDBG program.

§ 570.505 Disposition of real property.

The disposition of real property acquired in whole or in part with CDBG funds shall be at no less then its current appraised fair market value (or for a lease, at the current market value), except that such property may be disposed of for a lesser value, including by donation, if the disposition at the lesser value is for a use which qualifies under one of the criteria set forth in § 570.208 for meeting the national objectives and is permissible under State and local law. Where the disposition is for a lesser value, the recipient shall maintain documentation that the use meets one of the national objectives pursuant to § 570.208

§ 570.506 Records to be maintained.

Each recipient administering grants under this Subpart shall establish and maintain such records as may be necessary to facilitate review and audit by the Secretary of the recipient's CDBG grants. Records maintained by the recipient shall be sufficient to enable the Secretary to determine whether the recipient has carried out eligible activities meeting the national objectives and has otherwise met the requirements of this part.

§ 570.507 Reports.

(a) *Performance and evaluation report*—(1) *Content.* Each performance and evaluation report must contain completed copies of all forms and narratives prescribed by the Secretary, including a summary of the citizen comments received on the report, as prescribed in (a)(3) of this section.

(2) *Timing*—(i) *Entitlement grants.* Each Entitlement grant recipient shall submit a performance and evaluation report:

(A) No later than 75 days after the completion of the most recent program year showing the status of all activities as of the end of the program year;

(B) No later than November 30 each year showing housing assistance performance as of the end of the Federal fiscal year; and

(C) No later than 90 days after the criteria for grant closeout, as described in § 570.509(a) have been met.

(ii) *HUD-administered small cities grants.* Each Small Cities recipient shall submit a performance and evaluation report on each grant:

(A) No later than 12 months after the date of the grant award and annually thereafter on the date of the award until completion of the activities funded under the grant; and

(B) No later than 90 days after the criteria for grant closeout, as described in § 570.509(a) have been met.

(3) *Citizen comments on the report.* Each recipient shall make copies of the performance and evaluation report available to its citizens in sufficient time to permit the citizens to comment on the report prior to its submission to HUD. Each recipient may determine the specific manner and times the report will be made available to citizens consistent with the preceding sentence.

(b) *Equal employment opportunity reports.* Recipients of Entitlement grants or HUD-administered Small Cities grants shall submit to HUD each year a report (HUD/EEO–4) on recipient employment containing data as of June 30.

(c) *Minority business enterprise reports.* Recipients of Entitlement grants, HUD-administered Small Cities grants or Urban Development Action Grants shall submit to HUD, within 10 days after the end of each calendar quarter, a report on contracts and subcontract activity during the quarter.

(d) *Other reports.* Recipients may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities under the Act or other applicable laws.

(Approved by the Office of Management and Budget under control Nos. 2406–0062 for paragraph (a)(3), 2529–0008 for paragraph (b), and 2506–0066 for paragraph (c))

§ 570.508 Public access to program records.

Recipients shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding personal privacy and obligations of confidentiality.

§ 570.509 Grant closeout procedures.

(a) *Criteria for closeout.* A grant will be closed out when HUD determines, in consultation with the recipient, that the following criteria have been met:

(1) All costs to be paid with CDBG funds have been incurred, with the exception of closeout costs (e.g., audit costs) and costs resulting from contingent liabilities described in the closeout agreement pursuant to paragraph (c) of this section. Costs are incurred when goods or services are received. Contingent liabilities include but are not limited to third-party claims against the recipient, as well as related administrative costs. With respect to activities (such as rehabilitation of privately owned properties) which are carried out by means of revolving loan accounts, loan guarantee accounts, or similar mechanisms, costs shall be considered as incurred when work to be performed with CDBG funds (but excluding program income) is completed and not when a loan is made.

(2) Other responsibilities of the recipient under the grant agreement, applicable laws and regulations, appear to have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance.

(b) *Closeout actions.* (1) Within 90 days of the date it is determined that the criteria for closeout have been met, the recipient shall submit to HUD a copy of the final performance and evaluation report described in § 570.507. If an acceptable report is not submitted, an audit of the recipient's grant activities may be conducted by HUD.

(2) Based on the information provided in the performance report and other relevant information, HUD, in consultation with the recipient, will prepare a closeout agreement pursuant to paragraph (c) of this section.

(3) HUD will cancel any unused portion of the awarded grant, as shown in the signed grant closeout agreement. Any unused grant funds disbursed from the U.S. Treasury which are in the possession of the recipient shall be refunded to HUD.

(4) Any costs paid with CDBG funds which were not audited previously shall be covered in the recipient's next audit performed in accordance with Attachment P of OMB Circular No. A–102. The recipient may be required to repay HUD any disallowed costs based on the results of the audit or additional HUD reviews provided for in the closeout agreement.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout shall be covered by the terms of a closeout agreement. The agreement shall be prepared by the HUD field office in consultation with the recipient. The agreement shall identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with CDBG funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be canceled by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements, certifications and assurances in using program income on deposit at the time the closeout agreement is signed and in using any other remaining CDBG funds available for closeout costs and contingent liabilities;

(ii) Disposition or use of tangible personal property acquired with CDBG funds in accordance with Attachment N of OMB Circular A–102;

(iii) Ensuring that an audit is performed in accordance with Attachment P of OMB Circular A–102 covering any costs paid with CDBG funds which were not previously audited; and

(iv) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period.

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or addition to the above obligations. The agreement shall authorize monitoring by HUD, and provide that findings of noncompliance may be taken into account by HUD, as unsatisfactory performance of the recipient, in the consideration of any future grant award.

(d) *Status of housing assistance plan after closeout.* Unless otherwise provided in a closeout agreement, the Housing Assistance Plan (HAP) will remain in effect after closeout until the expiration of three fiscal years from and including the fiscal year for which the HAP was approved by HUD. The HAP will be used for allocations of HUD-assisted housing and local review and comment pursuant to 24 CFR Part 891 for purposes of achieving the housing goals under the performance criteria of § 570.903.

(e) *Termination of grant for mutual convenience.* Grant assistance provided under this Part may be canceled in whole or in part prior to completion of the assisted activities, when both parties agree that the continuation of the activities is infeasible or would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree in writing upon the termination conditions, including who shall be responsible for the environmental review to be performed pursuant to 24 CFR Part 50 or 24 CFR Part 58 as applicable, the effective date and, in the case of partial terminations, the portion to be terminated. The recipient shall not incur new obligations for the terminated portions after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the recipient for those portions of obligations which could not be canceled and which had been properly incurred by the recipient in carrying out the activities prior to termination. The closeout policies contained in this Section shall apply in such cases, except where the total approved grant is canceled in its entirety, in which event the recipient shall send to HUD a signed statement relinquishing the recipient's claim to such funds.

(f) *Termination for cause.* In cases in which the Secretary terminates the recipient's grant under the authority of Subpart O of this part or pursuant to the

terms of the grant agreement, the closeout policies contained in this Section shall apply, except where the total approved grant is canceled in its entirety. HUD shall determine whether an environmental assessment or finding of inapplicability is required, an if such review is required, HUD shall perform it pursuant to the provisions of 24 CFR Part 50.

§ 570.510 Transferring Projects from urban counties to metropolitan cities.

Section 106(c)(3) of the Act authorizes the Secretary to transfer unobligated grant funds from an urban county to a new metropolitan city provided: The city was an included unit of general local government in the urban county immediately prior to qualification a metropolitan city; the funds to be transferred were received by the county prior to the qualification of the city as a metropolitan city; the funds to be transferred had been programmed by the urban county for use in the city before such qualification; and the city and county agree to transfer responsibility for the administration of the funds being transferred from the county's letter of credit to the city's letter of credit. The following rules apply to the transfer of responsibility for an activity from an urban county to the new metropolitan city.

(a) The urban county and the metropolitan city shall execute a legally binding agreement which shall specify:

(1) The amount of funds to be transferred from the urban county's letter of credit to the metropolitan city's letter of credit;

(2) The activities to be carried out by the city with the funds being transferred;

(3) The county's responsibility for all expenditures and unliquidated obligations associated with the activities prior to the time of transfer and its continuing responsibility for all audit and monitoring findings associated with those expenditures and obligations;

(4) The responsibility of the metropolitan city for all other audit and monitoring findings;

(5) How program income from the activities specified (if any) shall be divided between the metropolitan city and the urban county;

(6) Such other provisions as may be required by HUD.

(b) Upon receipt of a request for the transfer of funds from an urban county to a metropolitan city and a copy of the executed agreement, HUD, in consultation with the Department of the Treasury, shall establish a date upon which the funds shall be transferred from the letter of credit of the urban county to the letter of credit of the metropolitan city, and shall take all necessary actions to affect such transfer of funds.

(c) HUD shall notify the metropolitan city and urban county of any special audit and monitoring rules which apply to the transferred funds when the date of the transfer is communicated to the city and the county.

§ 570.511 and § 570.512 [Revised]

§ 570.513 Lump sum drawdown for financing of property rehabilitation activities.

Subject to the conditions prescribed in this section, grantees may draw funds from the letter of credit in a lump sum to establish a rehabilitation loan fund in one or more private financial institutions for the purpose of financing the rehabilitation of privately owned properties. The fund may be used in conjunction with various rehabilitation financing techniques where there is a fixed or contingent repayment obligation.

(a) *Terms of Agreement.* The term of the agreement may be no more than two years. The lump sum deposit shall be made only after the agreement is fully executed. The rehabilitation loan fund may only be used for authorized activities during the term of agreement.

(b) *Limitation on drawdown of grant funds.* (1) The funds that a block grant recipient deposits to a rehabilitation fund shall not exceed the grant amount that the recipient reasonably expects will be required, together with anticipated program income from interest and loan repayments, for the rehabilitation activities during the period of the agreement, based on either:

(i) Prior level of rehabilitation activity; or

(ii) Rehabilitation staffing and management capacity during the period of the agreement.

(2) No grant funds may be deposited under this section solely for the purpose of investment, notwithstanding that the interest or other income is to be used for the rehabilitation activities.

(3) The grantee's rehabilitation program administrative costs may not be funded through lump sum drawdown. Such costs must be paid from periodic letter of credit withdrawals in accordance with standard procedures.

(c) *Standards to be met.* The following standards shall apply to all lump sum drawdowns of CDBG funds for rehabilitation:

(1) *Eligible rehabilitation activities.* The rehabilitation fund shall be used to finance the rehabilitation of privately owned properties eligible under the general policies in § 570.200 and the specific provisions of either § 570.202, including the acquisition of properties for rehabilitation, or § 507.203.

(2) *Requirement for agreement.* The recipient shall execute a written agreement with the private financial institution(s) for the operation of the rehabilitation fund. The agreement shall specify the obligations and responsibilities of the parties, the terms and conditions on which block grant funds are to be deposited and used or returned, the anticipated level of rehabilitation activities by the financial institution, the rate of interest and other benefits to be provided by the financial institution in return for the lump sum deposit, and such other terms as are necessary for compliance with the provisions of this section. Upon execution of the agreement, a copy must be provided to the HUD Field Office for its record and use in monitoring. Any amendments must also be provided to HUD.

(3) *Time limit on use of deposited funds.* Use of the deposited funds for rehabilitation financing assistance must start (e.g., first loan must be made, subsidized or guaranteed) within 45 days of the deposit. In addition, substantial disbursements from such fund must occur within 180 days of the receipt of such deposit. If a recipient has disbursed 25 percent of the fund (deposit plus any interest earned) within 180 days, this will be deemed as meeting this requirement. If a recipient determines they have had substantial disbursement from such fund within the 180 days although they had not met this 25 percent threshold, the justification for this determination shall be included in the program file. Should use of deposited funds not start within 45 days, or substantial disbursement from such fund not occur within 180 days, the recipient may be required by HUD to return all or part of the deposited funds and program income to the grantee's letter of credit.

(4) *Program activity.* Grantees shall review the level of program activity on a yearly basis. Where activity is substantially below that anticipated, an appropriate amount of program funds shall be returned to the grantee's letter of credit.

(5) *Termination of agreement.* In the case of substantial failure by the private financial institution(s) to comply with the terms of a lump sum drawdown agreement, the unit of local government shall terminate its agreement, providing written justification for the action, withdraw all unobligated deposited funds and program income from the

private financial institution(s), and return the funds to the grantee's letter of credit.

(6) *Return of unused deposits.* At the termination of the period of the agreement, all unobligated deposited funds and program income shall be returned to the appropriate letter of credit unless the block grant recipient enters into a new agreement conforming to the then current regulations for an additional period not to exceed two years. In addition, the block grant recipient shall reserve the right to withdraw any unobligated deposited funds and program income required by HUD in the exercise of corrective or remedial actions authorized under Sections § 570.910(b), § 570.911, or § 570.913.

(7) *Rehabilitation loans made with non-CDBG funds.* If the deposited funds or program income derived therefrom are used to subsidize or guarantee repayment of rehabilitation loans made with non-CDBG funds, or are used to provide a supplemental loan or grant to the borrower of the non-CDBG funds, the rehabilitation activities are deemed to be CDBG assisted activities subject to the requirements applicable to such activities;

(8) *Provision of consideration.* In consideration for the lump sum deposit by the recipient in a private financial institution, the deposit must result in appropriate benefits in support of the recipient's local rehabilitation program. Minimum requirements for such benefits are:

(i) Grantees shall require the financial institution to pay interest on the lump sum deposit.

(A) The interest rate paid by the financial institution shall be at a minimum no more than four points below the Treasury borrowing rate on one year Treasury obligations.

(B) When an agreement sets a single rate for the entire term of the agreement, the rate should be based on the rate at the time the agreement is executed.

(C) The agreement may provide for an interest rate that would fluctuate periodically during the term of the agreement, but at no time shall the rate be established at more than four points below the current Treasury borrowing rate on one year Treasury obligations.

(ii) In addition to the payment of interest, at least one of the following benefits must be provided by the financial institution(s):

(A) Leverage of the deposited funds so that the financial institution(s) commit private funds for loans in the rehabilitation program in an amount substantially in excess of the amount of the lump sum deposit;

(B) Commitment of private funds by the financial institution for rehabilitation loans at below market interest rates, at higher than normal risk, or with longer than normal repayment periods; or

(C) Provision of administrative services in support of the rehabilitation program by the participating financial institutions at no cost or at lower than actual cost.

(d) *Program income.* Interest earned on lump sum deposits and payments on loans made from such deposits are program income and, during the period of the agreement, shall be used for rehabilitation activities under the provisions of this section.

(e) *Outstanding findings.* Notwithstanding any other provision of this section no recipient shall enter into a new agreement or extend an existing agreement during any period of time in which an audit disallowance or monitoring finding on a previous lump sum drawdown agreement remains unresolved.

(f) *Prior notification.* The recipient shall provide the HUD Field Office with written notification of the amount of funds to be distributed to a private financial institution prior to such distribution under the provisions of this section.

(g) *Recordkeeping requirements.* The recipient shall maintain in its files a copy of the written agreement and related documents establishing conformance with this section and concerning performance by the financial institution(s) pursuant to the agreement.

(h) *Remedies and Sanctions.* Failure of the recipient to comply with any of the requirements of this section shall be cause for the Secretary to exercise any of the remedies or sanctions otherwise available under this part.

5. Subpart K of Part 570 would be revised to read as follows:

Subpart K—Other Program Requirements

Sec.

570.600 General.
570.601 Pub. L. 88–352 and Pub. L. 90–284; affirmatively furthering fair housing; Executive Order 11063.
570.602 Section 109 of the Act.
570.603 Labor standards.
570.604 Environmental standards.
570.605 National Flood Insurance Program.
570.606 Relocation and acquisition.
570.607 Employment and contracting opportunities.
570.608 Lead-based paint.
570.609 Use of debarred, suspended, or ineligible contractors or subrecipients.
570.610 Uniform administrative requirements and cost principles.
570.611 Conflict of interest.
570.612 Displacement.
570.613 Executive Order 12372.

Subpart K—Other Program Requirements

§ 570.600 General.

(a) Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary, among other things, that the grant "will be conducted and administered in conformity with Pub. L. 88–352 and Pub. L. 90–284," and, further, that the grantee "will comply with the other provisions of this title and with other applicable laws." Section 104(d)(1) of the Act requires that the Secretary determine with respect to grants made pursuant to section 106(b) (Entitlement Grants) and 106(d)(2)(B) (HUD-Administered Small Cities Grants), at least on an annual basis, among other things, "whether the grantee has carried out [its] certifications in compliance with the requirements and the primary objectives of this title and with other applicable laws. . . ." Certain other statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. Certain statutes or Executive Orders which may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental departments or agencies other than the Secretary or the Department. This Subpart K enumerates laws which the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to States made pursuant to section 106(d) of the Act, for purposes of the determinations described above to be made by the Secretary under section 104(d)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws which the Secretary will treat as applicable to grants made to States under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(d)(2) of the Act, see § 570.496.

(b) This subpart also sets forth certain additional program requirements which

the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.

(c) In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (Subparts D and F of this part, respectively), the requirements of this Subpart K are applicable to grants made pursuant to sections 107 and 119 of the Act (Subparts E and G, respectively).

§ 570.601 Pub. L. 88-352 and Pub. L. 90-284; affirmatively furthering fair housing; Executive Order 11063.

Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary that the grant "will be conducted and administered in conformity with Pub. L. 88-352 and Pub. L. 90-284 and the grantee will affirmatively further fair housing." Similarly, section 107 provides that no grant may be made under that section (Secretary's Discretionary Fund) or section 119 (UDAG) without satisfactory assurances to the same effect.

(a) "Pub. L. 88-352" refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 of the Civil Rights Act of 1964 directs each Federal department and agency empowered to extend Federal financial assistance to any program or activity by way of grant to effectuate the foregoing prohibition by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the statute authorizing the financial assistance. HUD regulations implementing the requirements of Title VI with respect to HUD programs are contained in 24 CFR Part 1.

(b) "Pub. L. 90-284" refers to Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), popularly known as the Fair Housing Act, which provides that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, or national origin. Title VIII further requires the Secretary to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of Title VIII. Pursuant to this statutory direction, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing; furthermore, section 104(b)(2) of the Act requires that each grantee certify to the satisfaction of the Secretary that it will affirmatively further fair housing.

(c) Executive Order 11063, as amended by Executive Order 12259, directs the Department to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government. HUD regulations implementing Executive Order 11063 are contained in 24 CFR Part 107.

§ 570.602 Section 109 of the Act.

(a) Section 109 of the Act requires that no person in the United States shall on the ground or race, color, national origin or sex be excluded from participation in, be denied the benefits, of, or be subjected to discrimination under, any program or activity founded in whole or in part with community development funds made available pursuant to the Act. For purposes of this section "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient, or by any unit of government, subrecipient, or private contractor receiving community development funds or loans from the recipient. "Funded in whole or in part with community development funds" means that community development funds in any amount in the form of grants or proceeds from HUD guaranteed loans have been transferred by the recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity.

(b) *Specific discriminatory actions prohibited and corrective actions.*

(1) A recipient may not, under any program or activity to which the regulations of this part may apply directly or through contractual or other arrangements, on the ground of race, color, national origan, or sex:

(i) Deny any facilities, services, financial aid or other benefits provided under the program or activity.

(ii) Provide any facilities, services, financial aid or other benefits which are different, or are provided in a different form from that provided to others under the program or activity.

(iii) Subject to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefits under the program or activity.

(iv) Restrict in any way access to, or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefit under the program or activity.

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

(vi) Deny an opportunity to participate in a program or activity as an employee.

(2) A recipient may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis or race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color national origin, or sex.

(3) A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds under this part, may not make selections of such site or location which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, or sex; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and of this section.

(4)(i) In administering a program or activity funded in whole or in part with CDBG funds regarding which the recipient has previously discriminated against persons on the ground of race, color, national origin or sex, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program or activity funded in whole or in part with CDBG funds should take affirmative action to

overcome the effects of conditions which would otherwise result in limiting participation by persons of a particular race, color, national origin or sex. Where previous discriminatory practice or usage tends, on the ground of race, color, national origin or sex, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

(iii) A recipient shall not be prohibited by this part from taking any action eligible under Subpart C to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to overcome prior discriminatory practice or usage.

(5) Notwithstanding anything to the contrary in this section, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

(c) Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act.

§ 570.603 Labor standards

Section 110 of the Act requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with assistance received under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5). By reason of the foregoing requirement, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) also applies. However, these requirements apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families. With respect to the labor standards specified in this section, the Secretary of Labor has the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. 1332–15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

§ 570.604 Environmental standards.

Section 104(f) expresses the intent that "the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) . . . [be] most effectively implemented in connection with the expenditure of funds under" the Act. Such other provisions of law which further the purposes of the National Environmental Policy Act of 1969 are specified in regulations issued pursuant to section 104(f) of the Act and contained in 24 CFR Part 58. Section 104(f) also provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may under regulations provide for the release of funds for particular projects to grantees who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, and the other provisions of law specified by the Secretary as described above, that would apply to the Secretary were he/she to undertake such projects as Federal projects. Grantees assume such environmental review, decisionmaking, and action responsibilities by execution of grant agreements with the Secretary. The procedures for carrying out such environmental responsibilities are contained in 24 CFR Part 58.

§ 570.605 National Flood Insurance Program.

Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C 400(a)), on and after July 1, 1975 (or one year after a community has been formally notified of its identification as a community containing an area of special flood hazard, whichever is later) for use in any area that has been identified by the Director of the Federal Emergency Management Agency (see Section 202 of Reorganization Plan No. 3 of 1978, 43 FR 41943) as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under Subpart D, the date of submission of the grantee's final statement pursuant to § 570.302), funds provided under this Part shall not be expended on or after July 1, 1975, or one year after a community has been formally notified, whichever is later, for acquisition or construction purposes in an area so identified as having special flood hazards which is located in a community not in compliance with the requirements of the National Flood Insurance Program pursuant to section 201(d) of said Act (42 U.S.C. 4105(d)). The use of any funds provided under this part for acquisition or construction purposes in identified special flood hazard areas shall be subject to the mandatory purchase of flood insurance requirements of section 102(a) of said Act (42 U.S.C. 4012a).

§ 570.606 Relocation and acquisition.

(a) Section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) (the "Uniform Act") provides that the head of a Federal agency shall not approve any grant to, or contract or agreement with, a "State agency" (as defined in Section 101 of the Uniform Act, 42 U.S.C. 4601, and 24 CFR 42.85 which includes any department, agency or instrumentality of a State or of a political subdivision of the State) under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any persons, unless he/she receives satisfactory assurance from such State agency that certain requirements of the Uniform Act with respect to relocation payments and assistance will be met. Such assurances will be provided in the grant agreement executed by the grantee (see § 570.304(b)). The requirements of the Uniform Act and HUD implementing regulations (24 CFR Part 42) apply to any acquisition of real property by a "State agency" that is carried out with the intention that such acquisition be for a community development activity assisted under this Part and to the displacement of any family, individual, business, nonprofit organization, or farm that results from such acquisition.

(1) Any acquisition of real property by a "State agency" and any displacement resulting from such acquisition of real property shall be considered to be for an activity assisted under the the CDBG program and to be subject to the regulations at 24 CFR Part 42 if the

acquisition or displacement occurs on or after the date of the submission of the application requesting Federal financial assistance which is granted for an activity for which the acquisition has been or will be undertaken (or, in the case of a grant made pursuant to Subpart D; the date of submission of the grantee's final statement pursuant to § 570.302). However, if the recipient determines that any acquisition or displacement was not carried out for an assisted activity, and the HUD Area Office serving the locality concurs in that determination, such acquisition or displacement shall not be subject to these regulations. The recipient's request of HUD concurrence shall include its certification that at the time of the acquisition it did not intend to use the property for an assisted activity and appropriate documentation to establish that fact.

(2) The recipient or HUD, which shall monitor compliance with the Uniform Act, may determine that an acquisition prior to submission of an application for financial assistance (or final statement) and any resulting displacement were carried out for an assisted activity and are subject to these regulations. In the absence of such a determination by the recipient or HUD, any such acquisition or displacement occurring prior to submission of an application (or final statement) shall not be subject to these regulations. The recipient may at any time request a HUD determination as to whether or not such an acquisition and any resulting displacement are considered to be for an assisted activity and to be suject to these regulations. The request shall be submitted to the HUD Area Office and shall include appropriate background documentation.

(3) If the owner or occupant of a property disagrees with the recipient's determination that the Uniform Act and the regulations at 24 CFR Part 42 do not apply to the acquisition of the property or to a displacement resulting from the acquisition, he/she may file an appeal under 24 CFR Part 42 Subpart J (Appeals), whether or not the acquisition or displacement occurs before or after submission of the application for financial assistance (or final statement). The specific payments and other assistance for which an appeal may be filed are set forth in 24 CFR 42.703(a).

(4) The costs of relocation payments and assistance under Title II of the Uniform Act shall be paid from funds provided by this Part and/or such other funds as may be available by the locality from any source.

(b) Section 305 of the Uniform Act (42 U.S.C. 4655) provides that the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property unless he/she receives satisfactory assurances from such State agency that: (1) In acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 of the Uniform Act (42 U.S.C. 4651) and the provisions of section 302 thereof (42 U.S.C. 4651) and (2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 of the Uniform Act (42 U.S.C. 4653, 4654). Appropriate assurances to such effect will be provided in the grant agreement executed by the grantee.

§ 570.607 Employment and contracting opportunities.

(a) Grantees shall comply with Executive Order 11246 and the regulations issued pursuant thereto (41 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts. As specified in Executive Order 11246 and the implementing regulations, contractors and subcontractors on Federal or federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) requires, in connection with the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible opportunities for training and employment be given to lower income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county) in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project. Grantees shall adopt appropriate procedures and requirements to assure good faith efforts toward compliance with the statutory directive. HUD regulations at 24 CFR Part 135 are not directly applicable to activities assisted under this Part but may be referred to as guidance indicative of the Secretary's view of the statutory objectives in other contexts.

§570.608 Lead-based paint.

(a) Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) directs the Secretary to prohibit the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance in any form. Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures constructed or rehabilitated with assistance provided under this Part.

(b) Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) directs the Secretary to establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary. Pursuant to such authority and the Secretary's general rulemaking authority, the Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR Part 35, Subpart C, and requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1950 at 24 CFR Part 35, Subpart A. The requirements of 24 CFR Part 35, Subpart A, are applicable to purchasers and tenants of residential structures constructed prior to 1950 and assisted under this Part, and the requirements of 24 CFR Part 35, Subpart C, are applicable to existing residential structures which are rehabilitated with assistance provided under this Part.

§ 570.609 Use of debarred, suspended, or ineligible contractors or subrecipients.

CDBG funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

§ 570.610 Uniform administrative requirements and cost principles.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of OMB Circular Nos. A-102, Revised, A-110, A-

87, and A–122, (including any subsequent amendments published in the Federal Register by OMB), as applicable and as they relate to the acceptance and use of Federal funds under this part.

§ 570.611 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified at § 570.204(c)), the conflict of interest provisions in Attachment O of OMB Circulars A–102, and A–110, respectively, shall apply.

(2) In all cases not governed by Attachment O of the OMB Circulars, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to §§ 570.203, 570.204 or 570.455).

(b) *Conflicts prohibited.* Except for approved eligible administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this Part or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such interest or benefit during, or at any time after, such person's tenure.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or subrecipients under § 570.204, which are receiving funds under this part.

(d) *Exceptions: threshold requirements.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class or low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

§ 570.612 Displacement.

(a) *Definition.* "Displacement" means the involuntary movement of persons (individuals, families, businesses, organizations, or farms) from their properties as a result of: (1) An activity assisted in whole or in part with CDBG funds; or (2) A non-CDBG assisted activity, where such activity is a prerequisite for an activity carried out with CDBG funds (e.g. acquisition of land with local funds for a neighborhood facility to be constructed with CDBG funds).

(b) *General policy.* Section 902 of the Housing and Community Development Amendments of 1978 (Pub. L. 95–557) provides that, in the administration of Federal housing and community development programs, consistent with other program objectives and goals, involuntary displacement of persons from their homes and neighborhoods should be minimized. This general policy is implemented in the Entitlement grant program through the requirements of § 570.307. It is implemented in the HUD-administered Small Cities program by means of selection criteria described in § 570.424(c) and § 570.428(c), and in the Urban Development Action Grant program by means of the selection criterion described in § 570.459(1).

§ 570.613 Executive Order 12372.

(a) *General.* Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR 52, allows each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) *Applicability.* Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to the Entitlements program only where a grantee proposes to use funds for the planning or construction (reconstruction, rehabilitation or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not include water and sewer lines connecting a structure to the lines in the public right-of-way or easement. It is the responsibility of the grantee to initiate the Executive Order review process if it proposes to use its CDBG or UDAG funds for activities subject to review.

6. Subpart M of Part 570 would be revised to read as follows:

Subpart M—Loan Guarantees

Sec.
570.700 Eligible applicants.
570.701 Eligible activities.
570.702 Application requirements.
570.703 Loan requirements.
570.704 Federal guarantee.
570.705 Applicability of rules and regualtions.

Subpart M—Loan Guarantees

§ 570.700 Eligible applicants.

(a) Units of general local government entitled to receive a grant under section

106(b) of the Act (metropolitan cities and urban counties) may apply for laon guarantee assistance under this Subpart.

(b) Public agencies may be designated by eligible units of general local government to receive a loan guarantee on notes or other obligations issued by the public agency in accordance with this Subpart. In such case the applicant unit of general local government shall be required to pledge its current and future grants under Title I as security for the notes or other obligations issued by the public agency.

§ 570.701 Eligible activities.

Loan guarantee assistance under this subpart may be utilized for the following activities undertaken by the unit of general local government or its designated public agency, provided such activities are otherwise eligible under the provisions of § 570.201 through § 570.203 and meet the requirements of § 570.200.

(a) Acquisition of improved or unimproved real property in fee or by long-term lease, including acquisition for economic development purposes.

(1) Acquisition for economic development purposes may include agreements for the purchase of real property to be improved by the seller prior to the acquisition. Obligations to purchase under such agreements may be contingent on the procurement of interim financing by the seller, and may provide for a leaseback of the improved property to the seller, including an option to purchase after full payment of the loan guaranteed under this Subpart.

(2) In the purchase of real property pursuant to paragraph (a)(1) of this section, the assisted activity includes the acquisition and/or improvements undertaken by the seller in whole or in part with interim financing obtained in reliance on the obligation to purchase the improved property with guaranteed loan funds. The agreement described in paragraph (a)(1) of this section shall specify that the obligation to purchase is contingent on compliance in the undertaking of interim financed activities with the requirements applicable to activities assisted under this Subpart.

(b) Rehabilitation of real property owned or acquired by the unit of general local government or its designated public agency.

(c) Payment of interest on obligations guaranteed under this Subpart.

(d) Relocation payments and assistance for individuals, families, businesses, nonprofit organizations and farm operations displaced as a result of activities financed with loan guarantee assistance.

(e) Clearance, demolition and removal, including movement of structures to other sites, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

(f) Site preparation, including construction, reconstruction, or installation of public improvements, utilities or facilities (other than buildings) related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

§ 570.702 Application requirements.

(a) *Presubmission requirements.* (1) Prior to submission of an application for loan guarantee assistance to HUD, the applicant must comply with the presubmission requirements specified in § 570.301 with respect to the activities proposed for loan guarantee assistance.

(2) If an application for loan guarantee assistance is simultaneous with the applicant's submission for its entitlement grant, the applicant may utilize the statement of community development objectives and projected use of funds prepared for its annual grant pursuant to § 570.301 by including and identifying the activities to be undertaken with the guaranteed loan funds.

(b) *Submission requirements.* An application for loan guarantee assistance shall be submitted to the appropriate HUD Field Office and shall consist of the following:

(1) A copy of the applicant's final statement of community development objectives and projected use of guaranteed loan funds.

(2) A description of how each of the activities to be carried out with the guaranteed loan funds meet one of the critieria in § 570.208.

(3) A schedule for repayment of the loan which identifies the source of repayment.

(4) A certification providing assurance that the applicant possesses legal authority to make the pledge of grants required under § 570.703(b)(2)

(5) A certification providing assurance that the applicant has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, the applicant will maintain documentation of such efforts for the term of the loan guarantee, and the applicant cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(6) Certifications required pursuant to § 570.303. For the purposes of this requirement, the terms "grant" and "CDBG" in such certifications shall also mean loan guarantee.

(c) *Economic feasibility and financial risk.* The Secretary will make no determination with respect to the economic feasibility of projects proposed to be funded with the proceeds of guaranteed loans; such determination is the responsibility of the applicant. In determining whether a loan guarantee constitutes an acceptable financial risk, the Secretary will consider the applicant's current and future entitlement block grants as the primary source of loan repayment. Approval of a loan guarantee under this subpart is not to be construed, in any way, as indicating that HUD has agreed to the feasibility of a project beyond recognition that block grant funds should be sufficient to retire the debt.

(d) *HUD review and approval of applications.* (1) HUD will normally accept the grantee's certifications. The Secretary reserves the right, however, to consider relevant information which challenges the certifications and to require additional information or assurances from the grantee as warranted by such information.

(2) The Field Office shall review the application for compliance with requirements specified in this Subpart and forward the application together with its recommendations for approval or disapproval of the requested loan guarantee to HUD Headquarters.

(3) The Secretary may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, for any of the following reasons:

(i) The Secretary determines that the guarantee constitutes an unacceptable financial risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(A) The length of the proposed repayment period;

(B) The ratio of expected annual debt service requirements to expected annual grant amount;

(C) The applicant's status as a metropolitan city or urban county during the proposed repayment period; and

(D) The applicant's ability to furnish adequate security pursuant to § 570.703(b).

(ii) The guarantee requested exceeds the maximum loan amount specified under § 570.703(a).

(iii) Funds are not available in the amount requested.

(iv) The applicant's performance does not meet the standards prescribed in Subpart O.

(v) Activities to be undertaken with the guaranteed loan funds are not listed as eligible under § 570.201 through § 570.203 and § 570.701(a) through (f).

(vi) Activities to be undertaken with the guaranteed loan funds do not meet the criteria in § 570.208 for compliance with one of the national objectives of the Act.

(4) The Secretary will notify the applicant in writing that the loan guarantee request has either been approved, reduced or disapproved. If the request is reduced or disapproved, the applicant shall be informed of the specific reasons for reduction or disapproval. If the request is approved, the Secretary shall issue an offer of commitment to guarantee obligations of the applicant or the designated public agency subject to such conditions as the Secretary may prescribe, including the conditions for release of funds described in paragraph (e).

(e) *Environmental review.* The applicant shall comply with HUD environmental review procedures (24 CFR Part 58) leading to certification for the release of funds for each project carried out with loan guarantee assistance. These procedures set forth the regulations, policies, responsibilities and procedures governing the carry out of environmental review responsibilities of applicants. For the purposes of this paragraph, the "release of funds" shall be deemed to occur at the time of guarantee of notes or other obligations by the Secretary.

(f) *Relocation and acquisition.* The applicant (and the desiganted public agency where appropriate) shall, as a condition for receiving the loan guarantee assistance, comply with requirements identical to those set forth at 24 CFR Part 42 (Uniform Relocation Assistance and Real Property Acquisition). Such requirements shall apply to acquisition of real property by such applicant or designated public agency and resulting displacement for a project financed in whole or in part with a loan guaranteed under this subpart.

§ 570.703 Loan requirements.

(a) *Maximum loan amount.* No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the total outstanding notes or obligations guaranteed under this Subpart on behalf of the applicant and each public agency duly designated by the applicant would thereby exceed an amount equal to three times the amount of the entitlement grant made pursuant to § 570.304 to the applicant.

(b) *Security requirements.* To assure the repayment of notes or other obligations and charges incurred under this Subpart and as a condition for receiving loan guarantee assistance, the applicant (or the applicant and designated public agency, where appropriate) shall:

(1) Enter into a contract with HUD, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed hereunder;

(2) Pledge any grant made or for which the applicant may become eligible under this Part; and

(3) Furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this Part or disposition proceeds from the sale of land or rehabilitated property.

(c) *Use of grants for loan repayment.* Notwithstanding any other provision of this Part:

(1) Grants allocated to an applicant under this Part (including program income derived therefrom) are authorized for use in the payment of principal and interest due (including such servicing, underwriting, or other costs as may be authorized by the Secretary) on the notes or other obligations guaranteed pursuant to this Subpart.

(2) The Secretary may apply grants pledged pursuant to paragraph (b)(2) of this section to any amounts due under the note or other obligation guaranteed pursuant to this Subpart, or to the purchase of such obligation, in accordance with the terms of the contract required by paragraph (b)(1) of this section.

(d) *Debt obligations.* Notes or other obligations guaranteed pursuant to this Subpart shall be in the form and denominations prescribed by the Secretary. Such notes or other obligations shall be issued and sold only to the Federal Financing Bank under such terms as may be prescribed by the Secretary and the Federal Financing Bank.

(e) *Taxable obligations.* Interest earned on obligations guaranteed under this Subpart shall be subject to Federal taxation as provided in section 108(j) of the Act. All applicants or designated public agencies issuing guaranteed obligations must bear the full cost of interest.

(f) *Loan repayment period.* As a general rule, the repayment period for a loan guaranteed under this Subpart shall be limited to six years. However, a longer repayment period may be permitted in special cases where it is deemed necessary to achieve the purposes of this part.

§ 570.704 Federal guarantee.

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subpart. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

§ 570.705 Applicability of rules and regulations.

The provisions of Subparts A, C, D, J, K and O applicable to Entitlement grants shall apply to loan funds guaranteed under this subpart, except to the extent they are specifically modified or augmented by the provisions of this subpart.

7. Subpart O of 24 CFR 570 would be revised to read as follows:

Subpart O—Performance Reviews

Sec.

570.900 General.
570.901 Review for compliance with the primary and national objectives and other program requirements.
570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.
570.903 Review to determine if the Housing Assistance Plan (HAP) is being carried out in a timely manner.
570.904 Equal opportunity and fair housing review criteria.
570.905 Review of continuing capacity to carry out CDBG funded activities in a timely manner.
570.906 Review of urban counties.
570.907–570.909 Reserved.
570.910 Corrective and remedial actions.
570.911 Reduction, withdrawal or adjustment of a grant or other appropriate action.
570.912 Nondiscrimination compliance.
570.913 Other remedies for noncompliance.

Subpart O—Performance Reviews

§ 570.900 General.

(a) *Performance review authorities—*(1) *Entitlement and HUD-administered Small Cities performance reviews.* Section 104(d)(1) of the Act requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities, and where applicable, its housing assistance plan in a timely manner, whether the grantee has carried out those activities and its certifications in accordance with the requirements and the primary

objectives of the Act and with other applicable laws, and whether the grantee has a continuing capacity to carry out those activities in a timely manner.

(2) *Urban Development Action Grant (UDAG) performance reviews.* Section 119(g) of the Act requires the Secretary, at least on an annual basis, to make such reviews and audits of recipients of Urban Development Action Grants as necessary to determine whether the recipient's progress in carrying out the approved activities is substantially in accordance with the recipient's approved plans and timetables.

(b) *Performance review procedures.* This paragraph describes the review procedures the Department will use in conducting the performance reviews required by sections 104(d) and 119(g) of the Act:

(1) The Department will determine the performance of each Entitlement and HUD-administered Small Cities recipient in accordance with section 104(d)(1) of the Act by reviewing for compliance with the requirements described in § 570.901 and by applying the performance criteria described in §§ 570.902 and 570.903 relative to carrying out activities and, where applicable, the housing assistance plan in a timely manner. The review criteria in § 570.904 will be used to assist in determining if the recipient's program is being carried out in compliance with civil rights requirements.

(2) The Department will review UDAG projects and activities to determine whether such projects and activities are being carried out substantially in accordance with the recipient's approved plans and schedules. The Department will also review to determine if the recipient has carried out its UDAG program in accordance with all other requirements of the Grant Agreement and with all applicable requirements of this Part.

(3) In conducting performance reviews, HUD will primarily rely on information obtained fromt the recipient's performance report, records maintained, findings from on-site monitoring, audit reports, and the status of the letter of credit. Where applicable, the Department may also consider relevant information pertaining to a recipient's performance gained from other sources including, litigation, citizens comments and other information provided by the recipient. A recipient's failure to maintain in the prescribed manner records required under § 570.506 may result in a finding that the recipient has failed to meet the applicable requirement to which the record pertains.

(4) If HUD determines that a recipient has not met a civil rights review criterion in § 570.904, the recipient will be provided an opportunity to demonstrate that it has nonetheless met the applicable civil rights requirement.

(5) If HUD finds that a recipient has failed to comply with a program requirement or has failed to meet a performance criterion in § 570.902 or § 570.903, the recipient will be provided an opportunity to contest the finding.

(6) If the recipient is unsuccessful in contesting the validity of a finding of noncompliance or a finding that the recipient has failed to carry out its activities or its housing assistance plan in a timely manner, HUD may require the recipient to undertake appropriate corrective or remedial actions as specified in § 570.910.

(7) If the recipient fails to undertake appropriate corrective or remedial actions which resolve the deficiency to the satisfaction of the Secretary, the Secretary may impose a sanction pursuant to §§ 570.911, 570.912, or 570.913, as applicable.

§ 570.901 Review for compliance with the primary and national objectives and other program requirements.

HUD will review each Entitlement and HUD-administered Small Cities recipient's program to determine if the recipient has carried out its activities and certifications in compliance with:

(a) The requirement described at § 570.200(a)(3) that, consistent with the primary objective of the Act, not less than 51 percent of the aggregate amount of CDBG funds received by the recipient shall be used over the period specified in its certification for activities that benefit low and moderate income persons;

(b) The requirement described at § 570.200(a)(2) that each CDBG assisted activity meets the criteria for one or more of the national objectives described at § 570.208;

(c) All other activity eligibility requirements defined in 24 CFR Subpart C;

(d) For Entitlement grants only, the presubmission requirements at § 570.301, the amendment requirements at § 570.305 and the displacement policy requirements at § 570.307;

(e) For HUD-administered Small Cities Program grants only, the citizen participation requirements at § 570.431, the amendment requirements at § 570.434 and the displacement policy requirements of section 104(a)(2)(A) of the Act and § 570.200(k);

(f) The grant administration requirements described in 24 CFR Part 570, Subpart J;

(g) Other applicable laws and program requirements described in 24 CFR Part 570, Subpart K; and

(h) Where applicable, the requirements pertaining to loan guarantees (24 CFR Part 570, Subpart M) and urban renewal completions (24 CFR Part 570, Subpart N).

§ 570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.

HUD will review the performance of each Entitlement and HUD-administered Small Cities recipient to determine whether each recipient is carrying out its CDBG assisted activities in a timely manner.

(a) *Entitlement recipients.* (1) Before the funding of the next annual grant and absent substantial evidence to the contrary, the Department will consider an Entitlement recipient to be carrying out its CDBG activities in a timely manner if, 60 days prior to the end of its current program year:

(i) The amount of Entitlement grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is less than 1.25 times the amount it received for its current program year; and,

(ii) In cases where the recipient has received at least two consecutive Entitlement grants, the amount of Entitlement grant funds disbursed by the U.S. Treasury to the recipient during the previous twelve month period is equal to or greater than one-half of the amount of Entitlement grant funds made available under the grant agreement for its current program year.

(2) HUD may also review an Entitlement recipient's progress at other times during the year to determine whether the recipient's rate of fund utilization is likely to fall outside of the criteria in paragraph (a)(1)(i), in which case the Department will notify the recipient of a potential problem with the lack of timeliness in carrying out its activities.

(b) *HUD-administered Small Cities program.* The Department will, absent substantial evidence to the contrary, consider that a HUD-administered Small Cities grantee is carrying out its CDBG funded activities in a timely manner if the schedule for carrying out its activities as contained in the approved application, or subsequent amendment, is being substantially met.

§ 570.903 Review to determine if the Housing Assistance Plan (HAP) is being carried out in a timely manner.

(a) HUD will review an Entitlement grant recipient's HAP performance prior to HUD's approval of each succeeding

year's HAP and prior to acceptance of a grant recipient's HAP certification in order to determine whether the recipient is achieving its specific HAP goals in a timely manner.

(b) Absent substantial evidence to the contrary, HUD will consider that an Entitlement recipient is carrying out its approved HAP in a timely manner if at the end of each of the first two years governed by the HAP, the recipient has substantially met each annual goal for that year, and if at the end of the third year of the period governed by the HAP, a recipient has substantially met its three year goals. For the three year period, this standard also requires that the provision of rental subsidies has been made in reasonable proportion to the need of each household type as identified in the HAP.

(c) For a recipient whose HAP performance does not fall within the criteria in paragraph (b) above, a review shall be conducted which considers the extent to which the recipient made use of housing assistance resources that were available to meet the applicable HAP goals. Where such consideration of the use of available resources results in a determination that the recipient has taken all reasonable actions to use available resources and has not impeded the provision of housing assistance which would have been consistent with the HAP goals, HUD will also consider, under such circumstances, that a recipient has carried out its HAP in a timely manner.

(d) In measuring progress in achieving one-year goals, HUD will consider the extent to which the recipient has made or received firm fianncial commitments which have not subsequently been cancelled for specific projects, households or units identified in the HAP by household and tenure type within a two year period. Progress in achieving the three-year goal will consider the movement of firm financial commitments to start of rehabilitation or construction, or in the case of the Section 8 Existing Program (24 CFR Part 882) or vouchers to occupancy, within a reasonable period of time. Such reasonable period of time may be within the three-year period covered by the most recently approved three-year goals, or, for firm financial commitments received late in the three-year period, it may be a year or more into the next three-year cycle.

(e) If HUD determines that an Entitlement grant recipient has not met the criteria outlined in paragraphs (b) or (c) of this section the recipient will be notified and provided a reasonable opportunity to demonstrate to the satisfaction of the Secretary that the recipient has carried out its HAP in a timely manner considering all relevant circumstances and the recipient's actions and lack of actions affecting the provision of housing assistance within its jurisdiction. Failure to so demonstrate will be cause for HUD to find that the recipient has failed to carry out its HAP in a timely manner. The response by the recipient should describe:

(1) The factors which prevented it from meeting those HAP goals it failed to meet; and

(2) What actions were taken to facilitate achieving its HAP goals, such as:

(i) The removal of impediments under local ordinances and land use requirements to the development of assisted housing;

(ii) The formation of a local housing authority or execution of an agreement with a housing authority having powers to provide assisted housing within the jurisdiction of the recipient, when necessary to carry out the HAP;

(iii) The provision of sites, improvements to sites, and/or extensions of utilities to sites for assisted housing new construction, provided that such sites meet the applicable HUD site and neighborhood standards;

(iv) Establishment of a housing rehabilitation program or increased use of an existing one where substantial need for rehabilitation is evident; and

(v) Cooperation with a local housing authority or other proper administrative body to facilitate operation of the Section 8 Existing Program (or a comparable rental assistance program) through such means as landlord information programs and identification of available rental unit inventories.

§ 570.904 Equal opportunity and fair housing review criteria.

(a) *General.* Where the criteria in this section are met, the Department will presume that the recipient has carried out its program in accordance with civil rights requirements unless:

(1) There is evidence which shows, or from which it is reasonable to infer, that the recipient, motivated by consideration of race, color, religion, sex, national origin, age or handicap, has treated some persons less favorably than others, or

(2) There is evidence that a policy, practice, standard or method of administration, although neutral on its face, denies or affects in an adverse and significantly disparate way the provision of employment services, benefits or other participation to persons of a particular race, color, religion, sex, national origin, age or to handicapped persons, or

(3) Where the Secretary required a further assurance pursuant to § 570.304 in order to accept the recipient's prior civil rights certification, the recipient has failed to meet any such assurance.

In such instances, or where the review criteria in this section are not met, the recipient will be afforded an opportunity to present evidence that it has not failed to carry out the program in compliance with the civil rights requirements. The Secretary's determination of whether there has been such compliance will be made based on a review of the recipient's performance, evidence submitted by the recipient, and all other available evidence. The substantive test of compliance, for purposes of any review conducted pursuant to this provision, will be the same as would be applicable in compliance reviews under the authorities of Title VI of the Civil Rights Act of 1964 or section 109 of the Act. The Department may also initiate separate compliance reviews under such authorities.

(b) *Review for equal opportunity.* Section 570.601(a) sets forth the general requirements for Title VI of the Civil Rights Act of 1964 and § 570.602 sets forth the general requirements for section 109 of Title I of the Act. Together these provisions prohibit discrimination in any program or activity funded in whole or in part by CDBG funds.

(1) *Review for equal employment opportunity.* Absent independent evidence to the contrary, the Department will presume a recipient's hiring and employment practices have been carried out in compliance with its equal opportunity certifications if:

(i) For the operating units of the recipient funded in whole or in part with CDBG funds, when taken as a whole:

(A) The number of minorities and females newly hired in permanent full-time positions during the reporting period, compared to all new hires in such positions, reasonably approximates the respective representation of minorities and females in the labor force of the recipient's labor market area (or in the population of the recipient's jurisdiction if labor force data is not available); or

(B) The number of minorities and females employed in permanent full-time positions in such operating units reasonably approximates the respective representation of minorities and females in the labor force of the recipient's labor market area (or in the population of the recipient's jurisdiction if labor force data is not available); and

(ii) In each operating unit, there have been no actions by the recipient which excluded minorities or females from particular job categories.

In conducting the review under paragraph (b)(1)(i) of this section, the Department will rely primarily upon the employment information provided by the recipient in the EEO-4 form prepared for each CDBG funded operating unit and submitted to HUD in accordance with § 570.507(b).

(2) *Equal opportunity in services, benefits and participation.* (i) Absent independent evidence to the contrary, the Department will presume the recipient is carrying out its programs and activities in compliance with its equal opportunity certifications if over a period of not less than three years, the proportion of expenditures benefiting each minority group under any "program or activity funded in whole or in part with community development funds" (as defined in 24 CFR 570.602(a)) does not differ substantially from the proportionate need of each such minority group for the program or activity; or where information on proportionate needs is not generally available, the proportion of each minority group in the recipient's low and moderate income population.

(ii) In determining whether these criteria have been met, the Department will proceed as follows:

(A) The comparison described in paragraph (b)(2)(i) of this section will be made first by looking exclusively at expenditures of CDBG funds;

(B) If the criteria in paragraph (b)(2)(i) of this section are not met based solely on expenditures of CDBG funds, the recipient will be asked to provide necessary information to permit the comparison described in paragraph (b)(2)(i) of this section to be broadened to look at expenditures for such program or activity from *all* sources of funds within the recipient's control, including federal, state and local funds; and

(C) If the criteria in paragraph (b)(2)(i) of this section are not met based on expenditures from *all* sources of funds for a particular program or activity, the recipient will be given an opportunity to provide satisfactory reasons for the substantial disparity in the level of services or benefits.

(iii) As used in this provision, the term "minority group" means a racial or ethnic group as defined by OMB Directive 15 (i.e., Blacks; American Indians and Alaskan Natives; Hispanics; and Asians and Pacific Islanders.)

(iv) In those communities where information is not available on the proportion of each minority group in the recipient's low and moderate income population, the comparison described in subparagraph (b)(2)(i), of this section will be made using the proportion of each minority group in the recipient's population as a whole.

(2) *Fair housing review criteria.* Section 570.601(b) sets forth the general requirements for Title VIII of the Civil Rights Act of 1968 and the grantee's certification that it will affirmatively further fair housing. In reviewing a recipient's actions in carrying out its housing and community development activities in a manner to affirmatively further fair housing in the private and public housing sectors, absent independent evidence to the contrary, the Department will consider that a recipient has taken such actions in accordance with its certification if the recipient meets the following review criteria:

(1) The recipient has conducted an analysis to determine the impediments to fair housing choice within its community. The term "fair housing choice" means the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, creed, sex or national origin. This analysis shall include, at minimum, a review for impediments to fair housing choice in the following areas:

(i) The sale of rental of dwellings;

(ii) The provision of housing brokerage services;

(iii) The provision of financing assistance for dwellings;

(iv) Public policies and actions affecting the approval of sites and other building requirements used in the approval process for the construction of publicly assisted housing; and

(v) The administrative policies concerning community developing and housing activities, such as urban homesteading, multifamily rehabilitation, and activities causing displacement, which affect opportunities of minority households to select housing inside or outside areas of minority concentration;

(2) Based upon the conclusions of the analysis in paragraph (c)(1) of this section, the recipient has carried out appropriate official actions relating to housing and community development to remedy or ameliorate those conditions limiting fair housing choice in the recipient's community. Such actions may include:

(i) Enactment and enforcement of an ordinance providing for fair housing consistent with the federal fair housing law;

(ii) Support of the administration and enforcement of state fair housing laws providing for fair housing consistent with the federal fair housing law;

(iii) Participation in voluntary partnerships developed with public and private organizations to promote the achievement of the goal of fair housing choice (including implementation of a locally-developed and HUD-approved New Horizons comprehensive fair housing plan); or

(iv) Other actions determined to be appropriate based upon the conclusions of the analysis.

(d) *Actions to utilize minority and women's business firms.* (1) The Department will review a recipient's performance to determine if it has administered its CDBG activities in a manner to encourage establishment and utilization of minority and women's business enterprises described in Executive Orders 11625, 12432, and 12138, and OMB Circular Number A-102, Attachment O, paragraph 9. The Department will presume that a recipient has administered its CDBG activities in a satisfactory manner with respect to minority and women's business enterprises if:

(i) Over the review period, the amount of CDBG funds awarded through contracts and subcontracts of $10,000 or more to minority business enterprises and women's business enterprises, respectively, for supplies, equipment, construction and services divided by the total amount of all such contracts to firms approximates the percentage of minority businesses and the percentage of women's business enterprises in the recipients Metropolitan Statistical Area (MSA); and

(ii) Consistent with the intent of the Executive Orders, the above percentages of minority and women's business enterprises, respectively, have increased over the prior year unless HUD has determined that the recipient has taken all reasonable actions to satisfy the Executive Orders and Circular A-102; or

(iii) Where the percentage of minority and women's business enterprises required for paragraph (d)(1) (i) and (ii) of this section is not available, the proportions of CDBG funds awarded to such enterprises have increased over the prior year unless HUD has determined that the recipient has taken all reasonable actions to satisfy the Executive Orders and Circular A-102.

(2) Where sufficient data from the Bureau of Census, the Small Business Administration and the Minority Business Development Agency of the Department of Commerce are not available, the Secretary may accept a

recipient's estimate of such percentages for purposes of this criterion.

§ 570.905 Review of continuing capacity to carry out CDBG funded activities in a timely manner.

If HUD determines that the recipient has not carried out its CDBG funded activities in a timely manner or that the recipient has not carried out its CDBG activities and certifications in accordance with the requirements and criteria described into §§ 570.901 or 570.902, HUD will undertake a further review to determine whether or not the recipient has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken and the success or likely success of such actions.

§ 570.906 Review of urban counties.

In reviewing the performance of an urban county, HUD will hold the county accountable for the actions or failures to act of any of the units of general local government participating in the urban county. Where the Department finds that a participating unit of government has failed to cooperate with the county to undertake or assist in undertaking an essential community development or assisted housing activity and that such failure results, or is likely to result, in a failure of the urban county to meet any requirement of the program or other applicable laws, the Department may prohibit the county's use of CDBG funds for that unit of government. HUD will also consider any such failure to cooperate in its review of a future cooperation agreement between the county and such included unit of government.

§ 570.907–570.909 [Reserved]

§ 570.910 Corrective and remedial actions.

(a) *General.* Consistent with the procedures described in § 570.900(b), the Secretary may take one or more of the actions described in paragraph (b) of this section. Such actions shall be designed to prevent a continuation of the performance deficiency; mitigate, to the extent possible, the adverse effect or consequences of the deficiency; and prevent a recurrence of the deficiency.

(b) *Actions authorized.* The following lists the actions that HUD may take in response to the review of a recipient's performance:

(1) Issue a letter of warning advising the recipient of the deficiency and putting the recipient on notice that additional action will be taken if the deficiency is not corrected or is repeated;

(2) Recommend, or request the recipient to submit, proposals for corrective actions, including the correction or removal of the causes of the deficiency, through such actions as:

(i) Preparing and following a schedule of actions for carrying out the affected CDBG activities, consisting of schedules, timetables and milestones necessary to implement the affected CDBG activities;

(ii) Establishing and following a management plan which assigns responsibilities for carrying out the actions identified in paragraph (b)(2)(i) of this section;

(iii) For Entitlement recipients, cancelling or revising affected activities which are no longer feasible to implement due to the deficiency and reprogramming funds from such affected activities to other eligible activities; or

(iv) Other actions which will serve to prevent a continuation of the deficiency, mitigate (to the extent possible) the adverse effects or consequences of the deficiency, and prevent a recurrence of the deficiency;

(3) Advise the recipient that a certification will no longer be acceptable and that additional information or assurances will be required;

(4) Advise the recipient to suspend disbursement of funds for the deficient activity;

(5) Advise the recipient to reimburse its program account or letter of credit in any amounts improperly expended;

(6) Change the method of payment to the recipient from a letter of credit basis to a reimbursement basis;

(7) In the case of claims payable to HUD or the U.S. Treasury, institute collection procedures pursuant to Subpart B of 24 CFR Part 17; and

(8) In the case of an Entitlement recipient, condition the use of funds from a succeeding fiscal year's allocation upon appropriate corrective action by the recipient pursuant to § 570.304(d). The failure of the recipient to undertake the actions specified in the contract condition may result in a reduction, pursuant to § 570.911, of the Entitlement recipient's annual grant by up to the amount conditionally granted.

§ 570.911 Reduction, withdrawal, or adjustment of a grant or other appropriate action.

(a) *Opportunity for an informal consultation.* Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action, taken pursuant to paragraph (b), (c), or (d) of this section, the recipient shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation.

(b) *Entitlement grants.* Consistent with the procedures described in § 570.900(b), the Secretary may make a reduction in the Entitlement grant amount either for the succeeding program year or, if the grant had been conditioned, up to the amount that had been conditioned. The amount of the reduction shall be based on the severity of the deficiency and may be for the entire grant amount.

(c) *HUD-administered Small Cities grants.* Consistent with the procedures described in § 570.900(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants.

(d) *Urban Development Action Grants.* Consistent with the procedures described in § 570.900(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants made to the recipient.

§ 570.912 Nondiscrimination compliance.

(a) Whenever the Secretary determines that a unit of general local government which is a recipient of assistance under this Part has failed to comply with § 570.602, the Secretary shall notify the governor of such State or chief executive officer of such unit of general local government of the noncompliance and shall request the governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, the Secretary is authorized to:

(1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) Exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d);

(3) Exercise the power and functions provided for in § 570.913; or

(4) Take such other action as may be provided by law.

(b) When a matter is referred to the Attorney General pursuant to paragraph (a)(1) of this section, or whenever the Secretary has reason to believe that a State or a unit of general local government is engaged in a pattern or practice in violation of the provisions of § 570.602, the Attorney General may bring a civil action in any appropriate

United States district court for such relief as may be appropriate, including injunction relief.

§ 570.913 Other remedies for noncompliance.

(a) If the Secretary finds after reasonable notice and opportunity for hearing that a recipient has failed to comply substantially with any provision of this Part, the Secretary, until he/she is satisfied that there is no longer any such failure to comply, shall:

(1) Terminate payments to the recipient;

(2) Reduce payments to the recipient by an amount equal to the amount of such payments which were not expended in accordance with this Part; or

(3) Limit the availability of payments to programs or activities not affected by such failure to comply;

Provided, however, that the Secretary may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (c)(1) of this section; pending such hearing and a final decision, to the extent the Secretary determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) In lieu of, or in addition to, any action authorized by paragraph (a) of this section, the Secretary may, if he/she has reason to believe that a recipient has failed to comply substantially with any provision of this Part:

(1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and

(2) Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this Part which was not expended in accordance with it, or for mandatory or injunctive relief;

(c) *Proceedings.* When the Secretary proposes to take action pursuant to this section, the respondent is the unit of general local government or State receiving assistance under this Part. These procedures are to be followed prior to imposition of a sanction described in paragraph (a) of this section:

(1) *Notice of opportunity for hearing:* The Secretary shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall:

(i) Specify, in a manner which is adequate to allow the respondent to prepare its response, allegations with respect to a failure to comply substantially with a provision of this Part;

(ii) State that the hearing procedures are governed by these rules;

(iii) State that a hearing may be requested within 10 days from receipt of the notice and the name, address and telephone number of the person to whom any request for hearing is to be addressed:

(iv) Specify the action which the Secretary proposes to take and that the authority for this action is section 111(a) of the Act;

(v) State that if the respondent fails to request a hearing within the time specified a decision by default will be rendered against the respondent; and

(vi) Be sent to the respondent by certified mail, return receipt requested.

(2) *Initiation of hearing.* The respondent shall be allowed at least 10 days from receipt of the notice within which to notify HUD of its request for a hearing. If no request is received within the time specified, the Secretary may proceed to make a finding on the issue of compliance with this Part and to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ by the Secretary at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas as authorized by law;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Order or limit discovery prior to the hearing as the interests of justice may require;

(v) Regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) Hold conferences for the settlement or simplification of the issues by consent to the parties;

(vii) Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) Make and file initial determinations.

(4) *Ex parte communications.* An ex parte communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. Ex parte communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an ex parte communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. The Department has the burder of proof in showing by a preponderance of the evidence that the respondent failed to comply substantially with a provision of this Part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Within 25 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a treatment of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole

record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by certified mail, return receipt requested, and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching his/her initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the reasons or basis therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 80 days after the decision of the ALJ was furnished to the parties.

(10) *Judicial Review.* The respondent may seek judicial review of the Secretary's decision pursuant to section 111(c) of the Act.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5320) and Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 84–28541 Filed 10–30–84; 8:45 am]

BILLING CODE 4210–29–M

federal register

Wednesday
October 31, 1984

Part IV

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants:

Regulations of Radionuclides; Withdrawal of Proposed Standards

Standards for Radon-222 Emissions from Underground Uranium Mines and From Licensed Uranium Mills; Advanced Notices of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL 2694-2]

National Emission Standards for Hazardous Air Pollutants; Regulation of Radionuclides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed standards.

SUMMARY: On April 6, 1983, the Environmental Protection Agency, pursuant to section 112 of the Clean Air Act, proposed standards for sources of emissions of radionuclides in four categories: (1) Elemental phosphorus plants; (2) Department of Energy (DOE) facilities; (3) Nuclear Regulatory Commission (NRC)-licensed facilities and non-DOE Federal facilities; and (4) underground uranium mines. In addition, the Agency decided not to propose standards for the following source categories of radionuclide emissions: (1) Coal-fired boilers; (2) the phosphate industry; (3) other extraction industries; (4) uranium fuel cycle facilities, uranium mill tailings, and management of high-level radioactive waste; and (5) low energy accelerators. The Agency is announcing the withdrawal of its four proposed standards for radionuclide emissions under Section 112 of the Clear Air Act and affirms its original decision not to regulate emissions from the other five source categories considered. The U.S. District Court for the Northern District of California has ordered EPA to take final action on its proposed standards by October 23, 1984.

DATE: This withdrawal is effective October 31, 1984.

ADDRESS: The rulemaking record is contained in Docket No. A–79–11. This docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery One, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: James M. Hardin, Environmental Standards Branch (ANR–460), Criteria and Standards Division, Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460, (703) 557–8977.

SUPPLEMENTARY INFORMATION:

I. Supporting Documents

A final Background Information Document has been prepared and single copies may be obtained by writing the Program Management Office, Office of Radiation Programs (ANR–458), U.S. Environmental Protection Agency, Washington, D.C. 20460, or by calling (703) 557-9351. Please refer to "NESHAPS-Radionuclides: Background Information Document for Final Rules, Volumes 1 and 2 [EPA 520/1–84–022–1, EPA 520/1–84–022–2], October 1984. These documents comprise the integrated risk assessment performed to provide the scientific basis for this rulemaking. Volume 1 of the Background Information Document contains a complete description of the Agency's methodology used in its risk assessment of the hazards associated with airborne emissions of radionuclides. Volume 2 is devoted to a detailed description of how the Agency applied this methodology to each source category considered in this rulemaking. For each source category, this document describes the radionuclide emissions, estimated doses and risks to nearby individuals and to populations, description of current emission control technology, and descriptions and cost estimates of additional emission control technology.

The Agency's written responses to oral and written comments on the proposed standards have been placed in Docket No. A–79–11. Single copies of the Agency's responses may be obtained by writing the Program Management Office, Office of Radiation Programs (ANR–458), U.S. Environmental Protection Agency, Washington, D.C. 20460, or by calling (703) 557–9351. Please refer to "NESHAPS-Radionuclides: Response to Comments for Final Rules, Volumes 1 and 2" [EPA 520/1–84–023–1, EPA 520/1–84–023–2], October 1984.

II. History of Standards Development

In 1977, Congress amended the Clean Air Act (the Act) to adddress airborne emissions of radioactive materials. Before 1977, these emissions were either unregulated or were regulated under the Atomic Energy Act. Section 122 of the Act required the Administrator of EPA, after providing public notice and opportunity for public hearings (44 FR 21704, April 11, 1979), to determine whether emissions of radioactive pollutants "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health." On December 27, 1979, EPA published a notice in the **Federal Register** listing radionuclides as a hazardous air pollutant under section 112 of the Act (44 FR 76738). This action was based on the Agency's finding that studies of the biological effects of ionizing radiation indicated that exposure to radionuclides increases the risk of human cancer and genetic damage. In addition, the Agency found that emissions data indicated that radionuclides are released into air from many different sources with the result that millions of people are exposed. To support these findings, EPA issued a report entitled "Radiological Impact Caused By Emissions oof Radionuclides into Air in the United States, Preliminary Report," [EPA 520/7–79–006], Office of Radiation Programs, U.S. EPA, Washington, D.C., August 1979.

Section 122(c)(2) of the Act directed that, after having listed radionuclides as a hazardous air pollutant, EPA enter into an interagency agreement with the Nuclear Regulatory Commission with respect to those facilities under NRC jurisdiction. Such a memorandum of understanding was effected on October 24, 1980, and was subsequently published in the **Federal Register** (45 FR 72980, November 3, 1980). When EPA began developing standards for Department of Energy facilities, a similar memorandum of understanding was negotiated with DOE and signed in October 1982. Copies of both these memoranda have been placed in the Docket for public review.

On April 6, 1983, EPA announced its proposed standards for sources of emissions of radionuclides from four categories: (1) Elemental phosphorus plants; (2) DOE facilities; (3) NRC–licensed facilities and non-DOE Federal facilities; and (4) underground uranium mines. Several additional source categories emitting radionuclides were identified in the notice. However, the Agency concluded that good reasons existed to propose not to regulate these categories, which included: (1) Coal-fired boilers; (2) the phosphate industry; (3) other extraction industries; (4) uranium fuel cycle facilities, uranium mill tailings, and management of high-level radioactive waste; and (5) low energy accelerators (48 FR 15076, April 6, 1983). At the time of proposal, it was thought that these nine source categories were all that potentially released radionuclides to air at levels that could warrant regulatory attention. In support of these proposed standards and determinations, EPA published a draft report entitled "Background Information Document, Proposed Standards for Radionuclides," [EPA 520/1–83–001], Office of Radiation Programs, U.S. EPA, Washington, D.C., March 1983.

Following publication of the proposed standards, EPA conducted an informal public hearing in Washington, D.C., on April 28 and 29, 1983. The comment period was held open an additional 30 days to receive written comments. Subsequently, EPA received a number of

requests to extend the time for submission of public comments and to conduct a public hearing outside of Washington, D.C., on the proposed standards to accommodate those were unable to attend the first hearing. In response to these requests, EPA extended the comment period by an additional 45 days and held another informal public hearing in Denver, Colorado, on June 14, 1983 (48 FR 23665, May 26, 1983).

EPA has considered and responded to all written and oral comments; a copy of the Agency's responses is in the Docket. The Background Information Document has been revised and published in final form. In addition, a final economic analysis of the impact of the proposed standards for elemental phosphorus plants has been completed and placed in the Docket (Refer to "Regulatory Impact Analysis of Emission Standards for Elemental Phosphorus Plants," October 1984). The final report on control technology for radionuclide emissions to air at Department of Energy facilities has been published and a copy is available int he Docket. (Refer to "Control Technology for Radioactive Emissions to the Atmosphere at U.S. Department of Energy Facilities," [PNL–4621], October 1984).

In response to requests for wider scientific review of the Agency's risk assessment, the Administrator in December 1983, formed a Subcommittee on Risk Assessment for Radionuclides within the Agency's Science Advisory Board (SAB) to review the scientific basis for the proposed standards. This review is discussed in more detail in Section IV of this notice. On the basis of the Subcommittee's review, the final Background Information Document has been rewritten to incorporate recommendations made by the Subcommittee. The revised Background Information Document presents an integrated risk assessment following the format and methodology suggested by the Subcommittee, to the extent possible.

On February 17, 1984, the Sierra Club filed suit to compel final action in the U.S District Court for the Northern District of California, pursuant to the citizens' suit provision of the Act (Sierra Club v. Ruckelshaus, No. 84–0656 WHO). In August 1984, the Court granted the Sierra Club's summary judgment motion and ordered EPA to take final action on its proposed standards by October 23, 1984. On September 14, 1984, the Administrator requested that the Court delay its deadline until January 1985 to him enable him to personally evaluate the merits of the criticisms and suggestions presented by the Subcommittee. This request was denied.

On August 24, 1984, EPA announced in the **Federal Register** the availability of new technical information (49 FR 33695). The public was encouraged to comment on this new information which included the Final Report of the SAB Subcommittee, transcripts of all public meetings of the Subcommittee, information presented to the Subcommittee, and technical information relevant to elemental phosphorus plants and underground uranium mines. This new information was available in the Docket on September 7, 1984. The Agency's responses to these comments are included in Volume 2 of "NESHAPS-Radionuclides: Response to Comments for Final Rules."

III. Summary of the Final Actions.

On April 6, 1983, the Agency proposed standards for sources of emissions of radionuclides in four categories: (1) Elemental phosphorus plants; (2) DOE facilities; (3) NRC-licensed facilities and non-DOE Federal facilities; and (4) underground uranium mines. For DOE facilities, the Agency proposed an emission limit not to exceed an amount that causes a dose equivalent rate of 10 mrem/y to the whole body and 30 mrem/y to any organ of any individual living nearby. For NRC-licensees and non-DOE Federal facilities, the Agency proposed an emission limit not to exceed an amount that causes a dose equivalent rate of 10 mrem/y to any organ of any member of the public. The emission limit proposed for elemental phosphorus plants was 1 Ci/y of polonium-210.

For all three of these source categories, the Administrator has determined that current practice provides an ample margin of safety in protecting the public health from the hazards associated with exposure to airborne radionuclides, and has therefore decided to withdraw the proposed standards.

In the case of underground uranium mines, the Agency proposed a standard to limit the annual average radon-222 concentration in air due to emissions from an underground mine to 0.2 pCi/1 above background in any unrestricted area. The Agency is also withdrawing this proposed standard beacause it has concluded, for the reasons discussed below, that it did not meet the legal requirements of Section 112. The Agency has received additional technical information that suggests the possibility of using bulkheading and other techniques to control radon emissions. However, pursuing this course of action was not advocated or even suggested in the proposal. Indeed, the information available to EPA at the time of proposal indicated that these techniques were costly and "not very effective" and the Agency dismissed these techniques as the basis for an emission standard (48 FR 15083, col. 3). Since that time, new information suggests that conclusion may be erroneous. Technical information on which the base of final regulation or a proposal is not yet available; further work is needed to demonstrate how to set such a regulation at some future time. Therefore, the Agency is publishing, simultaneously with this notice, an Advance Notice of Proposed Rulemaking for Radon-222 Emissions from Underground Uranium Mines to solicit additional information on control methods, such as bulkheading and other forms of operational controls for radon-222 emissions from these mines. Such an approach could avoid many of the technical and legal difficulties pose by EPA's proposed standards.

In addition to the four source categories for which EPA did propose standards, the Agency has made a final determination not to regulate the following five source categories: (1) Coal-fired boilers; (2) the phosphate industry; (3) other extraction facilities; (4) uranium fuel cycle facilities, uranium mill tailings, and management of high-level radioactive waste; and (5) low energy accelerators. The Agency did not receive any new information during the public comment period that convinced it of a need for regulation of any of these five categories. Therefore, the Administrator affirms the original decision not to regulate these sources, believing that adequate public health protection exists to satisfy the requirements of the Clean Air Act.

When the Agency promulgated its standards for active uranium mill tailings (40 CFR 192, Subparts D and E), it decided that the control of the radon-222 emissions from the active uranium mill tailings piles could more appropriately be considered under the Clean Air Act, rather than the Uranium Mill Tailings Radiation Control Act. The preamble to the final uranium mill tailings standards noted that work practice standards were probably the most practical way to control radon emissions at active uranium mills. Consequently, EPA is issuing, simultaneously with this notice, an Advance Notice of Proposed Rulemaking for Radon-222 Emissions from Licensed Uranium Mills.

The withdrawal of the proposed standards for elemental phosphorus plants, Department of Energy facilities, Nuclear Regulatory Commission-licensed facilities and non-DOE Federal facilities, and underground uranium mines are final actions. Also, the decision not to establish radionuclide emission standards for coal-fired boilers; the phosphate industry, other extraction industries; uranium fuel cycle facilities, uranium mill tailings, and management of high-level radioactive waste; and low energy accelerators are final actions. Judicial review is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication date.

III. Major Issues Raised in Public Comments

Many commenters expressed considerable dissatisfaction with the proposed standards. Operators of facilities for which standards were proposed objected vigorously to the stringency of the proposed standards; other groups objected on the grounds that the proposed actions were not sufficiently protective of public health. Both groups criticized the proposed standards for not meeting the intent of the Clean Air Act.

A number of comments were made which apply to all of the source categories considered and which address the bases of the standards-setting process. The following is a summary of the most significant comments and the Agency's responses:

Comment: Radionuclides should not be considered a hazardous air pollutant under section 112 of the Clean Air Act because ambient levels do not pose a significant risk to human health. One commenter petitioned for reconsideration of EPA's listing of radionuclides as a section 112 pollutant, on the basis that the Agency had not justified its conclusion that radionuclides are hazardous air pollutants within the meaning of section 112.

Responses: EPA has concluded that existing radionuclide emissions from some stationary sources can represent a significant risk of fatal and nonfatal cancers to exposed populations. There is no scientific doubt that radionuclides are carcinogens. This conclusion is based on extensive scientific evidence derived from studies of populations of humans and animals exposed to radiation at various levels ranging from very high doses to doses only slightly greater than environmental levels.

Both this conclusion and EPA's specific risk esitmates are based on the widely used assumption that there is no threshold below which exposure to radiation does not pose some risk to human health. Based on this premise, EPA concludes that exposure to radionuclides at low levels in the ambient air presents a risk of fatal and nonfatal cancers, as well as genetic damage.

In addition, section 112 requires not only a finding that the pollutant at issue is hazardous in the abstract, but also that it poses a public health risk in its form as an air pollutant. EPA has evaluated the air pollution risk of radionuclide emissions based on the magnitude of such emissions from stationary sources to the ambient air, on observed and estimated ambient concentrations of radionuclides, on the proximity of large populations to emitting sources, on estimates of health risks to exposed populations, and on considerations of uncertainties associated with risk estimates.

Based on this analysis, EPA has concluded that the present record does not support regulation of any of the source categories for which regulation was proposed. This conclusion, however, does not support delisting of radionuclides, because, in the case of uranium mines, the risks appear sufficient to warrant future regulatory action under section 112. It is only because regulation of the appropriate type is impossible at this time, due to the need for further work on the technical issues and the need to provide an opportunity for notice and comment on any proposed action, that no rules for uranium mines are being included in this decision.[1]

Therefore, with respect to the petition for reconsideration of the listing of radionuclides as a hazardous air pollutant, EPA has considered this option and has rejected it, believing that the original decision to list under section 112 is still appropriate.

Comment: The EPA standards are unnecessary because current administrative or regulatory standards of 500 mrem/y to the whole body and 1500 mrem/y to any organ (Federal Radiation Council guidance and NRC regulatory values), coupled with directives to keep emissions as low as practicable, are adequately protective of the public health. Other commenters felt that the proposed standards were too lax and that the Agency should set an emission limit of zero, with exceptions allowed only after a case-by-case examination.

Response: EPA does not believe that current Federal Radiation Council guidance and NRC policy of limiting exposure to individuals to 500 mrem/y to the whole body and 1500 mrem/y to any organ protects public health with an ample margin of safety, as required by the Clean Air Act. EPA estimates that a person receiving 500 mrem/y to the whole body over a lifetime would have an added potential risk of developing a fatal cancer of about one in one hundred due to the radiation exposure. In addition, that same person would face an approximately equal level of risk of nonfatal cancer and of passing on nonfatal genetic effects to succeeding generations.

However, EPA recognizes that the "as low as reasonably achievable" (ALARA) emissions policy had led to generally low emissions of radionuclides from most facilities. The Agency expects that this current policy will continue in the future and does not anticipate an increase in the emission level or the associated risks. Therefore, the Agency believes that in cases in which a vigorous and well-implemented ALARA program has achieved low emissions, such practice can provide an ample margin of safety for public health protection.

The Agency does not agree with the approach of establishing an emission limit of zero. The implementation of such a standard for the source categories considered would be extremely burdensome, and would result in little improvement in public health. More important, however, is the Administrator's determination that public health is currently protected to a degree which satisfies the requirement of Section 112 of the Act.

Comment: EPA is required to promulgate standards under all of its applicable authorities in order to fulfill the intent of its Congressional mandates. For example, the Agency must regulate air emissions from uranium fuel cycle facilities under the Clean Air Act, as well as under the Atomic Energy Act.

Response: The Agency believes that its primary objective is to provide reasonable public health protection, but that it was not the intent of Congress that the Agency issue duplicative regulations to achieve this goal. In light of the limited resources in both the

[1] The Administrator believes, based on an analysis by EPA's Office of General Counsel, that today's actions are consistent with the statute and the court order governing today's decision. EPA acknowledges, however, that an argument exists that the only proper way to procedurally express the substantive conclusions set forth in today's rulemaking is by delisting the particular pollutant involved. Though EPA does not presently accept that position, it stands ready to amend this package promptly along these lines if the Court should so direct.

public and private sector, it would be inefficient and unnecessarily complicated to require sources to comply with a standard they already meet, or alternatively, to meet several comparable standards set by one Agency under different statutory authorities.

Comment: Some commenters stated that the standards should be based on cost analyses, and if not cost-effective, they should not be promulated. Others felt that costs should not be considered at all.

Response: The Agency believes that giving equal weight to costs and benefits is inappropriate in developing standards under Section 112 of the Clean Air Act. Congress clearly intended that public health protection considerations be primary and that cost be secondary.

The Agency did consider, in developing these rules, the availability and practicality of control equipment. While this was not a primary consideration, knowledge of the availability of control technology is necessary when making judgments on the need for and level of emission standards. EPA believes these considerations are within the Administrator's discretion in determining what level of protection is adequate. The Agency considered costs to a limited degree consistent with this overall perspective in reaching its decisions on coal-fired boilers and elemental phosphorus plants, but otherwise today's action does not rest on cost considerations.

Comment: Some commenters stated that the Clean Air Act requires standards for all source categories releasing significant amounts of radionuclides into the air. Determinations that standards are not needed are not allowed for any reason. Others supported EPA's determinations that standards for some categories are unnecessary.

Response: The comment that every stack emitting radionuclides to air must be subject to an emission limit established under the Clean Air Act must be considered in light of the fact that every stack in the United States discharges at least minute quantities of radionuclides. These radionuclides include certain kinds of carbon and potassium atoms and other naturally-occurring radionuclides. Because these emissions are so small, the risk to nearby individuals and the total population group is minimal. To regulate these sources would not significantly improve the public health.

Section 112 of the Act requires the Administrator to assure public health protection with an ample margin of safety. A negative determination of the need for standards is permissible within the context of the Act, so long as this criterion is met. With respect to eight of the source categories considered in this rulemaking, the Agency has concluded that the public health is adequately protected under current practice, and therefore has met the requirements of the Act. For the uranium mines category, the Agency concludes that risks are significant; however, there is presently no feasible way to establish an emission standard. The Agency will consider such a standard, together with alternative design, equipment, work practice and operational standards, for future proposal.

Comment: There has not been sufficient review outside the Agency of EPA's methods and procedures for risk assessment. Specifically, EPA's Science Advisory Board should review the scientific basis of the proposed standards for radionuclides.

Response: The Agency agrees with this comment (see section V below).

Comment: The proposed standards should not be promulgated because they cannot be implemented with reasonable procedures. Compliance with indirect emission standards (dose or concentration limits at site boundary) must be determined by environmental measurements at the site boundary. Because the proposed standards are so restrictive, this is either very expensive or altogether impractical.

Response: Questions concerning the implementations of standards for airborne radionuclide emissions are moot in light of the Administrator's decision to withdraw the proposed rules.

Comment: Standards should be consistent with established international and national policies and regulations governing radiation protection, as well as among each source category.

Response: The Agency agrees with this comment and has based its decision to withdraw the proposed standards, in part, on the fact that current practices in radiation protection do provide adequate public health protection.

Comment: Standards should allow for greater operational flexibility in selecting control technology.

Response: Questions concerning the amount of operational flexibility necessary to comply with standards for airborne radionuclide emissions are moot in light of the Administrator's decision to withdraw the proposed rules.

V. Technical Review by the Science Advisory Board

In response to criticism that the Agency did not have sufficient outside review of its methods used to assess risk due to radionuclides, the Administrator formed a subcommittee of the Agency's Science Advisory Board to review the scientific basis of the proposed standards for radionuclides. The Subcommittee held three public meetings: the first on January 16, 1984, the second on February 21–22, 1984, and the third on March 22, 1984. At these meetings, the Subcommittee was briefed by Agency staff on the methods used in estimating risks caused by airborne radionuclides. The panel heard from members of the public on the Agency's risk assessments, as well. The Subcommittee also held executive sessions to consider the information presented by the Agency and the public.

Transcripts of the public meetings are available in the Docket. The Subcommittee's final report, entitled "Report on the Scientific Basis of EPA's Proposed National Emission Standards for Hazardous Air Pollutants for Radionuclides," was transmitted to the Administrator on August 17, 1984. A copy of this report and the Agency's response are available in the Docket.

In the Executive Summary of its report, the Subcommittee noted that its activities could be viewed as addressing two interrelated questions. First, did the Agency's staff collect the scientifically relevant data and use scientifically defensible approaches in modeling the transport of radionuclides through the environment from airborne releases, in calculating the doses received by persons inhaling or ingesting this radioactivity and in estimating the potential cancer and genetic risks of the calculated doses? Second, are the individual facts, calculational operations, scientific judgments, and estimates of uncertainty documented and integrated in a clear and logical manner to provide a risk assessment that can be used as a scientific basis for risk management purposes, i.e., standard-setting? With regard to the first question, the Subcommittee concluded that EPA had gathered the appropriate scientific information needed for a risk assessment in a technically proficient manner.

The Subcommittee made several technical suggestions on how EPA could improve its assumptions, models, and methods for estimating risks. Most of these technical suggestions have been incorporated into EPA's risk assessment procedures. The risk assessment for the final rule reflects these modifications. Some of these technical suggestions involve additonal research to improve future risk assessment methods. Those

suggestions will be used as EPA conducts new studies.

The Subcommittee's greatest criticism in its report was related to the second question. They concluded that EPA had not assembled and integrated the available scientific data in the format of a risk assessment that provides an adequate basis for regulatory decisions. The panel suggested the need for an intermediate step between the collection of the relevant technical information and the selection of regulatory options. Specifically, they encouraged the Agency to assemble an intergrated risk assessment document that would lead a decisionmaker step-by-step from the identification of emission sources, through the calculation of radiation doses and the associated degree of uncertainty, to a variety of regulatory options from which to choose. Only in this way did the Subcommittee feel that a policymaker could be presented with all the facts necessary to make a responsible regulatory decision. Further, this analysis would enable the scientific community and the public to understand the rationale and basis for the Agency's actions.

The Agency recognizes and is concerned about the adverse criticism of its processes by its own Science Advisory Board. EPA does believe that, on balance, its risk estimates for specific sources of radionuclide emissions are accurate within the limitations inherent in making such estimates. It acknowledges, however, that the criticism of the Board does cloud the rulemaking record, and that the Subcommittee's concerns, by their very nature, cannot be fully addressed within the time available for this decision. Nevertheless, the final Background Information Document has been greatly modified to encompass the format and suggestions of the Subcommittee to the extent possible. However, the Subcommittee has not reviewed this revised document.

The Science Advisory Board also made several procedural suggestions for improving the Agency's risk assessment methods. These recommedations will be incorporated into the Agency's procedures and processes. Detailed responses to the Science Advisory Board's recommendations can be found in Volume 2 of "NESHAPS-Radionuclides: Response to Comments for Fiscal Rule."

VI. Perspectives on Risk Assessment

Today's decision is based on a developing body of science and policy concerning the treatment of one particular class of hazardous substances, namely materials that cause, or are thought to cause, cancer. In some cases, scientific evidence indicates that a given substance is hazardous at high levels or exposure, but has no effect below a certain level. For most carcinogenic substances, however, scientists are unable to identify such a threshold below which no effects occur; moreover, to the extent scientists understand the process of carcinogenesis, there is some reason to believe such thresholds may not exist. For these kinds of substances, EPA and other Federal agencies have taken the position that any level of exposure may pose some risks of adverse effects, with the risks increasing as the exposure increases.

EPA's approach to risk assessment for suspected carcinogens may be divided into several steps. The first is qualitative evaluation of the evidence to determine whether a substance should be considered a human carcinogen for regulatory purposes. This was done for radionuclides before they were listed as a hazardous air pollutant in 1979. The second step is quantitative: how large is the risk of cancer at various levels of exposure? The result of this examination is a dose-response function which gives the lifetime risk per unit of exposure (or "potency"). The third step is to estimate how many people are exposed to the sources of radiation, and at what levels. These exposure estimates then are combined with the dose-response function to obtain estimates of the risk caused by emissions of the pollutant, in this case radionuclides, into the environment.

Exposure levels for each specific source category are derived using emissions estimates, dispersion modeling, and population data. For any given level of emissions, dispersion models predict concentrations at different distances from the emission source. By combining those estimated concentrations with census data on population densities, the number of people exposed at different levels can be estimated. Several factors suggest that actual exposure levels will be lower than those estimated. In estimating exposure, the most exposed individuals are hypothetically subjected to the maximum annual average concentration of the emissions for 24 hours every day for 70 years (roughly a lifetime). This does not take into account indoor vs. outdoor air, for instance, or the fact that most people in their daily routines move in and out of the specific areas where the emission concentration are the highest.

The final risk estimates are the product of the exposure levels and the estimated unit-risk factor. Two summary measures are of particular interest: "nearby individual risk" and "total population impact." The former refers to the estimated increased lifetime risk from a source that is faced by individuals who spent their entire life at the point where predicted concentrations of the pollutant are highest. Nearby individual risk is expressed as a probability; a risk of one in one thousand, for example, means that a person spending a lifetime at the point of maximum exposure faces an estimated increased risk of cancer of one in one thousand. (For comparison, the average lifetime risk of dying of cancer in the United States is about 165 in 1,000, so eliminating a risk of one in one thousand reduces the overall lifetime risk of contracting cancer by less than 0.6 percent.) Estimates of nearby individual risk must be interpreted cautiously, however, since generally few people reside at the points of maximum concentrations and spend their whole lives at such locations.

The second measure, "total population impact," considers people exposed at all concentrations, low as well as high. It is expressed in terms of annual number of cancer cases, and provides a measure of the overall impact on public health. A total population impact of 0.05 fatal cancer per year, for example, means that emissions of the specific pollutant from the source category are expected to cause one case of cancer every 20 years. Such figures should not be viewed as precise estimates of the likely effects. Together with the estimates of maximum individual risk, they are intended to give an indication of a reasonable upper-limit situation.

The two estimates together provide a better description of the magnitude and distribution of risk in a community than either number alone. "Nearby individual risk" tells us the highest risk, but not how many people bear that risk. "Total population impact" describes the overall health impact on the entire exposed population, but not how much risk the most exposed persons bear. Two sources of radionuclide or chemical emissions could have similar population impacts, but very different maximum individual risks, or vice versa. Any sensible "risk management" system cannot rely on either measure alone; both are important.

Much more is known about the risks from exposure to radiation than exposure to most chemicals. While there is uncertainty in risk estimates from assessments of chemical emissions and radionuclide emissions, there is likely to be much less uncertainty in estimates of

risk from radionuclide emissions because of the extensive data base on human exposure to radiation. Therefore, a risk estimate of one in one thousand resulting from radionuclide emissions is likely to be more accurate than the same estimate for chemical releases. The situation for estimating risk from radionuclides is much less likely to reflect hypothetical maximum potential estimates than are estimates made for chemical emissions.

To provide general perspective regarding radiation exposure, everyone is exposed to background radiation due to cosmic radiation, and radioactivity in minerals, soils, and even our own bodies. Background radiation levels vary across the U.S., but average about 100 mrem/y for each person. There is very little that people can do to control exposure to background radiation. Over a lifetime this exposure is estimated to contribute to a fatal cancer risk of about one or two cases for every one thousand people.

VII. Withdrawal of Proposed Standards

A. Alternatives

In determining the appropriate course of action for the proposed standards, EPA considered the following alternatives.

1. Withdraw the Proposed Standards

This alternative is based on the finding that current and future emissions at the facilities under consideration are anticipated to be at levels that would protect the public with an ample margin of safety, as required by section 112 of the Act. This alternative is also appropriate if implementation of the proposed standards is infeasible.

2. Promulgate the Proposed Standards

This alternative is based on the conclusion that the findings made in the proposed rule were correct and that the proposed standards are necessary to adequately protect the public health.

3. Promulgate a Standard for Each Category at a Level That Would Limit Dose to 25 mrem/y to the Whole Body and 75 mrem/y to Any Organ

This alternative is based on the conclusion that the need for standards for each category for which the Agency proposed rules was correct, but that EPA could establish the standards at these recommended levels and still provide an ample margin of safety. Establishing the standards at these levels would also respond to several comments regarding consistency among the categories and with the recommendations of recognized national and international radiation protection groups, and regarding the need for greater operator flexibility in selecting control technology and methods of demonstrating compliance.

B. Elemental Phosphorus Plants

One of the decisions presented by this rulemaking concerns emission for elemental phosphorus plants. Risks from these plants are higher than for any other source category in this rulemaking except uranium mines. Moreover, technology to reduce these risks is available. Nevertheless, after consideration of the proposed rule, the public comments, the Science Advisory Board report, the risk assessment, and other pertinent information, it is the Administrator's judgment that the present record does not support a conclusion that regulation of elemental phosphorus plants is necessary to protect the public health, within the meaning of the Clean Air Act. Therefore, the proposed rule is withdrawn. This decision presents difficult questions and the Agency is undertaking a number of nonregulatory actions, explained below, that may lead to reexamination of this decision at some future date.

EPA estimates the total risk to human populations posed by radionuclide emissions from elemental phosphorus plants to be 0.06 fatal cancer per year, or approximately one case every seventeen years. This risk is similar to other risks that EPA has considered insufficient to warrant Federal regulation in comparable Section 112 proceedings. About 80% of the total risk presented by the industry is accounted for by two plants, the FMC plant in Pocatello, Idaho, and the Monsanto plant in Soda Springs, Idaho.

In the case of one of the plants, EPA estimates the dose rate to individuals at the location of highest air concentrations to be about 600 mrem/y to the lung. The chance of getting cancer from a lifetime of exposure at this location is calculated to be about one in one thousand. If risk to the "most exposed individuals" were the only criterion for judgment, this relatively high risk might well have led to a decision to regulate.

However, this risk must be weighed against both the low aggregate risk described earlier and against other factors. Our studies indicate that present emission controls on these plants are not efficient in removing radionuclides and could be improved. However, adding such additional controls will be expensive measured against the limited public health benefits provided.

Finally, the SAB Subcommittee's report harshly criticized EPA's analysis in support of its proposed standards. That alone would not justify a decision not to regulate, but in the context of the limited aggregate risk and other factors described earlier it contributes to such a decision, particularly given the Science Advisory Board's statutory role as the Agency's science advisor.

Over the next several years, EPA will work with the Science Advisory Board to satisfy its concerns regarding the scientific basis of regulations such as this. Undertaking this effort will also allow the development of answers to the following two questions that may have a bearing on any future EPA action.

1. EPA is curently reconsidering its ambient air quality standard for particulates, and may shift its emphasis toward regulating the smaller-sized particles. Since the two elemental phosphorus plants being considered here emit large amounts of these smallar particles, they may require additional controls based on these new standards. Limiting emissions of these smaller particulates would also control some of the radionuclide emissions from the plants.

2. The area surrounding these two plants is characterized by high total levels of radiation from a variety of sources. The storage and widespread use of slag and possibly other waste products from these plants have significantly increased the natural background radiation levels in parts of the communities. In particular, phosphate slag from these plants has been widely used as aggregate in road and house construction in these areas. EPA and the State of Idaho intend to perform a total assessement of the various sources and will investigate ways to reduce or prevent risks from growing. This assessment may find more effective ways to control the overall risks than by controlling the emissions at issue here.

C. Department of Energy (DOE) Facilities

It is also the Administrator's judgment that the present record does not support a conclusion that regulation of DOE facilities for radio-nuclide emissions to air is necessary to protect the public health with an ample margin of safety, within the meaning of the Clean Air Act. Therefore, the proposed rule is withdrawn and the rulemaking is terminated.

EPA estimates the total risk to exposed human populations by all DOE facilities for which regulation was proposed as 0.08 potential fatal cancer

per year, or one case every 13 years. This risk is comparable to risks that EPA has considered insufficient to warrant regulation in similar Section 112 proceedings.

Dose rates from the four DOE facilities with the greatest radionuclide emissions range from 50 mrem/y to 88 mrem/y to the lung; one of these facilities delivers a dose rate of 34 mrem/y to the whole body. EPA estimates the chances of fatal cancer from a lifetime of exposure to these plants' most concentrated emissions are about one to eight in ten thousand, somewhat lower than the maximum risks elemental phosphorus plants. Once again, this risk to nearby individuals must be weighed both against the low aggregate risks and the Science Advisory Board report described earlier.

The DOE currently has a program to keep exposure to the public to levels that are as low as reasonably achievable. This program is operated by the Department in keeping with the longstanding recommendations of the National Council on Radiation Protection and Measurements, the International Commission on Radiological Protection, and the Federal Radiation Council to avoid radiation exposure where practical. While the Agency recognizes that DOE facilities maintain very large quantities of radionuclides in their inventories at many of their facilities, there has been a general trend at most facilities for radionuclide emissions to be reduced over the years. Emissions should not significantly increase in the future. EPA intends to continue its oversight of emissions from DOE facilities and should this change, the Agency will reexamine its decision not to regulate.

As previously noted, EPA currently has a Memorandum of Understanding (MOU) with DOE regarding the development and implementation of standards under section 112. EPA intends to coordinate with DOE to seek to modify the Memorandum of Understanding as appropriate.

D. Nuclear Regulatory Commission (NRC)-Licensed Facilities and Non-DOE Federal Facilities

It is also the Administrator's judgment that the present record does not support a conclusion that regulation of NRC-licensed facilities and Federal facilities other than DOE facilities is necessary to protect the public health with an ample margin of safety, within the meaning of section 112. Therefore, the proposed rule is withdrawn and the rulemaking is terminated.

EPA estimates the total risk to human populations posed by NRC-licensed facilities and non-DOE Federal facilities for which regulations were proposed to be no more than 0.02 fatal cancer per year, or less than one case every fifty years. This risk is comparable to other risks that EPA has considered insufficient to warrant regulation in similar Section 112 proceedings.

EPA calculates the changes of developing fatal cancer from a lifetime of exposure to the most concentrated emissions from the NCR facilitiy with the greatest dose rate at no more than two in ten thousands. EPA believes that the Nuclear Regulatory Commission and other Federal facilities will continue to implement programs to keep exposure of the public to levels that are as low as reasonably achievable, and adequate to protect the public against significant adverse effects from radiation. Emissions should not significantly increase in the future. EPA will continue its oversight of emissions from these facilities, and should this change, the Agency will reexamine its decision not to regulate.

As previously noted EPA currently has a Memorandum of Understanding (MOU) with NRC regarding the development and implementation of standards under section 112. EPA intends to coordinate with NRC to seek to modify the Memorandum of Understanding as appropriate.

E. Underground Uranimum Mines

The Agency proposed a standard for underground uranimum mines that would limit the annual average radon-222 concentration in air due to emissions from an underground mine to 0.2 pCi/1 above background in any unrestricted area. The standard was expected to be met by one of the following procedures: (1) Reducing the precentage of time the mine operates, (2) increasing the effective height of the release, and (3) controlling additional land. EPA expected that mine operators would most likely try to control land within about 2 kilometers of the mine vents in order to comply with the standard. EPA did not issue a direct emission standard for radon from underground uranium mines because, as the proposal explained, available information suggested that radon could not be collected by available pollution control equipment before being released from the vents, reductions afforded by better bulkheading or sealants were highly uncertain, and reducing the volume of air flow was not feasible due to the effect on occupational exposure. Comments on the proposed rule indicated that controlling a sufficient amount of land might not be feasible because private owners of land surrounding the mine might be unwilling to make their land available to the mine owners.

Several comments were received starting that EPA had overestimated the risks from radon-222 emissions from underground uranium mines. It was suggested that the Agency had used overly conservative assumptions in the dispersion and risk calculations and that it used greater risk coefficients than recommended by other recognized radiation experts. EPA has considered these comments in establishing its parameters for emission rates, plume rise, and equilibrium ratios in the revised risk assessment. The most recent estimates of the lifetime risks to individuals living near these mine range from one in one thousand to one in one hundred. The potential exists for even higher risks in some situations, e.g., a person living very close to several horizontal mines vents or in areas influenced by multiple mine emissions. Lifetime risks in these situations could be as high as one in ten. EPA estimates the fatal cancer risk to the total population to be about five fatal cancers per year. The Agency considers these risks to be significant and believes action is needed to protect populations and individuals living near underground uranium mines.

Analysis of the likely reduction in health risks afforded by the proposed standards showed that while risks to nearly individuals were reduced by a factor of about ten, the risks to the total population were only negligibly reduced. The lack of population risk reduction is due to the fact that radon releases would not be reduced by the proposed rule, they would only be more widely dispersed.

EPA has concluded that its proposed standard was legally flawed in two ways. First, because it would not have limited radionuclide emissions on a continuous basis, but was primarily based on the use of dispersion technology to reduce risks to nearby people, it did not qualify an "emission standard" within the meaning of section 112 (See Clean Air Act, section 302(k)). EPA also believes such dispersion techniques cannot qualify in this context as a "design, equipment, work practice or operational standard" within the meaning of section 112(e). EPA believes that for such standards to be valid, they must also have an emission limiting effect. (See Clear Air Act, sections 112(e)(3) and (e)(4).) Second, because this standard would not reduce the aggregate population risk appreciably, when such risk was high, if failed to

meet the public health protection purposes of the Act.

Because radon-222 is a noble gas and the volume of air discharged through mine vents is very large, there is no practical method to remove radon-222 from the mine exhaust air. Adsorption onto activated charcoal is the most widely used method for removing noble gases from a low volume air stream. However, application of this method to the removal of radon-222 from mine ventilation air at the volumes of air which must be treated would require large, complex, unproven systems which would be extremely costly (i.e., at least $18–44/lb of U_3O_8 produced).

Since proposal, EPA has received additional technical information in a report prepared for the U.S. Bureau of Mines, indicating that work practices, such as bulkheading abandoned sections of mines to trap the radon before it is vented, may be more feasible and cost-effective than previously thought. This information, which is of a preliminary nature, suggests that bulkheading, even without the use of charcoal filters, could reduce emissions of radon-222 by 10–60% from typical mines at a cost ranging from $4–$60 per curie reduced or about $0.01–0.05/lb of U_3O_8 produced.

Uranium mines are widely diverse in their characteristics. They differ in configuration; for example, some mines have very few side tunnels and cross cuts whereas others may have many side areas. Consequently, they have a wide variety of surface areas where radon can be generated. In addition, mines differ in the geologic strata, mining techniques, and uranium and radium concentrations. All of these factors tend to decrease the number of common characteristics among mines that can be used to make general predictions of the effectiveness of specific control measures. Therefore, considerable additional work is needed to establish whether these results can be realized consistently for an appreciable segment of the industry, and to determine methods of bulkheading that might potentially produce any such consistently acceptable results. Only after these facts have been established would EPA be able to propose a standard based on these techniques. In any event, no such rule can be promulgated on the present record because the original proposal considered the use of this form of control and explicitly dismised it as a basis for the standard.

Because the Agency is convinced that the health risks posed by underground uranium mines are significant, EPA has decided to begin developing an emission, design, equipment, work practice, or operational standard to control radon releases from underground uranium mines. An Advance Notice of Proposed Rulemaking announcing this decision is being published simultaneously with this notice.

VIII. Final Determination for Sources EPA Proposed Not To Regulate

EPA previously identified several source categories that emit radionuclides to air but proposed not to regulate them. Final decisions on the need for emission standards for these categories, and the reasons for these decisions, are discussed in the following paragraphs.

A. Coal-Fired Boilers

Large coal-fired boilers are used by utilities and industry to generate electricity and to make process steam and hot water for space heaters and industrial processes. When operating, these boilers emit trace amounts of uranium, radium, thorium, and their decay products found in the feed coal. These radionuclides become incorporated into fly ash and are carried into the air along with the particulate matter these boilers emit. Technology that removes particulates will also limit radionuclide emissions.

Particulate emissions from new utility and new large industrial boilers are controlled by new source performance standards issued under Section 111 of the Clean Air Act reflecting best demonstrated technology. EPA has also proposed new source performance standards for smaller industrial boilers. Existing utility and industrial boilers are regulated for particulate emissions by State implementation plans as required by the Clean Air Act.

EPA proposed not to regulate coal-fired boilers because these existing particulate emission standards also limit radionuclide releases, and result in relatively insignificant risks to nearby individuals and to populations due to radionuclides. The highest dose resulting from this source category is 1 mrem/y to the lung. This is equivalent to an individual lifetime risk of fatal cancer of one in one million. Population risk is estimated to be about two fatal cancers per year, spread over the entire U.S. population. The cost to further reduce radionuclide emissions is greater in comparison to the additional public health protection achieved. In addition, radionuclide emissions will decrease as old plants are replaced with new ones having improved particulate emission controls as required by the Clean Air Act.

Many commenters, mostly industrial groups, strongly supported the determination not to propose regulations for this source category. Several commenters stated that the risks from coal-fired boilers were so low that this fact alone indicated that standards are not needed. The Agency's decision not to regulate is based on both a consideration of the level of risk and on a consideration of total cost and practicality of additional control equipment. Some commenters stated costs should not be considered under section 112 of the Clean Air Act. EPA believes it is not reasonable to avoid considering cost and practicality of control technology; however, the protection of public health was the primary consideration in reaching this decision.

Some commenters raised the question of whether there are some boilers that might burn coal with high uranium content, leading to emission levels far greater than those considered in making this determination. EPA asked for comment on this point and contracted with Los Alamos National Laboratory to investigate the existence of such boilers. The Agency was unable to find boilers with radionuclide emission rates significantly greater than the model facility we studied in detail. In fact, the majority of boilers can be demonstrated to have emissions much lower.

Some commenters stated that the requirements of the Clean Air Act dictate that EPA must propose an emission standard specifically for radionuclides, regardless of other Clean Air Act regulations limiting particulate emissions. EPA believes that to issue a standard that duplicates current regulations is unreasonable. As a practical matter, Clean Air Act regulations limiting particulate emissions from these boilers also limit radionuclide emissions. Hence, these existing regulations protect the public health with an ample margin of safety as far as radionuclide emissions are concerned.

After carefully considering all comments, EPA has decided not to regulate radionuclide emissions from coal-fired boilers at this time. This decision will be periodically reviewed as additional information on the total impact of all hazardous air pollutants from coal-fired boilers becomes available.

B. Phosphate Industry

The phosphate industry processes phosphate rock to produce fertilizers, detergents, animal feeds, and other products. The production of fertilizer

uses approximately 80 percent of the phosphate rock mined in the United States. Phosphate deposits contain elevated quantities of natural radioactivity, principally uranium-238 and members of its decay series. Uranium concentrations in phosphate deposits range from ten to one hundred times the concentration of uranium in other natural rocks and soils.

Phosphate Rock Processing Plants

The processing of phosphate rock in dryers, grinders, and fertilizer plants results in the release of radionuclides into the air in the form of dust particles. Control techniques that remove particulates will also control radionuclide emissions.

Particulate emissions from new or modified phosphate rock drying, grinding, and fertilizer plants are controlled by new source performance standards issued under Section 111 of the Clean Air Act. In the case of fertilizer plants, the new source performance standard for fluoride also provides for effective control of particulates. Existing drying, grinding, and fertilizer plants are regulated for particulate emissions by State implementation plans as required by the Clean Air Act. EPA proposed not to regulate phosphate rock processing facilities because the existing particulate and fluoride emission standards also limit radionuclide releases. The risks to nearby individuals and the total population risks due to radionuclide emissions from these three types of facilities are insignificant. The highest doses resulting from emissions from these facilities are 15 mrem/y to the bone and 7 mrem/y to the lung. This is equivalent to a lifetime individual risk of fatal cancer of one in one hundred thousand. Population risk is from all of these facilities about to 0.02 fatal cancer per year. In addition, there is no potential for emissions to increase; rather, they should decrease as older plants are replaced with new ones subject to new source performance standards.

Comments from the phosphate industry strongly supported EPA's proposal not to regulate phosphate rock processing facilities and further stated that EPA had overestimated the radionuclide emissions from these facilities. EPA agrees that its estimates of radionuclide emissions from these facilities were based on some conservative assumptions and has concluded that this serves to reinforce its decision not to regulate these facilities.

Several commenters stated that standards were needed for phosphate rock processing facilities and that cost should not be considered in reaching a decision on the need for these standards. Even without considering costs, EPA does not agree that standards are needed for these facilities for the reasons just stated.

EPA did not previously make any determination regarding radionuclide standards for phosphate rock calciners at wet process fertilizer plants because information on emissions from these facilities was not available. EPA requested comments on these emissions and asked whether standards were needed. In addition, the Agency conducted emission tests at two of these facilities. EPA has not yet completed its analysis of these emission tests or carried out a risk assessment for these calciners. Therefore, no determination of the need for standards for phosphate rock calciners at wet process fertilizer plants is made at this time.

After considering all comments, EPA has decided to affirm and make final its decision not to regulate radionuclide emissions from phosphate rock processing plants, other than phosphate rock calciners at wet process fertilizer plants. A decision regarding the need for standards for this latter source will be made after completion of the Agency's analyses of emissions and risks from these facilities.

Phosphogypsum Piles

Several comments were received requesting EPA to issue standards under the Clean Air Act for radionuclide emissions from phosphogypsum piles (fertilizer plant waste material). EPA did not propose radionuclide standards for this source because it believed that such wastes would be more appropriately regulated under the Resource Conservation and Recovery Act (Pub. L. 94–580).

After considering all comments, EPA is reevaluating the need for radionuclide standards for this source. Preliminary risk estimates indicate that individual lifetime risks from exposure to air emissions from these piles may be as high as eight in ten thousand. Population risks may be on the order of one fatal cancer per year. The Agency will continue its examination of the need for a standard for this source category.

C. Other Extraction Industries

Almost all industrial operations involving removal and processing of soils and rocks to recover mineral resources release some radionuclides into the air. EPA has conducted studies of airborne radioactive emissions from the mining, milling, and smelting of iron, copper, zinc, clay, limestone, fluorspar, and bauxite. These are relatively large industries and are considered to have the greatest potential for air emissions of radionuclides.

EPA proposed not to regulate these extraction industries because the available data showed that the risks to individuals and populations from radionuclide emissions from these facilities are insignificant. Individual lifetime risks range from one in one hundred million to one in ten thousand. Population risks range from 0.000001 to 0.01 fatal cancer per year.

Most of the comments received were from industry representatives who concurred with EPA's proposal not to regulate these facilities. In their opinion, emissions, doses, and risks were so small that a regulation was unnecessary. No new information was provided to the Agency during the public comment period which indicated a need for standards. Additional Agency studies have confirmed that radionuclide emissions from these sources are low.

After considering all comments, EPA has decided to affirm and make final its decision not to regulate radionuclide emissions from extraction industry facilities.

D. Uranium Fuel Cycle Facilities, Uranium Mill Tailings, and Management of High-Level Radioactive Waste

The uranium fuel cycle consists of operations associated with production of commercial electric power by light water reactors using uranium fuel. It includes nuclear power plants and facilities that mill uranium ore, process uranium, and fabricate and reprocess uranium fuel. EPA has promulgated emission standards for normal operations of the uranium fuel cycle under the Atomic Energy Act (40 CFR Part 190). These standards limit the annual dose equivalent from radionuclide emissions to 25 mrem/y to the whole body and to any organ, with the exception of the thyroid, which may receive 75 mrem/y. EPA standards and their implementation by the NRC require the use of available technology which results in low doses to individuals and populations.

Many commenters, both government and industry, supported EPA's decision not to issue emission standards for this source category. Other commenters felt that the Clean Air Act requires EPA to set emission standards for uranium fuel cycle facilities, regardless of any other standards in force.

The Agency believes that current EPA standards for the uranium fuel cycle provide a level of protection which

satisfies the requirements of the Clean Air Act. An emission standard promulgated under the Clean Air Act would be duplicative with the uranium fuel cycle standard and would not offer any additional public health protection. During the Agency's upcoming review of 40 CFR Part 190, this issue will be reexamined.

Uranium mill tailings remain after uranium is removed from the ore. Many thousands of acres of these tailings exist at both inactive and active uranium mill sites, located mostly in the West. The high concentration of radium–226 in the tailings can result in significant emission or radon–222, a radioactive gas. Under current EPA disposal standards which require long term stabilization of the tailings piles, 95% or more of the random emissions will be controlled. These standards, issued under the authority of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95–604), provide a level of public health protection comparable to an air emission standard.

However, commenters noted that randon emissions from the tailings piles at licensed uranium mills are exempted from the requirements of 40 CFR Part 190. They are controlled, instead, by NRC regulations which allow a concentration of 3pCi/1 of radon–222 in unrestricted areas. This value represents a level of risk that may be significant. EPA is publishing, simultaneously with this notice, and Advance Notice of Proposed Rulemaking to consider the need for an emission standard for radon emission from licensed uranium mills.

Highly radioactive liquid or solid wastes from reprocessing spent nuclear fuel, or the spent fuel elements themselves if they are disposed of without reprocessing, are considered high-level radioactive waste. EPA has proposed standards under the Atomic Energy Act to limit public exposure to the radionuclides in this waste prior to disposal and has proposed that operations be conducted to reduce exposures below the standard to the extent reasonably achievable. The Agency expects its standards for the management of high-level radioactive waste to be promulgated in the near future. These standards will control emissions during the operational phase of the disposal site to a level which results in a dose equivalent no greater than 25 mrem/y to the whole body or to any organ, except the thyroid, which may receive a dose as high as 75 mrem/y. These standards will provide a level of public health protection comparable to an emission standard issued under the Clean Air Act.

After consideration of all comments, EPA affirms and makes final its decision not to issue separate standards under the Clean Air Act for radionuclide emissions from the uranium fuel cycle, uranium mill tailings, and management of high-level radioactive waste.

E. Low Energy Accelerators

Accelerators impart energy to charged particles, such as electrons, alpha particles, protons, and neutrons. They are used for a wide variety of applications, including radiography, activation analysis, food sterilization and preservation, and radiation therapy and research. Accelerators, other than those owned by the DOE, operate at comparatively low energy levels and therefore emit very small quantities of radionuclides. The doses and health risks associated with these emissions are extremely low. Lifetime individual risks range from one in ten trillion to one in one billion. Further, there is no potential for the emissions from these facilities to increase significantly.

The Agency proposed not to regulate this category. No comments were received on this proposal, and the Agency is not aware of any new information indicating a need for a standard. Therefore, the Agency affirms and makes final its decision not to regulate radionuclide emissions from low energy accelerators.

IX. Miscellaneous

Docket

The docket is an organized and complete file of all information considered by EPA in this rulemaking. It is a dynamic file, since material is added throughout the rulemaking process. The docket allows interested persons to identify and locate documents so they can effectively participate in the rulemaking process, and it also serves as the record for judicial review.

Transcripts of the hearings, all written statements, the Agency's responses to comments, and other relevant documents have been placed in the docket and are available for inspection and copying during normal working hours.

Dated: October 23, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–28438 Filed 10–26–84; 2:12 pm]

BILLING CODE 6560–50–M

40 CFR Part 61

[AD–FRL 2694–2a]

National Emission Standards for Hazardous Air Pollutants; Standards for Radon-222 Emissions From Underground Uranium Mines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice announces the Agency's intent, under Section 112 of the Clean Air Act, as amended, to start a program to consider a standard based on bulkheading or related techniques to control radon emissions from underground uranium mines. This standard could be an emission standard, or a design, equipment, work practice, or operational standard, or a combination thereof. The Agency requests interested parties to submit information and comments relative to controlling these emissions.

DATES: Information received by April 30, 1985 will be of maximum value.

ADDRESS: Comments must be submitted (in duplicate, if possible) to: Central Docket Section (LE–130) Attention: Docket No. A–79–11, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: James M. Hardin, (703) 557–8977, Environmental Standards Branch, Criteria and Standards Division (ANR–460), Office of Radiation Programs, Environmental Protection Agency, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: This Advance Notice of Proposed Rulemaking (ANPR) serves to inform interested parties that the Agency is considering a rulemaking related to the design and type of equipment, work practices, operational procedures, or to emission standards based on these techniques, to control the radon-222 emissions from underground uranium mines. As of January 1983, there were 139 of these mines located in Arizona, Colorado, New Mexico, Utah, and Wyoming. These mines have a production rate of 6,200 tons of U_3O_8 and account for about 46% of the total production of U_3O_8 in the United States.

The Agency proposed a standard under section 112 of the Clean Air Act in April of 1983 for underground uranium mines that would limit the annual radon-222 concentration in air due to emissions from an underground mine to 0.2 pCi/1 above background in any unrestricted area. The principal method

to meet this standard was considered to be control of land around the mine, since at the time, the Agency believed that no emission reduction measures were practical.

In EPA's most recent evaluation of the risks due to radon-222 emissions from underground uranium mines, the estimated lifetime risk of fatal cancer to nearby individuals ranges from one in one thousand to one in one hundred. The potential exists for an even higher risk in some situations (up to one in ten) for individuals living very close to several horizontal vents or in areas influenced by multiple mine emissions. The fatal cancer risk to the total population from radon-222 emissions from all underground uranium mines is five fatal cancers per year. The Agency considers these risks to be significant and believes action is needed to protect individuals living near underground mines and other populations.

However, analysis of the likely reduction in health risks afforded by the proposed standard showed that, while risks to nearby individuals were reduced by a factor of about ten, the risks to the total population were only negligibly reduced. The lack of population risk reduction was due to the fact that radon releases would not be reduced, they would only be more widely dispersed.

The Agency decided to withdraw its proposed standard for underground uranium mines based on its conclusion that the proposed standard was not authorized by the Clean Air Act and that the limited reduction in population risk would not meet the full intent of section 112 to provide adequate public health protection.

Because radon-222 is a noble gas and the volume of air discharged through mine vents is very large, there is no practical method to remove radon-222 from the mine exhaust air. Adsorption onto activated charcoal is the most widely used method for removing noble gases from a low volume air stream. However, application of this method to the removal of radon-222 from mine ventilation air at the volumes of air that must be treated would require large, complex, unproven systems which would be extremely costly.

Since proposal, EPA has received additional information indicating that work practices, such as bulkheading, are more feasible and cost-effective than originally thought. The Agency has decided to begin development of standards based on bulkheading or similar techniques to control radon releases from underground uranium mines. Interested parties are requested to submit information and comments on the following issues:

(1) Measured or estimated radon-222 releases from underground mines;

(2) Applicable standards for reducing radon emissions, including such practices as bulkheading, sealants, mine pressurization, and backfilling;

(3) Methods of procedures to predict releases of radon-222 without controls and with controls, such as bulkheading, sealants, mine pressurization, and backfilling;

(4) Effectiveness, feasibility and costs of controls;

(5) Methods of determining compliance with design, equipment, work practice, or operational type standards;

(6) Estimates of impacts on nearby individuals and populations due to radon-222 emissions before and after control;

(7) Extent of radon-222 controls now practiced by the industry, including such methods as bulkheading, sealants, mine pressurization, and backfilling; and

(8) Effect on the industry if controls are required.

Dated: October 23, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-28439 Filed 10-26-84; 2:13 pm]

BILLING CODE 6560-50-M

---

40 CFR Part 61

[AD FRL 2694-2b]

National Emission Standards for Hazardous Air Pollutants; Standards for Radon-222 Emissions from Licensed Uranium Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rule making.

SUMMARY: This notice announces the Agency's intent, under section 112 of the Clean Air Act, as amended, to consider development of standards to control radon-222 emissions from licensed uranium mills. The Agency requests interested parties to submit information and comments relative to controlling these emissions.

DATES: Information received by April 30, 1985 will be of maximum value.

ADDRESS: Comments must be submitted (in duplicate, if possible) to: Central Docket Section (LE-130) Attention: Docket No. A-79-11, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: James M. Hardin, (703) 557-8977, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: This Advance Notice of Proposed Rulemaking (ANPR) serves to inform interested parties that the Agency is considering emission standards under the Clean Air Act for licensed uranium ore processing facilities. As of January 1983, there were 27 licensed uranium mills located in Colorado, New Mexico, South Dakota, Texas, Utah, Washington, and Wyoming. These mills have produced a total of over 150 million metric tons of tailings which contain radioactive elements from the uranium decay chain, including radium-226 which decays to radon-222. The latter is a radioactive gas which is emitted from the piles to the ambient air.

EPA issued standards under the Uranium Mill Tailings Radiation Control Act (UMTRCA) (40 CFR Part 192 Subparts D and E) for the management of tailings at locations that are licensed by the Nuclear Regulatory Commission (NRC) or the States under Title II of the UMTRCA. These standards do not specifically limit radon-222 emissions until after closure of the facility. When the UMTRCA standards were promulgated, the Agency stated that it would issue an ANPR for consideration of control of radon emissions from uranium tailings piles during the operational period of a uranium mill. This notice fulfills that commitment.

The Agency issued Environmental Radiation Protection Standards for Nuclear Power Operations (42 FR 2858, January 13, 1977). These standards (40 CFR Part 190) limit the total individual radiation dose caused by emissions from facilities that comprise the uranium fuel cycle, including licensed uranium mills. At the time 40 CFR Part 190 was promulgated, there existed considerable uncertainty about the public health impact of existing levels of radon-222 in the atmosphere, as well as uncertainty about the best method for management of new man-made sources of the gas. The Agency exempted radon-222 from control under 40 CFR Part 190 since at that time the problems associated with radon emissions were considered sufficiently different from those of other radioactive materials associated with the fuel cycle to warrant separate consideration.

Subsequently, standards were proposed under the Clean Air Act (48 FR 15076, April 6, 1983) for NRC licensees, but uranium fuel cycle facilities, which included operating uranium mills, were

excluded because these sources are subject to EPA's 40 CFR Part 190 standard that provided protection equivalent to that of the Clean Air Act. It was noted during the comment period for the Clean Air Act standards that radon-222 emitted from operating uranium mills and their actively used tailings piles are not subject to any current or proposed EPA standards, and that there may be significant risks associated with resulting radon-222 emission.

The Agency is particularly interested in receiving information on the following issues:

(1) Radon-222 emissions from these facilities;

(2) Applicable control options and strategies, including work practices;

(3) Feasibility and cost of control options and strategies;

(4) Local and regional impacts due to emissions of radon-222 from active uranium mills;

(5) Methods of determining compliance with a work practice type of standard; and

(6) Effect on the industry if controls are required.

Dated: October 23, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-28440 Filed 10-26-84; 2:14 am]

BILLING CODE 6560-50-M

federal register

Wednesday
October 31, 1984

Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 3410

Federal Coal Leases; Requests for Comments

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3410

Request for Public Comment on Experimental Auction Techniques for Federal Coal Lease Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Request for comments.

SUMMARY: The Commission on Fair Market Value Policy for Federal Coal Leasing (the Commission) recommended that "to promote more competitive bidding, the Government should test the feasibility of and experiment with a variety of auction techniques." (Recommendation V–4, page 224 of the Commission's report of February 1984.) On March 19, 1984, the Secretary of the Interior's Review of Federal Coal Leasing formally adopted this recommendation. Accordingly, the Department is seeking public comment on several auction techniques it may wish to consider for experimentation at Federal coal lease sales.

Copies of this proposal were sent to Western State Governors and major interest groups and organizations at their request in July 1984. Following this distribution, these groups asked the Department of the Interior to hold informational briefings. The meetings took place in Denver, Colorado on July 23 and 24, 1984. In response to the July 1984 distribution, a mining company and two industry associations submitted one individual and one joint set of written comments. These comments are on file at the address listed below. Both responses expressed a preference for a particular auction procedure: oral bidding with reservation prices announced by the Department in advance of the lease sale.

Another comment stressed that maximizing return to the U.S. Treasury should not be the sole objective guiding the Department in choosing a coal lease auction technique. Since the Department is seeking broad public comment on elements and criteria defining both the conceptual and practical aspects of coal lease auction design, these comments provide no basis for a sustantive revision in the proposal at this time.

DATES: Written comments will be received on or before November 30, 1984.

ADDRESS: Send to Director (640), Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Andrew Strasfogel, Resource Evaluation and Program Development Staff, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C., 20240, telephone (202) 343–4786.

SUPPLEMENTARY INFORMATION:

Introduction

The responsibility for designing sale procedures for offering Federal coal lease tracts rests with the Bureau of Land Management (BLM). Decisions on which specific method is applied at a particular lease sale had been made by BLM State Director until regulations and policies limiting such discretion were adopted in 1982 and 1983. Under current regulation and policy, coal lease tracts can only be offered using sealed bidding with an undisclosed estimate of tract value. The minimum bid required in order to participate in the sale is $100 per acre.

The Commission examined a number of alternative bidding systems that could be used to set the price for Federal coal leases. It considered profit sharing, sliding scale royalty bidding, and variable bonus/fixed royalty systems. The Commission concluded that bonus bidding with fixed royalties "was a reasonable compromise between efficiency and equity goals" and that "in the conduct of lease sales the Government should continue to rely on bonus bidding." (Recommendation V–2, page 216 of the Commission's report.) The Secretary adopted recommendation V–2 of the report and the Department will not propose any change from the bonus bidding/fixed royalty system for offering Federal coal leases.

An interdisciplinary task force in the Department has conducted a preliminary analysis of possible auction techniques that could be used in offering Federal coal leases. The objective of the analysis has been to design systems that elicit bids that represent fair market value (FMV) for Federal coal leases, particularly for tracts that receive only one bid. This study has included an examination of the literature on the subject of auctions and bidding behavior. A bibliography of articles on the subject of auctions and a summary of these articles may be obtained by writing to the address in the beginning of this notice.

The BLM requests comment on preliminary findings of the task force concerning how the theory of bidding behavior and auctions can be applied to the unique circumstances representative of Federal coal lease sales. Following receipt of comments, the Department will decide what experimental auction techniques to test, if any, and will propose appropriate revisions to the coal management rules and procedures to carry these out. Recommendations from State Governors and from Regional Coal Teams will be considered in this decisionmaking process.

This notice consists of the following sections:

—A brief history of lease sale and auction techniques used by the Department in leasing coal competitively since passage of the Mineral Lands Leasing Act of 1920 (MLLA).
—A summary of competition for Federal coal leases in the past decade.
—A section on design criteria (objectives) the Government might consider important in structuring auctions for Federal coal leases, and the tradeoffs among these criteria.
—A listing of design elements of bonus bid auctions setting forth the procedures that can be varied.
—Four examples groupings of various design elements chosen to illustrate how Federal coal lease auctions could be tailored to obtain a different balance in achieving the design criteria.

I. Coal Lease Sale Procedures: 1920–1983

Section 2 of the Mineral Leasing Act of 1920 authorized the Secretary to "divide any of the coal lands and deposits of coal . . . into leasing tracts. . . and at his discretion, upon the request of any qualified applicant or on his own motion . . offer such lands or deposits for coal leasing, and award leases . . . by competitive bidding or by such other methods as he by general regulation adopts to any qualified applicant."

Leasing in the 1920–1940 period was rather restrictive. Leases were generally sold based on the initative of the coal developer but with the requirement that the prospective leases show a need for a new sources of supply.

This requirement was intended to protect operating mines during the Depression years, when producing mines were operating on a part-tme basis.

The rationale suggested that new mines should not be opened when existing mines were only working part-time or were closing.

This requirement was relaxed somewhat during World War II but was generally reimposed at the close of the War and through the 1950's. All coal leases have been sold competitively except those preference right leases issued as a result of prospecting permits. Most "competitive" leases were sold by sealed bids where the applicant was the sole bidder. A minimum bid of $1 per acre was usually specified. As a matter

of policy, however, sealed bidding followed by oral bidding was instituted when the Department determined that adjacent land holders or mine operators could have an interest in the land under application. Underlying this policy was the rationale that a second party that might have an interest in the land under application should be allowed to protect that interest through the mechanism of an oral auction.

Table 1 on page 153 of the report of the Commission on Fair Market Value Policy for Federal Coal Leasing substantiates the low competitive interest in Federal coal leases between 1920 and 1960. In that time interval, 71.9 percent or 103 of the 146 tracts offered and leased received one bid or no bids. Of these 103, 8.7 percent or 9 were issued upon application only: the parcel was offered for competitive bid, but if no bidders came forth, the applicant was awarded the lease without payment of cash bonus. The application contained either the applicant's proposed rental or "bonus" amount and other parties could offer a greater amount than listed in the application.

Prior to 1970, Interior paid little attention to setting a minimum value for coal leases. Some parties in the 1960's were expressing concerns about value. Participants in inter-bureau meetings within the Department discussed a policy of increasing royalty payments from the 15 to 20 cents per ton of coal sold to 3 percent to 5 percent of the value of the coal at the mine. In 1971, the Conservation Division of the U.S. Geological Survey (now part of the BLM) adopted an empirical formula for appraising coal lease tracts. This formula was used for valuing few leases because in 1971 the Department began an informal coal leasing moratorium to prevent speculation in Federal coal leases. By 1976, discounted cash flow analysis similar to that used in evaluations of Outer Continental Shelf oil and gas lease tracts became the accepted method of valuing coal lease tracts. The desirability of comparable sales analysis was also widely recognized, but the needed market data were largely not collected and utilized until 1981.

The Department's informal 1971 coal leasing moratorium was followed in 1973 by a formal moratorium on leasing, except for short-term leases meeting specific criteria. Between 1973 and 1975 short-term Federal coal tracts were offered for lease with no indication of the Department's pre-sale estimate of value. High bids failing to meet the unannounced estimate of value were rejected. This procedure resulted in the rejection of bids for several production maintenance and bypass tracts; however, the emergency conditions remained after the bid rejections. Most were reoffered immediately and the second, higher bid accepted. The Department's estimate of value remained undisclosed.

Passage of the Federal Coal Leasing Amendments Act of 1976 raised the royalty rate for surface-mined coal from new Federal leases to 12½ percent of the selling price of the coal. Beginning in 1977, the Department decided to disclose its estimate of lease value when offering tracts. This took several forms between 1977 and 1980, including advertising leases for sale at elevated royalty rates reflecting the pre-sale estimate of value with a minimum fixed cash bonus bid of $25 per acre; regulatory minimum royalty rates and a minimum dollar per acre cash bonus bid reflecting the pre-sale estimate of value; and offering the bidders a choice between the two payment methods.

In June 1979, the Secretary of the Interior convened a fair market value (FMV) task force to develop options for FMV and sale notice minimum bid policy and criteria. A report was issued in December 1979 and a Secretarial issue document was signed on May 28, 1980. The Secretary decided to rely on cash bonus bidding rather than royalty rate bidding.

Leasing other than short-term leasing resumed with the initiation of regional coal leasing in January 1981 following a 10-year moratorium. Leases were sold initially using a sealed bidding procedure with the sale notice containing the Department's pre-sale estimates of tract value. Formal determination of FMV was always made after the sale was completed. The use of an oral auction in case more than one sealed bid was submitted for a tract was reintroduced for non-emergency criteria lease sales in Western States starting in February 1981.

At a February 1982 lease sale in the Uinta-Southwestern Utah Coal Region, three of the four offered tracts received no bids. The pre-sale estimates had been published prior to the date of sale, and it was felt in the Department that the three tracts that received no bids might have been valued too high. A decision was made to modify FMV procedures to allow the market to participate through competitive bidding in setting lease prices, and to lessen reliance on Government estimates.

For the Powder River Regional lease sale of April 28, 1982, new experimental procedures were tested. It was decided to continue to make the final FMV determination *after* all sealed and oral bids had been submitted and analyzed but not to publish the pre-sale estimates of value before the sale. Entry level bids based on cents per ton of recoverable coal were published in the Notice of Lease Sale except for one tract category of $25 per acre. Bids had to equal or exceed the entry level in order for bidders to participate in the oral auction.

Since the April 1982 Powder River regional coal lease sale, a number of actions have been taken by the Department to modify and improve coal lease sale procedures. In July 1982, the Department adopted Federal coal management regulations that prescribed leasing by sealed bidding only and raised to $100 per acre the minimum bid required for lease tracts. On July 26, 1983, lease sale procedures were further modified, after public notice and comment, in a decision memorandum specifying the role of competition in determining acceptance levels for bids submitted for Federal coal lease tracts and requiring that all such tracts be evaluated prior to a lease sale but offered only at the $100 per acre regulatory minimum bid. Pre-sale estimates were not to be disclosed unless the high bid on any tract was shown in the Department's post-sale analysis to have passed the test for FMV. Guidelines were also established setting a minimum time period of one year between reofferings for most tracts that did not receive acceptable FMV bids. In determining whether to accept a high bid among two or more serious bids for the same tract, the decision called for averaging the bids with the Department's pre-sale estimate. This "average evaluation of tract" value determined the post-sale acceptance price.

The rationale for adopting as policy the three main components of the July 1983 coal lease sale procedures decision was as follows:

- No oral auction (sealed bidding only)—Sealed bidding was thought to force bidders to submit bids closer to their own estimates of value. Without the opportunity for an oral auction, each bidder would have only one opportunity to bid on a tract, and would have to "compete" against the Department's undisclosed pre-sale value estimate even if no other firms competed for the tract.
- Undisclosed reservation price—By not announcing the Government's estimate of value, the Department sought to compel bidders to calculate and use their values rather than trying to see how close to the Department's

estimates they could come. This uncertainty would leave open the possibility of bids substantially above the Government's estimated value. On the other hand, not disclosing the pre-sale estimates exposed the risk that bids might fall below these estimates.

• Delayed reoffering strategy—Extending to 1 year the minimum time before most tracts could be reoffered penalized bidders whose bids failed to meet the Department's FMV criteria. It was intended to encourage bidders to submit serious bids if they desired to obtain a lease on a timely basis.

II. Competition for Federal Leases Since 1973

Of the 133 Federal coal lease tracts offered since 1973, 31 (23.3 percent) received two or more bids.

The sub-totals for each Western State ranged from 0 percent of the tracts offered (North Dakota) to 30 percent (Utah). The Commission theorized that the higher degree of competition for tracts leased in Utah appeared to reflect Federal Government ownership of both surface and coal rights in that region, reasonable access to the tracts, the modest tract acreage needed to form a viable mining unit, and the relatively small sizes of Federal coal tracts previously leased. Given the existing land ownership patterns, access problems, and split ownership of mineral and surface rights in the other Western States, however, the Commission felt the Department should vary its auction procedures to foster a more competitive environment for Federal coal lease sales.

III. Design Criteria for Experimental Auction Techniques

The task force studying coal lease auctions has identified 10 criteria for rating the auction process. These criteria represent objectives, from the point of view of the seller, in designing an auction process. In particular, they serve as a basis for evaluating alternative methods of offering Federal coal at lease sales.

The Department requests comment on whether any other criteria should be considered. Because no auction system can fully achieve all criteria, tradeoffs are necessary, for example, between the desire to obtain high bids (Criterion 2) and the wish to sell a lease quickly (Criterion 9).

Criterion 1—Increases Bidding Competition

An essential means of achieving acceptable bid levels is to enhance or increase the effective degree of bidding competition in the sale. Increased bidding competition allows the Federal Government to be more confident that it will receive higher bids, and that FMV will be obtained. This can be accomplished by selecting an auction design that:

—Reduces bidder apathy, the tendency for weaker competitors not to bid when they must face a known, stronger competitor in open bidding competition;
—Puts weaker bidders on a more equal footing with stronger bidders, in general;
—Hides from bidders the fact that they face few or no other competitors, when such situations exist;
—Reveals to bidders the fact that they face other competitors, when such situations exist;
—Discourages the anti-competitive practice of collusion among potential bidders; and makes punitive bidding, aimed at driving competitors out of the sale, difficult to undertake.

Criterion 2—Results in High Bids

The ultimate objective of a good auction design is to bring forth a price that is as close as possible to the full value of the item to the bidder who values the item the highest. It can be direct objective by selecting an auction design which:

—Makes strategic bidding, aimed at obtaining the item for less than it is valued, difficult to carry out; and
—Does not tip off to the bidder who values the item the highest the fact that no other bidder values the item nearly as high.

Criterion 3—Raises Total Receipts

Some items sold, such as mineral leases, impose rental and royalty payment obligations on the purchaser. In such sales, it is important to choose an auction design that not only results in high bids but also leads to higher total receipts (see Criteria 9 and 10).

Criterion 4—Increases the Value of the Item to the Buyer

Some sale processes effect the value of the item being sold from the buyers' point of view. It is desirable to select an auction design which has a positive effect on value, because this can lead to higher offered prices. In particular, it is desirable to select an auction design which:

—Lowers the bidders' costs of participating in the sale process;
—Reduce bidders' uncertainty about the value of the item being sold, in order to reduce the discount made to their bids to account for this uncertainty; and
—Allows bidders to make full use of the funds they have available, in order to reduce any discount or limitation made on their bids.

Criterion 5—Has Low Administrative Costs

It is, in general, desirable to select an auction design with low administrative costs because, all else equal, this increases the net return to the seller from the sale.

Criterion 6—Works Well in a Wide Variety of Circumstances

Some auction designs work very well in specific sale situations, for example, where there are many competitors, but do very poorly otherwise. Other auction designs tend to work at least adequately well in almost all sale situations, but perhaps not as well as where the design has been specifically matched to the exact sale situation. Such "robust" auction designs have several advantages over more situation-specific designs, as follows:

—The administrative tasks of determining the exact sale circumstances and then prescribing a specific auction design for these circumstances would not have to be done;
—Where circumstances are uncertain, major losses caused by an accidental mismatch of auction design to sale circumstances would be avoided; and
—The seller would not tip off to buyers those sale situations in which the seller expects weak (or strong) bidding competition.

Criterion 7—Is Simple and Understandable

An auction design that is simple to administer reduces the risk of an administrative error by the seller. One that is easy to understand will tend to bring in more bidders, although a complex system might occasionally bring in higher bids due to bidder errors in the face of complexity.

Criterion 8—Aids Bid Acceptance/Rejection Decisions

In some auction markets, the seller plays an active role in the sale process. One way in which the seller may participate is by deciding to accept or reject the high bid offered for the item for sale, as does the Federal Government in evaluating bids for coal lease tracts. Accordingly, it is desirable to select an auction design that reveals as much information to the seller as possible about the number and quality of competitors for the item and the

values these competitors place on the item.

Criterion 9—Sells the Item Rapidly

Some auction procedures are more likely than others to result in a completed sale. In general, failure to complete a sale imposes a cost on the seller, if only the administrative cost of later reoffering the item. Where the item is a mineral lease, the loss may be greater because of a delay in, or ultimate loss of, royalty payments due to the seller upon development of the lease.

Criterion 10—Allocates Item to Highest and Best User

Some auction designs are more likely than others to sell the item to the party who values it the highest. If another party instead obtains the item, this party may then resell the item to the party who values it highest. It is possible that the original seller could have obtained a higher price by selling it directly to the highest and best user. Furthermore, if the item is a mineral lease, the delay or failure to place the lease in the hands of the highest and best user may cause a delay or loss of royalty payments to the seller.

IV. Elements of a Bonus Bid Auction Process

The task force studying auction techniques identified 12 basic elements or components of a bonus bid auction process. These elements define the framework for the experimental auction techniques described in the next section of this notice. The Department requests comments regarding their completeness and whether they have been adequately defined.

Element 1—Method of Bid Entry

Bids may be accepted in a number of ways. Common approaches include sealed bidding, oral bidding, and the Dutch auction where the seller's asking price gradually descends until a bid is offered at that price, which ends the sale. A combination of methods, such as sealed followed by oral bidding, is also possible. Current Federal coal management regulations prescribe the use of sealed bidding only.

Element 2—Price the High Bidder Must Pay

The high bidder wins the auction and commonly pays the high bid offered to obtain the item for sale, as is the case in a Federal coal lease sale. In some auctions, however, the high bidder pays a different, lower price for the item, i.e., the second highest sealed bid (the highest losing bid) offered. In sales of multiple identical items, prices paid are commonly the highest set of sealed bids that exhaust the number of items for sale; but sometimes a single price is paid for the items, set just equal to the highest bid not in the above winning set of bids (the highest losing bid).

Element 3—Duration of Offering

The amount of time given to potential bidders to become aware of the offering, to gather information about the value of the item, and to prepare a bid can significantly affect the bids offered. Currently, bidders are notified 30 to 45 days prior to a Federal coal lease sale, although the planning framework for most sales is known up to 18 months in advance.

Element 4—Payment or Charge to Participants

In some auction designs, a payment is made to the losing bidder or bidders to encourage bidders to participate. In others, all bidders are charged a fee to discourage what is perceived to be an overly large number of participants. There is currently no fee or payment associated with participation in a Federal coal lease auction, although the minimum bid that will be considered for a lease is set by regulation at $100 per acre. The minimum bid is best viewed as "good faith" money rather than a true charge to participants.

Element 5—Bidder Qualifications

In some auctions, participation is limited to those who meet certain qualifications. For example, only small businesses are allowed to bid for tracts designated as small business set-asides in Federal coal lease sales. In the past, one qualification to bid in an emergency Federal coal lease sale was the ability to develop the tract being offered. This qualification has been eliminated in order to promote greater bidding competition; however, all bidders must "qualify" through payment of the minimum bid and meet certain statutory citizenship and other requirements listed in the coal management regulations.

Element 6—Limitations Placed by Bidders on Winnings or Expenditures

In some sales of multiple items, bidders are allowed to specifly a limit either on the number of items they wish to win or on the total amount they wish to spend at the sale. This limit is submitted along with the sealed bids offered for the items in the sale. Where a limit is allowed, the bids are opened for one item at a time in an order specified by the seller before the sale. Once a bidder wins enough items to reach this winnings or expenditure limit, his or her bids on remaining items in the sale are cancelled. No such procedure is currently followed by the Department in its coal lease offerings.

Element 7—Limitation Placed by Seller on Number of Items Sold

In some sales of multiple items, the seller may decide to set a limit on the number of items that will be sold, at a level below the number offered. This limit may be decided by the seller before or after the sale and, if set presale, may or may not be announced pre-sale. Although such a limitation has not been used in Federal coal lease sales, a form of this approach, called intertract bidding, is being considered by the Department for future sales. Guidelines explaining how this procedure would be used will be presented for public comment in a separate notice.

Element 8—Order of Offering Items for Sale

In an oral auction, items are put up for sale one at a time. The order in which the items are offered can influence which items get sold and what prices are obtained. In a sealed bid auction, bids are usually taken for all items simultaneously and the order in which the bids for the items are opened does not matter. This is the current procedure for Federal coal lease sales. Sealed bids could, however, be taken for each item one at a time and then opened, much like an oral bidding auction. In such a case, the order in which the items were offered would matter just as it would in an oral auction. Also, if bidders were allowed to set a limit on expenditures in the sale, the order in which the items' bids would be opened would need to be specified by the seller in advance of the sale.

Element 9—Whether and How the Seller Uses Own Evaluation or Data To Influence the price

In some auctions, the seller merely accepts the price which results from the auction. In other auctions, the seller attempts to influence or doublecheck the auction price based on his or her own information about the value of the item for sale. The seller may provide data or an estimate of the value of the item to potential bidders before the sale and may also decide on a price below which he or she will not sell the item. The seller might or might not announce this "reservation" price to bidders before the sale. The seller's reservation price might change after the sale based on information that the seller obtains from the sale. If the bid price is deemed too

low, the seller may actually engage in bidding at the sale. While the Department does not play an active role in its coal lease auctions, it does estimate lease value before such sales, and formally determines a reservation price for each tract after the lease sale based on its pre-sale estimate and new information provided by competitive bidding at the lease sale. the pre-sale estimates are not announced prior to the sale, however.

Element 10—Method of Payment

The seller may require the high bid to be paid as a single lump sum or may allow a series of smaller payments over time. Federal coal lease tracts are generally offered with deferred bonus bidding—20 per cent of the bonus must be paid at the time of the sale and 20 per cent at each of the first four anniversary dates of the lease.

Element 11—Information Provided by Seller After Sale

Certain information, if disclosed by the seller after the sale, could affect the bidding in future sales and thus is a design element. This information includes the names of the bidders, the bids tendered, and the seller's evaluation and reservation price (if any) for the items offered. In Federal coal lease sales, all of the above information is available except for the Government's evaluations and reservation prices for tracts not receiving bids that have been accepted.

Element 12—Timing of Reoffering

Bidders' expectations about when items not sold in the auction would be reoffered for sale affect how they will bid. The seller might announce before the sale that items not sold would not be reoffered again for a specified period of time. The seller might require that, in order to have a reoffering, a suitable level of demand must be exhibited in the initial offering. Under current policy, Federal coal lease tracts would generally not be reoffered in less than 1 year, unless bypass of the Federal coal could occur within that interval.

V. Proposed Experimental Auction Techniques

The Department task force has examined past coal lease sales, the available literature on auctions, and the design elements and criteria used to define and measure the effectiveness of various lease offering methods. While manipulation of the 12 identified auction elements could result in a very large number of experimental procedures, the task force developed four hypothetical examples that demonstrate means of achieving different balances among design criteria. Each example emphasizes different objectives in the auction process. The Department welcomes suggestions of additional examples that might weigh other important design criteria differently, as well as comments on the examples themselves.

The Commission noted the lack of homogeneity among Federal coal tracts offered at lease auctions. Depending on tract size and amount of coal reserves, configuration, and urgency of need, tracts are categorized as meeting requirements for new production, production maintenance, and avoidance of coal bypass. Each of these tract categories is further modified by consideration of whether a tract is captive to a single dominant bidder or non-captive. Comments on how the Department's experimental auction techniques should take these factors into account are also encouraged. For example, should the Department adopt a different auction procedure for bypass tracts than for new production tracts?

In selecting examples of experimental auction techniques, the task force did not alter several of the design elements used in current Department procedures. While this decision was partly motivated by the observation that certain alternative procedures may be inappropriate for auctions of Federal coal lease tracts, commenters may wish to suggest appropriate variations of any element. Those design elements not changed include elements 2, 3, 4, 5, 7, 10 and 11. The rationale is as follows:

Element 2 will not be altered from the current procedure that the winning bidder pays the highest bid offered. In highly competitive auctions, there may be an advantage to allowing the high bidder to pay the second highest sealed bid offered. This option would not prove beneficial in the sale of Federal coal leases because most tracts receive only one bid.

Element 3 is not specifically proposed for experimentation because procedures were developed in July 1983, after public comment, to permit lease sale notices to be posted from between 30 and 45 days in advance of the sale.

Element 4 will not be changed to permit a payment or charge to participants. Such a procedure would be inconsistent with competitive offerings of all other solid and fluid mineral leases.

Element 5 will not be altered either to increase or decrease the qualifications of bidders from those contained in existing coal management regulations at 43 CFR Part 3472.

Element 7 is addressed separately in the Department's proposal to implement the Commission's recommendation to adopt intertract bidding in appropriate circumstances.

Element 10, concerning the method of payment, will not be changed. Federal coal lease tracts would still be sold on a deferred bonus bidding basis for at least half of all acreage offered for lease in any year. This is a requirement of the Federal Coal Leasing Amendments Act of 1976.

Element 11, concerning information provided after the sale, will continue to follow current guidelines permitting the release of final tract appraisal values for high bids that meet the criteria for bid acceptance.

The four examples are tiered according to degree of bidder uncertainty and penalties for underbidding. The first example generally follows the thrust of current Department action procedures, which is to seek to elicit bids close to a bidder's own appraisal of tract value (Criterion 2). This is accomplished by maximizing bidder uncertainty regarding Government reservation prices and penalizing underdidding through delayed tract reofferings. At the other end of the spectrum, example 4 features an oral auction procedure prior to which Government values are disclosed in the Notice of Lease Sale. This approach is designed to increase the probability that a sale will be successful (Criterion 9). In between are gradations with some variations to test specific design elements. Comments are requested on any particular design element that could be varied to produce desirable results. An asterisk (*) signifies that the design element is the same as the procedure currently utilized by the Department.

Example 1—Sealed Bidding with Optional Expenditure Limitation

*Method of bid entry: Sealed bidding; all bids submitted prior to lease sale.

Limitation placed by bidders on winnings or expenditures: Bidders may indicate a maximum spending limit or tract winnings limit when sealed bids are submitted. *Variation:* An option is to have sequential bidding at the sale, with bids submitted for one tract at a time.

Order of offering tracts: Order of bid opening will be specified in Notice of Lease Sales. Bids on bypass tracts and tracts with highest values per ton to be opened first, followed by bids on all remaining tracts.

*Whether and how the Department influences the price: Department will perform pre-sale estimates and post-sale appraisals to determine FMV. Pre-sale

estimates will not be announced prior to or at time of bid opening. *Variation:* The Department will not release its preliminary or final appraisals for *any* tracts, even if the high bid meets acceptance criteria.

Timing of reoffering: New production tracts could be reoffered no sooner than 1 year and production maintenance tracts no sooner than 6 months after the previous offering. Bypass tracts could be reoffered without restrictions. Tracts may be reoffered a maximum of three times.

Discussion: Example 1 is based on the assumption that sealed bidding potentially increases the revenue to the seller in a market with few bidders. Potential misallocation is increased in sealed bidding. In a single bidder market, however, the allocation problem is primarily between the buyer and the seller, due to an undisclosed reservation price. In the few cases where misallocation may occur, there exists an after market where the buyer can assign the lease to another party. Sealed bidding also makes it harder for parties to collude.

Allowing bidders a limit on capital expenditures or number of tracts won makes the market stronger and more homogeneous. With a limit, each firm can bid without fear of exceeding its financial resources. By removing that risk the Government may elicit bids that are higher. The option of sequencing the bidding with bids submitted for one tract at a time has a similar effect as an expenditure or winnings limit: the bidder is able to concentrate the firm's financial resources on one tract at a time. By the Department's offering the highest value-per-ton tracts first, revenue from the sale may be higher. By also offering bypass tracts first, the risk to the Government of having a bypass tract go unleased is also reduced. The variation from current procedures to withhold pre- and post-sale Government appraisals may result in higher bids for future sales by further increasing bidder uncertainty.

The more information available on the tract to be offered for lease, the less the risk and the higher the bids. However, the more information available on the number of competitors for the sale, the less the risk from competition and the lower the bids. By not disclosing a reservation price (pre-sale estimate), the Government effectively becomes another bidder. The disadvantage is also present, however, of potential misallocation where the high bid is rejected and the tract does not go to the firm that has the highest and best use for the tract.

This misallocation problem is circumvented by using the Government's own after market: reoffering the tract. Reoffering is the Government's way to correct misallocation. The misallocation potential of a new production tract is very slight. New production tracts are needed for development up to 10 years in the future, leaving ample time to reoffer and lease the tract. Maintenance tracts generally have a shorter time horizon, while bypass tracts may have an extremely short time horizon to correct any misallocation problem. Reoffering can be abused, however, if firms take advantage by narrowing in on the Government's reservation price. Thus, a limit to reofferings makes firms tend to bid closer to their estimate of what tracts are worth.

Example 2—Sealed Bidding With Second Chance

*Method of bid entry: Sealed bids submitted prior to lease sale.

*Limitation placed by bidders on winnings or expenditures: None

Order of offering tracts: Ordering specified in Notice of Lease Sale. Bids on bypass tracts and tracts with highest value per ton to be opened first, followed by all other tracts.

Whether and how Department uses its own evaluation or data to influence the price: Pre-sale estimates of tract value are not announced in Notice of Lease Sale. After bids are opened for a tract, Department identifies the bid(s) that are at least 25 percent of the Department's pre-sale estimate, unless the high bid exceeds this estimate. The bidder(s) with bids falling below the pre-sale estimate but at least 25 percent of the estimate may submit a second sealed bid within an appropriate time interval (5–30 minutes). No second chance permitted if any initially submitted bid exceeds the pre-sale estimate.

*Timing of reoffering: No less than 1 year from lease, sale, except for bypass tracts.

Discussion: Example 2 capitalizes on the advantages of sealed bidding discussed in example 1, but by having a second chance feature it helps mitigate the potential misallocation problem associated with sealed bidding. As the name implies, it gives the buyer a second chance, which is in some respects equivalent to an immediate reoffer. It also provides a form of negotiation to allow participants to raise their bids to an acceptable level, thus reducing administrative costs in reoffering tracts.

With the second chance feature the ordering of the tracts being offered becomes important. By offering the "best" and the bypass tracts first, for those tracts where a second chance is allowed the overall revenues of the sale are potentially higher and the risk of bypass tracts going unsold is reduced (criterion 9). In the case of production maintenance tracts, frequent reoffering becomes less critical due to the second chance feature.

The information disclosed and the associated advantages are the same as in example 1, except where a second chance is permitted. If this occurs no additional information is divulged except to indicate the bids fell short of the pre-sale estimate by no more than 75 per cent.

Example 3—Sealed Bid Followed by Oral Auction

Method of bid entry: Sealed bids. Oral auction if two or more participants submit bids of at least 25 percent of the Department's pre-sale estimate of tract value. All bids submitted at the lease auction.

*Limitation placed by bidders on expenditures: None

Order of offering or opening of bids: Tracts would be offered in sequence according to an ordering announced in the Notice of Lease Sale. Sealed bids would be collected for each tract as it is offered.

Whether and how the Department uses its own evaluation or data to influence the price: Tracts would be offered in Notice of Lease Sale without an indication of Department's estimate of tract value. Bid acceptance or rejection would be determined by comparing the Department's final post-sale tract appraisal with the high bid. *Variation*: The Department would announce in the Notice of Lease Sale its reservation price for tracts that would be mined within 2 years of the lease offering.

*Timing of reoffering—Same as example 2.

Discussion: The main difference between example 3 and the current system for auctioning coal lease tracts is the use of a two-stage auction process. By utilizing oral bidding, this example avoids the potential misallocation problem of using sealed bidding only. By not disclosing the Department's pre-sale reservation price, the proposal would tend to elicit bids that more accurately reflect firms' estimates of value. The competition by a bidder against the Government's reservation price would be augmented by oral bidding competition against any other firm or firms.

The use of oral bidding allows market forces to allocate the lease to its highest

and best user. Requiring a 25 percent floor to qualify for the oral auction is a means of encouraging the submission of serious bids, although it could be used by bidders to narrow in on the Department's pre-sale reservation price.

In an oral auction, expenditure or winnings limits are not needed. Since tracts are bid on sequentially, the bidder will simply not bid on any additional tracts when his or her limit is reached.

With sealed bids submitted at the lease sale as each tract is offered, followed by an oral auction, the need for rapid reoffering for production maintenance or bypass tracts is less critical. If the option to publish the Government reservation price for emergency leases pre-sale is utilized, then the need for reofferings in those cases is even more greatly reduced.

Example 4: Oral Bidding With Announced Reservation Prices

Method of bid entry: Oral bidding.

*Limitation placed by bidders on expenditures: None.

Order of offering tracts: Order specified in Notice of Lease Sale. Bypass tracts and tracts with the highest per ton value will be offered first, followed by all other tracts. As the auction for each tract is announced, oral bids may be submitted at appropriate value increments and time intervals.

Whether and how the Department uses its own evaluation or data to influence the price: Department would announce its pre-sale reservation price in the Notice of Lease Sale.

*Timing of reoffering: Same as example 2 and 3. Reoffering needed only when tracts receive no bids.

Discussion: This example provides a large degree of openness and eliminates misallocation problems. It also represents an extreme example of lowering buyer uncertainty by announcing Government estimates in advance of the lease sale.

Due to the use of oral bidding with an announced reservations price, however, competition may suffer where bidders are not homogeneous; collusion would also be harder to control. Weaker bidders may become apathetic and strong bidders would become aware of situations where they face no competition (criterion 1).

Since a majority of tracts appeal to a single dominant bidder, average bids under this example will approach the Government's reservation prices, and not necessarily reflect firms' values of tracts. Example 4 might work best under a situation of intense competition or where the cost of misallocation is great.

With disclosed reservation prices, tracts will have the greatest opportunity to sell rapidly (criterion 9) and there will be little need for reofferings. In most cases tracts will be acquired by the buyers who value them the highest.

List of Subjects in 43 CFR Part 3410

Administrative practice and procedure, coal, mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: October 26, 1984.

James M. Parker,

Acting Director.

[FR Doc. 84-28761 Filed 10-30-84; 8:45 am]

BILLING CODE 4310-84-M

---

43 CFR Part 3410

Public Comment on Collection and Sharing of Coal Exploratory Drilling Data

AGENCY: Bureau of Land Management, Interior.

ACTION: Request for comments.

SUMMARY: Two recent reports on the Federal Coal Management Program have contained recommendations about the collection and sharing of data gathered under a Federal coal exploration license. Specifically, the Commission on Fair Market Value Policy for Federal Coal Leasing (hereafter called the Commission) in their report of February 1984 has recommended that any firm be allowed to purchase data from a licensee even after exploratory drilling has been concluded. The Office of Technology Assessment (OTA) report (May 1984) suggested that the licensee be required to collect hydrologic and soil profile data in addition to coal resource data. The Department would like information on the probable effects and merits of these proposals.

A proposed version of this notice was sent to Western State Governors and major interest groups and organizations at their request in July 1984. Following this distribution, those groups asked the Department of the Interior to hold informational briefings. Meetings took place in Denver on July 23 and 24, 1984. Written comments received as a result of this distribution are on file at the address specified below.

No comments were received from State governments or environmental groups. Comments were received from four industry organizations. Three of these expressed strong concerns that requiring sharing of drilling data would be counterproductive and reduce incentive for expoloration drilling. One deferred comment on the merits of the proposal, but suggested two systems of sharing.

The substance of this proposal was not modified but a paragraph has been added to solicit specific information concerning the effectiveness of current regulations in fostering participation by all interested parties.

DATE: comments should be received on or before November 30, 1984.

ADDRESS: Bureau of Land Management (640), Room 5640, 1800 C Street, NW., Washington, D.C. 20240.

The comments will be available for public review in Room 5640 at the above address during normal business hours (7:45 a.m. to 4:15 p.m.).

FOR FURTHER INFORMATION CONTACT: Ron Smith, (202) 343-4799.

SUPPLEMENTARY INFORMATION: Under the coal program regulations, exploration licenses may be issued to allow private parties, singularly or jointly, to explore coal deposits to obtain geological, environmental, and other pertinent data concerning the coal deposits. Licensees may be required to collect ground and surface water data from the area being explored.

The regulations [43 CFR 3410.2-1(c)] require that a prospective licensee make public its intent to conduct exploratory drilling in order to provide an opportunity for other parties to particpate in exploration under the license on a pro rata cost sharing basis. Those parties interested in participating in the drilling project must indicate their intention within 30 days after publication of the "Notice of Invitation;" otherwise, they lose their right to participate in the drilling project. However, drilling information may be obtained from the licensee, provided the licensee is willing to sell the information. Copies of all data gathered by the licensee must be submitted to the Government and it shall be considered confidential until the area has been leased or until it is determined that public access to the data would not damage the competitive position of the licensee, whichever comes first.

Recently, however, two studies of the coal program have recommended changes in certain provisions of the exploration license program. The Commission recommended that the Department consider changing its regulations [43 CFR 3410.2-1(c)] to require that licensees allow any person to purchase information on a pro-rata basis even after the drilling has been completed.

The proposed change would require this sale to other interested parties with a late participation penalty fee, as well

as the original share cost, any time after the 30 day participation period has passed [43 CFR 3410.2–1(c)(2)]. The amount of the premium or fee to be paid, as well as the amount of the original share cost, is to be determined. The change may increase the number of bidders for the leases because it would make it easier for them to obtain information. It also may decrease environmental impacts by limiting exploratory drilling in a particular area to one company or group of companies.

Although the Department would not be involved in administering any contracts that may result from the proposed change, there is concern about the potential effect of forcing private firms to share exploratory drilling results. Even with compensation, the change may reduce the incentive for companies to conduct exploratory drilling, thus reducing the amount of coal data submitted by industry to the Government. It may benefit those companies that let others take the risk of exploratory drilling while penalizing those that are willing to take this risk.

The Department requests public comment on the merits of changing the present arrangement to one requiring the sale of data to any interested party, and also on the advisability of accepting this recommendation on an experimental basis to assess its actual effect. In addition, comments are needed on how to calculate the orginal share cost and what would be a reasonable penalty fee as a percentage of the original share cost, such as 10, 50 or 100 percent. The Department also seeks public comments on ways to insure that the confidentiality of the drilling information will be preserved under this proposal.

In addition to the change recommended by the Commission, the OTA report suggested that licensees be required to collect hydrologic and soil profile data as well as coal resource data. This proposal was put forth by OTA as a means of improving the collection of information and upgrading the quality of data available for coal leasing decisions. The expense of collecting the information would be borne by the companies that wish to lease the resource and thus be a prime beneficiary of the information.

However, the Department is concerned that additional requirements imposed on the licensee could increase expenses and reduce the amount of exploratory drilling undertaken. Therefore, the Department is seeking comments on the likely effects of imposing this requirement.

In addition, the Department is seeking comments to determine if any interested party has ever been denied particpation in an exploration license, or denied the opportunity to purhcase data after exploration from a licensee, or refused an exploration license because of previous drilling on a tract.

List of Subjects in 43 CFR Part 3410

Administrative practice and procedure, Coal, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: October 26, 1984.

James M. Parker,

Acting Director

[FR Doc. 84–28760 Filed 10–30–84; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Request for Comments on Proposed Guidelines for Intertract Bidding for Federal Coal Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (the Department) is seeking comment on alternative guidelines it may adopt concerning the use of an intertract bidding procedure for auctioning Federal cost leases. Publication of the guidelines in this notice is the first public step in fulfilling a commitment by the Secretary of the Interior to adopt Recommendation V–3 in the February 1984 report of the Commission on Fair Market Value Policy for Federal Coal Leasing. The Commission recommended that "intertract bidding in appropriate cases is a desirable method for leasing Federal coal." The intent of this notice is to offer for comment the Department's proposed guidelines for "appropriate cases" in which to use an intertract approach. Intertract bidding will be considered as an option for leasing coal tracts only after the Department receives the advice of the Regional Coal Teams and the affected State Governors.

A copy of this proposal was sent to Western State Governors and major interest groups and organizations at their request in July 1984. Following this distribution, those groups asked the Department of the Interior to hold informational briefings. Meetings took place in Denver on July 23 and 24, 1984.

A mining company, an energy company, and three industry associations submitted comments in response to the July 1984 distribution of this proposal. These comments are on file at the address specified below. Most of the comments expressed strong opposition to the intertract bidding concept without addressing the guidelines proposed by the Department to define circumstances in which it would consider using some form of intertract bidding. Because of the general nature of the comments received, there is no basis for revision of the proposal at this point. The Department hopes that publication of this notice results in specific comments on the alternative guidelines for intertract bidding rather than general statements of approval or disapproval.

DATE: Written comments will be received on or before 30 calendar days of publication of this notice.

ADDRESS: Send comments to Director (640), Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Andrew Strasfogel, Resource Evaluation and Program Development Staff, Bureau of Land Management (641), 18th and C Streets, NW., Washington, D.C. 20240, telephone (202) 343–4786.

SUPPLEMENTARY INFORMATION:

Introduction

In an intertract lease sale, the Department would offer a greater tonnage of coal than it intended to lease. Prior to the lease sale, a procedure will be developed to determine a ranking priority or mechanism for leasing preference. Only tracts with high bids that meet or exceed the Department's post-sale standards for fair market value (FMV) would be considered for leasing. If the aggregate tonnage in tracts with acceptable FMV bids is greater than the targeted leasing tonnage, the ranking priority or mechanism will be utilized in making the final decision as to what tracts are actually leased.

Historically, one problem in the Federal coal leasing process has been that bidding competition for Federal coal lease tracts has been weak. On average, only about 3 tracts in 10 can be expected to receive more than one bid. The chief cause of this lack of bidding competition is that, for most tracts, one firm tends to have a major informational and developmental advantage, either through ownership of coal reserves adjacent to the Federal lease tract or through control of access rights or surface ownership.

An additional weakness has been that purchasers have been offered only a limited selection of lease tracts because offerings were constrained by the total tonnage reserve contained in the Secretary's final tract selection and scheduling decision. That is, a large array of tracts could not be offered out of concern that the decided-upon sale tonnage limit might be exceeded.

This process of administrative tract selection has tended to place some firms in a position where they have virtually no competition for the coal they desire to lease. This process may also have led the Department to withhold tracts that are of interest to other potential bidders for fear of leasing too much coal. The administrative tract selection system now used may therefore discourage competition of lease sale opportunity for individual tracts. The Department believes that intertract bidding presents an approach that should be tested as a means of generating competition among tracts and of presenting enhanced lease sale opportunity.

The Department formally introduced the concept of intertract bidding for Federal coal leases in its July 1979 final rulemaking for the Federal coal management program. The rules specified that intertract bidding would be used when and if the Bureau of Land Management (BLM) and the Geological Survey (GS), in consultation with the Department of Energy (DOE), determined that the use of intertract bidding would be in the public interest. A provision in the 1979 proposed rules requiring the use of intertract bidding for tracts covered by nontransferable surface owner consents predating the Surface Mining Control and Reclamation Act of 1977 was dropped because of possible overlap with DOE regulatory authority. This provision was retained by the Department as a matter of policy, however, in 1981, full authority to promulgate rules governing bidding systems was returned to the Department. In early February 1982, the Department amended the policy concerning nontransferable consent tracts to permit such tracts to be offered in single tract sale procedures as well as by intertract bidding.

The first proposal to use intertract bidding in a Federal coal lease sale was made in late 1981 and early 1982 while the Secretary was considering a lease sale in the Powder River region of Wyoming and Montana. The Powder River Regional Coal Team (RCT) had delineated four lease tracts in the vicinity of Ashland, Montana; however, the State of Montana requested that only two of the tracts be leased in order to avoid overtaxing the local socioeconomic infrastructure. The BLM Montana State Director, actign as a member fo the RCT, proposed that all four tracts be offered for sale by intertract bidding and the two tracts receiving the highest bids in cents per ton of coal reserves be leased. In mid-February 1982, the Secretary agreed to this proposal.

The Department's presale evaluations of the four tracts ranged from .03 cent per ton of coal reserves to 10.3 cents per ton; however, all four tracts were assigned an entry level minimum bid of 2.5 cents per ton to permit the bidding to begin on an equal footing.

The surface on the four tracts included in the intertract sale was held wholly or in part by qualified surface owners. Since the required written evidence of consent by surface owners to allow coal mining on three of the tracts in the intertract sale was not received by the stated deadline, the

BLM was forced to withdraw those tracts and cancel the intertract sale. Evidence of consents was obtained for the fourth tract (Cook Mountain) and it was offered and sold by single tract sale procedures in effect at that time. No intertract coal lease sales have been proposed since, so that the Department has yet to hold such a sale.

Intertract in the Context of Federal Coal Management

The BLM processes for tract delineation, tract ranking, tract selection, and tract sale provide a highly specialized environment in which any intertract system would need to function. As explained below, tract selection is designed to provide the tracts deemed necessary for new coal mine development and expansion or continuation of existing mines. Tract selection currently is not designed to provide for the offering of an excess amount of coal that could be reduced through intertract bidding. Intertract bidding may therefore be viewed as a useful procedure to permit market forces, rather than government tract selection, a greater voice in deciding which tracts should be leased, in addition to its role as a means of generating bids that are more "competitive" for single bid tracts.

Preparation for a coal lease sale begins several years before the actual sale. Regional Coal Teams (RCTs) obtain expressions of leasing interest; delineate specific tracts based on these expressions and on geologic, engineering, economic, and environmental characteristics; and then rank the delineated tracts based on such factors. At the same time, the RCTs assess the expressions of leasing interest, projected regional capacities and plans, market surveys, and a variety of national and regional coal production scenarios. This information forms the basis for choosing the leasing level range, that is, the amount of coal the Department might need to lease in order to meet a variety of objectives. The leasing level range covers a possible sale—or—sales -to be held over one or more years.

Tract ranking is used to form alternative groupings of tracts for analysis in a regional sale environmental impact statement (EIS) which assesses environmental and socioeconomic effects likely to result from alternative levels of coal development. The alternatives analyzed fall above, within, and below the leasing level range, and usually overstate impacts of lease offerings since the Department rarely leases all tracts it offers and because all tracts leased may not necessarily be developed.

Upon the completion of the EIS process, the RCT resurveys interest in the region, considers regional and national short and long term markets and environmental impacts, and recommends to the Secretary a group of regional tracts to be offered for sale. These may be offered in a single sale or in a phased sale spread over a year or more. The Secretary makes the final tract selection and lease sale scheduling decision.

The RCT also categorizes lease tracts as captive or non-captive, although there are gradations in between. Captive tracts include those adjacent to or surrounded by existing or planned mining operations or in such a configuration as to limit bids on the Federal coal to a single firm or individual.

Conversely, non-captive tracts would be those lacking one dominant potential bidder. Tracts are further classified according to whether they represent new production, production maintenance, or bypass situations. In addition, tracts can be categorized by geographical area or other criteria, such as small business or public body set-asides. The Secretary uses the information provided by the RCT to decide the selection and timing of tracts to offer in one or more lease sales. If sales are to be phased, the Secretary could offer first those tracts of greatest apparent economic interest. The results from this sale could then be used to gauge if and when further phases of the sale are needed.

Implicit in this process is the assumption that the Secretary's final decision only includes tracts that the Government wishes to lease at the time, provided the high bid on each tract meets the test for fair market value (FMV). Because of the absence of surface owner consents, however, some tracts selected may not actually be offered and some of those offered may not receive acceptable (or any) bids and thus would not be leased. As a rule, therefore, the Department is uncertain prior to the sale what amount of coal will be leased. Almost invariably, the Department will lease fewer coal tracts than are approved by the Secretary in the final tract selection and scheduling decision.

Possible Benefits of Intertract Bidding

The main thrust of intertract bidding is to offer more tracts for sale than the Department is willing to sell, and to award leases in such a manner that lower-bid tracts are less likely to be among those actually sold. A somewhat analogous system is used at times in Treasury bill auctions where bidders compete against each other on the basis of bid yield offers to determine the successful purchaser of the Treasury bills. In this case, the Treasury Department ranks the bid yield offers in ascending order and awards bills based on this ascending order only up to the goal of meeting its fixed gross borrowing target in dollars.

Intertract bidding for coal lease tracts, as it has been proposed, is designed to allow competition among bidders for alternative tracts to supplement competition among bidders for the same tract. An additional reason for proposing intertract bidding for coal leases is that a value per ton ranking forms an efficient allocation mechanisms consistent with economic theory to select the best and lowest-cost tracts for development. Still another advantage is that this process is thought to provide a neutral mechanism that eliminates any appearance of favoritism in final tract selection; that is, many of the tracts in which there has been an expressed interest can be offered and the actual selection made by the market place, instead of by the Government.

There are several other possible benefits to be considered with regard to intertract. One important advantage is that some tonnage limit on sales can be set, which can assure RCT s that no matter how many tracts are offered the limit will not be exceeded. This may allow the Department to be much more flexible in which tracts to offer. In the case of a lease sale held in several phases, intertract can provide the RCTs and the Department with important information about the value of the tracts remaining to be leased. This can improve planning for further phases of the sale.

The above benefits accrue to differing degrees for the four intertract bid ranking mechanisms in the proposed guidelines. Some intertract ranking mechanisms provide much better competitive or allocative effects while others provide improved administrative control over the order in which tracts are leased. The circumstances to which these ranking mechanisms would best apply differ, and are discussed in the guidelines section.

Concerns Associated with Intertract Bidding

A number of concerns with intertract bidding have been raised over the past few years in comments by industry and through internal Departmental review. These concerns are with the administrative cost of the process; with

loss of Departmental control over the order in which tracts are eased; with the potential for the process to be used inappropriately to restrict coal supply; with the cost of the process to bidders; with the possibility that the process will result in prices well above FMV; and that the process may unfairly expose private firms' bidding strategies. Departmental study of intertract bidding suggests that these concerns, while real, may be overcome if intertract bidding is used in a flexible manner in specific situations. These concerns are addressed in turn.

1. Intertract Bidding May Result in Higher Administrative Cost to the Government Due to a Need To Delineate and Screen More Tracts Than the Government Wishes to Leases

The Commission on Fair Market Value Policy for Federal Coal Leasing found that current administrative processes are already providing an abundance of tracts for leasing. Furthermore, future sales will be held using a phased approach. Thus, a sufficient number of tracts may now be available in most regions to hold intertract sales. It is not clear, however, that significantly enhanced tract competition will result from using an intertract approach even if a surplus of tracts are available. This is because some offered tracts do not receive bids in a conventional lease sale, even at regulatory minimum bid levels.

2. Intertract Bidding Implies a Loss of Administrative Control Over the Order in Which Tracts Are Leased

It is possible that the least environmentally desirable tracts of a set of tracts may receive the highest bids in an intertract sale and thus be leased instead of the more environmentally desirable tracts. Under the Department's current tract selection procedures, few tracts with poor environmental ratings are offered for lease.

In certain cases, however, loss of administrative control over the order of leasing may not be as serious problem. Of the tracts that were to be offered in the 1982 Ashland, Montana, intertract bidding experiment, all four were given equal ranking on environmental and socioeconomic factors by the RCT. Because of this, the RCT was willing to permit the market to make the tract selection decision. Furthermore, the major externalities associated with coal development have, to a large extent, been internalized by surface mining laws and other environmental protection measures; thus, sites with environmental problems tend to have higher mining costs and will tend to do poorly in intertract sales as compared to environmentally superior sites, all else equal.

If additional administrative control is still felt to be needed, it could be provided in an intertract sale by applying weights to bids on different tracts to equalize the tracts environmentally, or a preferred order for acceptance of high bids in an intertract sale could be specified administratively before the sale. (See the discussion of alternative ranking rules which appears later in this notice.) Such a ranking scheme could, however, vitiate the economic benefits of using intertract to a significant degree.

3. Intertract Bidding has Been Questioned for Providing an Avenue, and an Incentive, for Placing an Artificial Limit on Coal Lease Supply and Capturing the Resulting Monopoly Profits That Result

Although it is Department policy not to act as a monopolist in its leasing of western coal, intertract could conceivably lead to supply restrictions if improperly administered. To avoid this potential problem, the Department's guidelines would allow for follow-up sales in the event that intertract cuts off leasing in the face of strong demand for Federal coal tracts.

4. Industry Representatives Have Complained That Intertract Bidding Would Pose Additional, Unduly High Costs of Participating in Federal Coal Lease Sales

In particular, firms have argued that they would have to evaluate all of the other tracts in the sale, besides the tract(s) in which they were interested, in order to know how much to bid.

The appropriate bidding strategy for a company bidding in a sealed-bid intertract sale would indeed be complex. Information on how other firms will bid on other tracts in the sale would, in fact, be useful to the firm, but not necessarily essential. What is essential to a firm is to know how much it is willing to pay for the tract it wishes to obtain. Bidding theory suggests that it is often in the seller's interest to make it difficult for buyers to find out the degree of competition they are facing and the prices their competitors are willing to offer for the properties being sold. It was primarily for this reason that the Department switched to sealed bidding in its coal lease sales. Intertract bidding would further enhance this aspect of sealed bidding. Given the near impossibility of evaluating all other tracts in the sale and the likely bidding strategies of the other bidders in the sale, it is hoped that bidders will not even attempt to undertake such an effort and, instead, will simply bid what they believed was a fair price for the tract they wished to obtain. Still, the Department recognizes that oral bidding might be preferable from the bidder's viewpoint as a device to assure the opportunity for bidding high enough to qualify for a lease, and seeks comment on this option.

5. Intertract bidding May Force Coal Lease Prices Too High in Situations Where a Firm Is Under Some Duress To Buy the Lease

For example, a firm that seeks reserves on one tract to continue its existing mining operations may be placed in competition with a company that is seeking reserves on another tract to open a new mine. The existing operator may feel greater pressure to obtain the coal and be willing to accept a lower rate of return on development of the coal in order to offer a higher price. Aggravating this problem is a situation in which the existing operation is committed to an f.o.b. contract price lower than prevailing f.o.b. prices for new mines. Value per ton bids may not provide a fair ordering of the leases in such cases. A cure for this problem would be to use a different ranking method or to offer such tracts separately in a non-intertract sale.

6. Confidential Evaluations of Lease Value Will Be Revealed on Tracts That Are Not Leased

This is not a new concern. Firms have raised this issue with regard to the bids on tracts whose high bids are rejected for FMV reasons in both Outer Continental Shelf (OCS) oil and gas lease sales and coal lease sales. Department policy has been that all bids will be announced in both OCS and coal lease sales in order to provide an open sale process and to maintain public confidence. Furthermore, in coal lease sales, it is unclear how release of an unsuccessful high bid is of harm to a coal company given that most firms do not face any real competition for their "captive" tracts. However, the Department has taken a tentative position that in intertract sales only the bids on tracts leased will be made public. It is interested in public comments on the merits of this policy in comparison to the policy of public disclosure of all bids received.

Because problems could arise if a single, rigidly specified form of intertract bidding were used for all coal lease sales, the proposed guidelines allow for flexibility in the specification of the particular form of intertract bidding to

be used in a sale, so that its particular characteristics, such as the ranking method, can be best matched to the characteristics of the tracts being leased. This approach is designed to provide maximum possible net benefits from the intertract bidding procedure.

Proposed Guidelines for Use of Intertract Bidding

In recognition of the possible merits of, and expressed concerns with, intertract bidding, the Department has conducted preliminary analyses of those situations in which an intertract approach would be most practical and of greatest benefit. The "appropriate" circumstances in these guidelines have been selected to mitigate the concerns raised about using an intertract approach in Federal coal lease sales. Other concerns are addressed in the ranking criteria for intertract selection. Using guidelines based on this analysis and subsequent public comment, RCTs can recommend various methods of grouping and ranking tracts to further minimize the problems associated with their diminished administrative control on tract selection. Also, the guidelines would protect bidders with assurances that the Department's intent is to let market forces operate more directly rather than to extract monopoly rents for coal leases. Comments on these proposed guidelines are specifically requested. Because of the untested nature of intertract bidding, these guidelines remain open to review.

1. Use for Subgroups of Tracts

Only a relatively small number of tracts in the same general area and/or having similar characteristics would be offered in an intertract sale.

An RCT would consider using this approach at that stage of activity planning when the tract ranking and EIS processes showed that firms had expressed interest in tracts the development of which might have unwanted cumulative socioeconomic or environmental effects. The concerns might be based on such considerations as probable hydrologic impacts, adverse effects on adjacent Indian reservations, or socioeconomic stress on agriculture communities.

Another application of this guideline might be a desire by an RCT to group new production lease tracts and offer them with a set leasing limit in order to minimize new mine development impacts across a region. Alternatively, several captive tracts that would each normally be of interest to only one bidder could be offered using an intertract approach, the express purpose being to generate bids that are more "competitive" and not necessarily to address socioeconomic or environmental concerns. Small captive tracts that cannot be mined efficiently on their own and are likely to be bypassed in the near future if not leased, with permanent loss of coal resources, would not be included in such a grouping.

This guideline, while encompassing a potentially significant number of circumstances in which RCTs might conclude intertract to be an "appropriate" approach, would, when properly applied, avoid many of the concerns that have been raised regarding intertract. It would permit an RCT to maintain administrative control over socioeconomic and environmental impacts without requiring the Government to make final tract selection decisions from among tracts whose cumulative development potential was perceived to be damaging to the environment or to the socioeconomic infrastructure. Since this use of intertract would be applied in the context of the department's analysis of market conditions, it would not place an artificial limit on coal needed to meet market demand.

2. Use on a Sale-Wide Basis

Intertract could be applied as a tool to test the market in a phased lease sale. In this approach, many more tracts would be offered than would be leased in the first phase of the sale regardless of tract location, type, or ranking. Following this initial lease sale, the bidding results would be analyzed and a decision made as to selection and scheduling of the unleased tracts in one or more reofferings.

Regional coal teams might want to adopt this approach when market signals forecast either an unclear or weak demand for Federal coal leases at the time the final tract selection decision is drawing near. For example, if 10 suitable tracts have been delineated and ranked yet the demand appears to call for leasing fewer than 10, all could be offered initially with the stipulation that no more than one-forth to one-half of the tonnage be leased. Following the inital phase of the sale, the RCT would have a clearer idea of the demand for Federal coal leases in formulating a recommendation to the Secretary for the timing and size of a second offering.

Criteria for Ranking Tracts for Intertract Selection

For each suggested guideline describing the circumstances in which intertract bidding would be considered, several mechanisms have been identified to select successful bids in such a sale. Prior to the intertract sale, a procedure would be developed to establish a ranking priority or acceptance mechanism for tracts with bids meeting the postsale evaluation criteria for FMV. This mechanism would be announced far enough in advance of the sale (60–90 days) for bidders to develop their bidding strategies. The bid ranking criteria selected would depend on the degree of administrative control the RCT wishes to maintain over the order of leasing. The criteria would also hinge on the tradeoff the RCT wishes to achieve between enhancing bidding competition and leasing tracts in order of descending economic value. Different bid ranking criteria could be selected for differenct groups of tracts within the same coal lease sale. A task force in the Department has identified the following possible ranking criteria:

1. Accept FMV Bids in Order of Descending Cents per Ton Bids

This approach would be administratively simple and would also select tracts of the highest economic value. The ranking criteria would be applied after the BLM economic evaluation team had completed its post sale appraisal of all bids submitted for the sale. If tracts differ greatly in value per ton, however, bidding competition may not significantly improve. To deal with the potential problem that firms might find it necessary to evaluate tracts they do not intend to lease in order to be able to bid high enough for the tract(s) they wish to lease, the Department would consider reinstituting a regulation permitting the use of oral bidding in coal lease sales.

2. Accept in Order of Descending High Bids Based on Percentage Above the Appraisal Value for Each Tract in the Sale

This method has the greatest potential of increasing bidding competition among bidders for different tracts. Following completion of the post-sale FMV appraisals for all tracts receiving bids, the economic evaluation team would rank each high bid according to the percentage above the post-sale appraisal for every tract receiving acceptable FMV bids. While this would encourage bidders on high-value tracts to compete on a more equal footing with those vying for low-value tracts, the

economic efficiency may be poorer than that of ranking method 1. This is because high value tracts would be as likely to receive unacceptable bids as low-value tracts. From an administrative standpoint, the bid evaluation process is also somewhat more complicated than ranking method 1.

3. Accept in Administratively Specified Order to Carry Out Leasing Priorities of RCTs

In this method, the order in which tracts with acceptable FMV bids would be leased, would be specified pre-sale. The order of preference would be based on economic, environmental, or other considerations, in particular:

- The closer to the time of lease sale that production on the tract is estimated to commence, the higher the ranking.
- High estimate economic/bonus value.
- Low projected environmental and/or socioeconomic impacts

The first consideration reflects the fact production royalities generated earlier mean greater revenue benefit to States and the Federal Government. Tracts with nearer-term potential for development would be assigned a higher priority for leasing. Similarly, tracts with potential for highest bonus bids could be given a higher ranking. Tracts with the smallest environmental or social impacts also could be given a higher preference. If this mechanism is used, absolute size of a bid will have little bearing on its acceptance, provided other tracts in the sale also receive bids above FMV.

4. Accept in order of descending cents per ton bids but with handicap for environmental or socioeconomic tract differences

While a more quantified version of ranking method 3, this approach features a greater degree of administrative complexity. To handicap tracts an RCT would equalize environmental or socioeconomic factors by assigning a cents per ton credit (or debit) to each tract prior to the sale. Following the lease sale, bids that meet the FMV acceptance standards would be adjusted upward or downward in accordance with each tract's handicap. Bids would than be accepted in order of descending adjusted high bids.

Dated: October 26, 1984

James M. Parker,

Acting Director.

[FR Doc. 84-28759 Filed 10-30-84; 8:45 am]

BILLING CODE 4310-84-M

Implementation of Linowes Commission; Recommendations on Tract Delineation; Factors, Alternative Tract Delineation; Procedures, and Tract Definitions

AGENCY: Bureau of Land Management, Interior.

ACTION: Request for Public Comment on Tract Delineation Factors, Alternative Tract Delineation Procedures, and Tract Definitions.

SUMMARY: This notice provides specific information for implementing the Secretary of the Interior's March 19, 1984, response to Congress concerning three recommendations made by the Commission on Fair Market Value Policy for Federal Coal Leasing (Linowes Commission). The Linowes Commission, among other things, recommended that:

1. The Government seek to provide diversity in quantity and quality of Federal coal lease holdings offered for sale to encourage active competition among mining companies because of the benefits to consumers such competition may produce;

2. Tracts be selected in such a manner that their characteristics will enhance the attainment of fair market value; and

3. The Government have leasing policies that distinguish between new production tracts and maintenance and bypass tracts.

The Secretary agreed with each of these Commission recommendations and directed the Bureau of Land Management (BLM) to:

1. Study and list the factors used in delineating tracts and assess the degree to which each may affect competition and its potential for enhancing competition at the tract delineation stage;

2. Develop proposed procedures for assessing alternative tract configurations to enhance potential competition; and

3. Formalize definitions for various types of tracts.

The BLM has developed the proposed delineation factors, the alternative tract delineation procedures, and the definitions as directed by the Secretary. These materials are published in their entirety in **SUPPLEMENTARY INFORMATION.**

DATE: Written comments on the tract delineation factors, alternative tract delineation procedures, and the definitions will be accepted until November 30, 1984. Comments received after that date may not be considered in preparing the final guidelines, procedures, and definitions.

ADDRESS: Comments or questions concerning the tract delineation factors, the alternative tract delineation procedures, or the definitions should be addressed to: Director (640), Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John Carlson, (202) 343-4722.

SUPPLEMENTARY INFORMATION: A copy of this proposal was sent to State Governors and major interest groups and organizations at their request in July 1984. Following this distribution, these groups asked the Department of the Interior to hold informational briefings. The meetings took place in Denver, Colorado, on July 23 and 24, 1984. Written comments received as a result of this distribution are on file in the Office of the Assistant Director for Solid Leasable Minerals (64)), Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240. Future comments filed as a result of this notice will also be on file for public inspection at this same location.

Several of the comments received as a result of the Denver meeting stressed the importance of industry's role in providing resource information and in configuring tracts that will stimulate mining and subsequent flow of revenue to the Federal Government. Industry-related organizations also strongly opposed the proposed tract delineation procedures whjich would permit, in some situations, the offering of multiple configurations of the same parcel of land for lease.

Public Law 98-63 (1983 Supplemental Appropriations Act) contained language directing the Secretary of the Interior to appoint a Commission to review the Department's coal leasing procedures to ensure receipt of fair market value for Federal coal. This Commission was chartered by the Department on August 3, 1983.

Over a period of 6 months, the Commission reviewed the various laws, regulations and policies and procedures which guide the Department's coal program. The Commission completed its work in February 1984 with publication of its findings and recommendations in the *Report of the Commission on Fair Market Value Policy for Federal Cool Leasing.* Several of the Commission's recommendations were directly related to the Department's policies and procedures used in delineating and selecting coal tracts for study in regional coal environmental impact statements. This notice will focus on the Secretary's

proposals for implementing three Commission recommendations. These are:

1. Commission Recommendation III–4, which stated that the Government should seek to provide adequate diversity in quantity and quality of Federal coal lease holdings offered for sale to encourage active competition among mining companies because of the benefits to consumers such competition may produce;

2. Commission Recommendation IV–1, which noted that tracts should be selected in such a manner that their characteristics will enhance the attainment of fair market value; and

3. Commission Recommendation V–1, which stated that the Government should have leasing policies that distinguish between new production tracts and maintenance and bypass tracts.

After extensive review and analysis of the Commission's recommendations, the Secretary submitted his response, "Review of Federal Coal Leasing," to Congress on March 19, 1984. This document contained the Secretary's comments on the Commission's findings and recommendations, including the Secretary's proposals for implementing those recommendations. With specific regard to the Commission's recommendations III–4 IV–1 and V–1, summarized above, the Secretary agreed with the Commission and directed the BLM to:

1. Study and list the tract delineation factors assessing the degree of competition in the process of tract delineation and tract selection. These factors will include size, coal type, geographic location, mining configuration, ownership configurations, and bypass or captive tract situations;

2. Develop proposed procedures for assessing alternative tract configurations because alternative tract configurations may enhance potential competition and may allow the Department to experiment with smaller tract sizes. One procedure that is to be considered by the BLM is offering alternative tract configurations using the same parcels of land; and

3. Formalize definitions for the terms "new production tract", "maintenance tract", "bypass tract", and "captive or non-captive tract."

A BLM task group comprised of geologists, mining engineers, and mineral economists met in Denver, Colorado, May 2–4, 1984, to study and develop the list of factors, procedures, and definitions, as required by the Secretary. These materials are as follows.

Tract Delineation Factors Having the Greatest Potential for Enhancing Competition

The BLM task group reviewed all the factors used by tract delineation teams in configuring tracts for possible lease sale. Special attention was given to those factors outlined by the Linowes Commission in Chapter IV (Selecting Tracts for Coal Leasing) of its February 1984 report to Congress. The purpose of the review was to select those factors which the task group considered as having the greatest potential for enhancing competition at the tract delineation stage. Identification of a special category of factors in this manner is intended to focus the tract delineation team's efforts to ensure that full consideration is being given to enhancing competition early in the activity planning process. No effort was made to address the comprehensive guidelines and procedures to be used by the tract delineation teams in delineating possible lease tracts. These procedures and guidelines will be addressed at a later date and will incorporate several changes which are being made in response to the Linowes Commission recommendations.

No effort was made to regionalize the factors selected by the task group as having the greatest potential for enhancing competition. The factors will vary from region to region depending on each region's unique situation. Transportation, for example, is not a major consideration in the Fort Union region because the relatively low value of the lignite coal generally prohibits long-distance transportation. In parts of other regions, such as in Uinta-SW Utah and Green River-Hams Fork, however, transportation can be a significant factor for enhancing competition at the delineation stage. Similarly, split-estate ownership patterns may play a significant role in limiting opportunities for enhancing competition, a characteristic typical of the Powder River Region. Conversely, solid-block Federal ownership, such as that found in portions of the Uinta-SW Utah and Green River-Hams Fork regions, presents opportunities for delineating tracts of interest to several bidders.

To reiterate, the list of factors being published for comment is not segregated by region; they are published from a national perspective and will be integrated into the comprehensive guidelines and procedures for tract delineation accordingly. Each lead BLM State Director and RCT will then have responsibility to supplement the national-level guidance by identifying the factors most applicable and appropriate for a particular Federal coal production region.

Finally, the factors listed below are segregated into four broad categories. A brief narrative for each factor is also provided to show how the factor might influence competition. Following are the factors.

Tract Delineation Factors Having the Greatest Potential for Enhancing Competition

1. Tract Configuration

a. *Size/type:* Very large tonnages/annual production may limit competition to very large producers. Configuring tracts to more moderate sizes may increase competition by making a tract available to more bidders. Conversely, smaller tracts may be less attractive to large companies.

b. *Expressions of interest:* Several expressions, either overlapping or in close proximity, may permit delineation of one or more tracts of interest to two or more bidders.

c. *Number of tracts:* An excessive number of tracts could dilute competition (i.e., spreading potential bidders among several tracts).

d. *Planning/environmental considerations:* Location of tracts on the landscape can enhance competition without compromising sensitive environmental values.

e. *Captive/bypass:* Configuration of tracts to serve more than one potential operator (where feasible) and avoid future bypass situations may improve competition.

II. Ownership Pattern/Control

a. *Surface/subsurface (minerals):* Ownership patterns may permit configuring tracts which are not captive to one firm.

b. *Access:* Preservation of alternative access routes may increase bidder interest; more than one entity has readily available access.

c. *Surface owner consent:* Delineating tracts which avoid consent problems/costs may increase competitive interest.

III. Coal Resources

a. *Coal data (availability/reliability/adequacy):* Large amounts of reliable data which are available to all parties can enhance competition. Data which are available only to a single company or entity will chill competition.

IV. Marketability

a. *Minability:* Easily accessible, low production cost coal may increase interest and bidding competition.

b. *Transportation:* The availability and cost of transportation systems can influence bidder interest.

Procedures and Guidelines for Alternative Tract Configurations

As previously indicated the procedures and guidelines for alternative tract configurations are but a portion of the more comprehensive and detailed procedures and guidelines for tract delineation, which the BLM will revise and publish next year. The guidelines and procedures published for public comment in this notice were specifically developed in response to the Commission's recommendation, and the Secretary's proposal to implement such recommendation, to assure that tracts are selected in a manner that their characteristics will enhance the attainment of fair market value.

After reviewing the tract delineation factors, the Tract Delineation Task Group developed a process which could be used by tract delineation teams to identify a special category of tracts (i.e., "packages" of tracts) which could be studied in the regional coal environmental impact statement and offered for lease in different ways to enhance attainment of fair market value.

As previously noted, these proposed procedures fostered concern that multi-tract configuration would present problems similar to those of intertract bidding. One commentor, in particular, pointed out that multi-configurations will make bid comparison on a cents/ton basis difficult because of the many dissimilarities between tracts. Overall, industry was not supportive of the multi-configuration concept to enhance competition.

The Department recognizes that the multi-configuration concept would be limited to special circumstances. Nevertheless, the procedure would permit exploration of one of many opportunities to increase competition through tract delineation. Its use, however, would be narrowed to situations where multi-configurations would result in tracts having similar physical and geological characteristics and where comparison of tract values would be feasible.

It should also be pointed out that the multi-configuration concept would only provide the Regional Coal Team (RCT) and the Secretary with additional flexibility in the process of selecting tracts to be offered. The mere delineation of multiple tracts on the same parcel of land would not commit the RCT or the Secretary to select and offer the tracts as a package. Such a decision would be based on the conditions prevailing at the time of decision; special consideration would be given to whether or not a multi-configuration offering would enhance competition at the time of sale and whether or not a multi-configuration would make the most efficient use of the coal resource while providing the required environmental protection.

In view of the above clarification and discussion, the proposed procedures and guidelines for alternative tract configurations are reoffered unchanged for public comment. The process is as follows:

Procedures and Guidelines for Alternative Tract Configurations

Objective—To identify opportunities and to delineate tracts to enhance competition.

Responsibility

(1) Tract delineation teams are responsible for configuring tracts to make wise and efficient use of the coal resource and to enhance competition.

(2) Regional coal teams (RCTs) are responsible for ranking tracts and selecting possible leasing alternatives for study in regional coal environmental impact statements.

Procedures

a. The delineation team must review available information on the area under consideration to determine if conditions exist which would allow alternative tract configurations and examine:

(1) Expressions of interest to identify overlaps or to determine if expressions are proximate to each other, which would allow delineation of one tract that would satisfy two or more expressions (condition does/does not exist);

(2) Access to surface or coal resources to determine if they are available to more than one possible bidder (condition does/does not exist);

(3) Surface and subsurface ownership patterns to identify areas which would allow delineation of non-captive tracts (condition does/does not exist);

(4) Existing/potential operations to determine if potential for delineating a competitive tract or tracts exists (condition does/does not exist; and

(5) Geologic/mining data to determine if conditions allow delineation of more than one tract (condition does/does not exist).

b. If the delineation team decides that, as a minimum, conditions 2, 3, and 5 above do not exist for an area considered for delineation, there is *no* opportunity for delineating alternative tract configurations. Single tracts would thus be delineated using standard delineation procedures.

c. If conditions 2, 3, and 5 under a, above, do exist, the area will be screened more intensely for alternative tract configurations. The tract delineation team will:

(1) Examine the coal deposit to determine if other tract configuration(s) will also provide maximum economic recovery of the coal resource.

(2) Study tract configuration options to insure that configuration either maintains or has the potential to increase competition.

(3) Review adjacent and other surrounding mining activities, planned operations and ownership patterns to ensure that alternative configurations will not result in future bypass or captive tract situations.

(4) Examine existing environmental and cultural considerations to determine if one or more tracts can be delineated, each of which would be of interest to two or more bidders, while retaining protection of environmental and cultural resources.

(5) Consider any other conditions not covered by 1–4 above which would allow enhancement of competition.

d. If *all* of the conditions in c, above, exist, the delineation team configures a "package" of one or more tracts for each area(s) where alternative tracts can be delineated (using standard delineation procedures). Each "package" may consist of a single tract that satisfies several expressions of interest or two or more tracts that satisfy a single expression or a group of expressions.

e. For *each* tract in each "package" of alternative tracts, prepare an economic review. The purpose of this review is to analyze the marketability of each tract and to identify obvious economic disparities between tracts in the "package."

(1) If this review reveals significant economic-related differences among the tracts in the "package" which cannot be resolved without affecting potential competition, then it is unlikely that competition can be enhanced and tract(s) should be delineated using standard procedures.

(2) If the review suggests approximately equal marketability conditions between tracts, the "package" of tracts will be labeled using the tract definitions in (Appendix C of this Notice) and a tract profile prepared for each delineated tract in the "package."

f. The "package(s)" of alternative tract configurations will be submitted, along with other delineated tracts, to the RCT for ranking and selection of leasing alternatives.

Tract Definitions

The purpose of tract definitions is to permit the labeling of tracts to distinguish captive, single bidder tracts from potentially competitive tracts. This was achieved using a bifurcated system, which first describes the type of tract (i.e., new production, production maintenance or bypass) and then its competitive status (i.e., captive or non-captive).

Tract labeling, using the following definitions, will initially be accomplished by the tract delineation teams. First, the teams will evaluate the tract and select the Tract Type. The teams will then determine the Competitive Status. For example, a delineation team might determine that a tract satisfies the definition for a new production tract but, because of the tract's location relative to adjacent or surrounding mineral ownership, only one bid is likely to be received. Thus, the delineation team would label the tract NPC (new production tract, captive to one firm). This label would be submitted to the Regional Coal Team (RCT) and would remain a part of the tract description throughout the activity planning process, unless changed by the RCT as a result of additional information.

Tract Definition

Tract Type

New production tract (NP): A tract which contains a sufficient quantity and quality of Federal recoverable coal, either by itself or in combination with surrounding non-Federal recoverable coal, that could justify the expenditure of money and effort to develop and implement an entirely new mining operation.

Production maintenance tract (PM): A tract which does not contain sufficient recoverable reserves to support an entirely new mining operation; recoverable reserves are present only in sufficient quantities to extend the life of an adjacent, existing mine of to permit expansion of that mine's annual production.

Bypass tract (B): A tract which contains Federal recoverable coal, which if not leased, would be bypassed in the reasonably foreseeable future.

Competitive Status

Captive tract (C): A tract containing recoverable Federal coal adjacent to or surrounded by existing or planned mining operations or situated in a manner which will likely limit bids on the Federal coal to a single entity.

Non-captive, limited tract (NCL): A tract located such that barriers will limit the number of potential bidders to a relatively few companies or entities.

Non-captive, unlimited tract (NCU): A tract located such that there are no barriers (e.g., access, land ownership, transportation, etc.) that would limit the number of potential bidders.

The reviewer is cautioned again that the products published in this notice were purposely narrowed in scope to address specific proposals for implementing specific Commission recommendations. This was done to assure that the focus of the Secretary's proposal for implementing a Commission recommendation could be accomplished within the time constraints imposed by the Secretary. The task group made no effort to fully describe how the tract delineation factors, the alternative tract delineation procedures, or the definitions would be integrated into more detailed and comprehensive procedures for delineating coal tracts. The delineation procedures currently in use are described in the Minerals Management Service's May 13, 1982, prelease coal program publication. These procedures will require extensive revision to conform to BLM format and to reflect various program changes, many in response to the Linowes Commission recommendations. For example, several work products not yet in final form which must be considered in the procedures include: (1) Integrating appropriate portions of the Bureau's coal drilling program into the tract delineation process: (2) use of the tract delineation factors; (3) delineating alternative tract configurations; (4) use of standards for determining coal data adequacy; (5) involving the economic evaluation team in the delineation process to enhance its position for subsequent fair market value appraisals; (6) designating the tract delineation team; and (7) using the tract definitions for labeling tracts. The comprehensive tract delineation procedures will also have to be more explicit in defining and describing the relationship between the regional coal teams and the tract delineation teams.

Once the products published in this and other notices are made final, more detailed and comprehensive procedures and guidelines for tract delineation will be developed and issued to field units. Final tract delineation procedures shoud be available in the spring of 1985. Therefore, reviewers are asked to focus their comments on the materials in this notice, which are intended to fully implement the Linowes Commission recommendations but which are only small portions of the much larger tract delineation process.

Date: October 26, 1984.

James M. Parker,

Acting Director, Bureau of Land Management.

[FR Doc. 84-28711 Filed 10-30-84; 8:45 am]

BILLING CODE 4310-84-M

Notice Requesting Comments on Conceptual Approaches To Negotiating To Achieve Fair Market Value for Federal Coal Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: By this notice, the Bureau of Land Management invites comments on three conceptual approaches to negotiating to achieve fair market value for Federal coal leases when there appears to be only one potential bidder for a prospective Federal coal tract. The Bureau requests comments on all aspects of negotiated coal lease sales but specifically requests comments as outlined in the sections which follow.

All comments will be reviewed and their content reported to Congress for its use in considering whether or not to develop legislation in response to the recommendations of the Commission on Fair Market Value Policy for Federal Coal Leasing.

DATE: Comments should be submitted by December 17, 1984. Comments received or postmarked after the above date may not be considered in the preparation of the correspondence to Congress.

A copy of this notice was sent to State Governors and major interest groups and organizations at their request in July 1984. Following this distribution, these groups asked the Department of the Interior to hold informational briefings. The meetings took place in Denver, Colorado, on July 23 and 24, 1984. Written comments received as a result of this distribution are on file in the Office of the Assistant Director for Solid Leasable Minerals (640), Bureau of Land Management, 18th and C Sts. NW., Washington, DC 20240. Future comments filed as a result of this notice will also be on file for public inspection at the same location.

FOR FURTHER INFORMATION CONTACT: Carole Smith, (202) 343-4774.

ADDRESS: Comments should be sent to: Director (640), Bureau of Land Management, 18th and C Sts. NW., Washington, DC 20240.

Comments will be available for public review in Room 5640 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

SUPPLEMENTARY INFORMATION:

General Information:

Four groups commented on the conceptual approaches presented here as a result of the July 23 and 24 meetings. These groups represented the energy industry, a western State, and an environmental organization. The comments provided views on the questions asked in this notice and do not provide a basis for revisions at this point.

The commenters expressed support of, opposition to, or modification of the three approaches described below. Since we seek broad public comment on the questions raised, the language below has not been revised from that presented at the Denver meeting.

The Federal Coal Leasing Amendments Act of 1976 (FCLAA) removed the Secretary of the Interior's general authority to issue Federal coal leases without competition. At the same time, the FCLAA specifically requires the Secretary of the Interior to receive fair market value for all Federal coal leased.

How the Federal Government can ensure the receipt of fair market value for the coal that it leases has been a subject of great interest for several years. Several groups have studied the concept of fair market value and the ways to achieve it. The latest such group is the Commission on Fair Market Value Policy for Federal Coal Leasing.

In its report to Congress, the Commission made a number of recommendations designed to ensure that the Federal Government receives fair market value for all Federal coal leased. After noting that competitive bidding is a good way to secure the receipt of fair market value, the Commission described factors limiting competition for Fedearl coal leases. The Commission believed that these factors were significant enough to support using negotiation in some situations in place of the competitive sales now mandated by the FCLAA. In Recommendation V–6, the Commission stated: "Wherever possible, leases should be sold on a competitive basis. However, where reasonable efforts to obtain competitive bids have failed, the Government should have the authority to negotiate a fair price."

This is not the first time that such a suggestion has been made. In its report to Congress on the April 1982 Powder River Coal Lease Sale (GAO/RCED–83–119, May 11, 1983), the General Accounting office (GAO) recommended that Congress amend the law to allow the Department of the Interior to negotiate the sale of captive tracts. The GAO believed that authority to negotiate would allow the Department access to better mining cost and revenue data. At the same time, the GAO stressed the need for adequate controls to ensure sufficient opportunities for public comment and to protect industry interests.

The Secretary of the Interior's response of March 19, 1984, to the Commission report outlined three conceptual approaches to conducting negotiated sales, including the approach described in the GAO report. His response also included a commitment to work with the Congress to determine whether a feasible approach to negotiating a fair price for Federal coal leases can be defined. As a preliminary step in this process, the Secretary of the Interior committed the Department to requesting public comments on possible conceptual approaches to negotiation. Accordingly, we request comments on the desirability of the Secretary of the Interior's having such negotiating authority in the case of tracts where reasonable efforts to obtain competition have failed and on what "reasonable efforts to obtain competition" should be based. This notice should not be construed as a proposal to implement negotiated coal lease sales. The comments will be used solely to assist the Department in responding to any legislative proposals which may be studied by the Congress.

The conceptual approaches contained in the Secretary's response are discussed below. We specifically request suggestions for improving these approaches and for other approaches that would meet the goals of the Commission's recommendation.

Conceptual Approaches.

The approaches outlined below are presented in the order in which they were presented in the Secretary's March 1984 response to the Commission's report.

Approach 1

This approach is similar to the one suggested by the General Accounting Office.

1. Identify the potential single bidder coal tract. The tract may be identified during activity planning based on mining patterns and patterns of surface and mineral ownership in the area or through submission of an application for coal lease sale. (See 43 CFR 3425.1–4 and 3425.1–5.)

2. Publish in the **Federal Register** a notice of intent to negotiate, requesting a response from any other companies possibly interested in bidding. Responses would be screened for degree of interest. Companies with mining operations or coal holdings in the area or otherwise demonstrating the ability to develop the tract would be considered to be seriously interested.

3. (a) If no interested parties respond to the notice, enter negotiations.

(b) If other interested parties respond, publish a **Federal Register** notice cancelling the intent to negotiate and hold a competitive sale under the provisions of 43 CFR Subpart 3422.

4. Negotiate.

(a) Analyze tract value as a range from the lowest to the highest likely market values.

The analysis should yield an asking price, falling within the range, to start the negotiation.

(b) Without revealing these estimates, solicit offer from the company, including the detailed basis for that offer.

(c) Compare company's offer with the Department's estimate of tract value.

(1) if company's offer is at or above the asking price, accept.

(2) If the company's offer is lower than the asking price and if the information supplied by the company with its offer provides the basis for a more reasonable estimate of likely market value, revise the tract value estimate and offer the company the lease tract at the revised value.

(3) if the company's offer is lower than the Department's asking price and if the information supplied by the company with its offer provides no basis for a more reasonable estimate of likely market value than the existing value estimate, give counteroffer and basis of tract value estimate.

(d) Continue negotiation and analysis until

(1) Tentative agreement is reached or

(2) Negotiation is ended in writing by either or both parties.

5. Publish notice in **Federal Register** describing tentative agreement and requesting public comment on the negotiated terms.

6. Accept/reject agreement. Include public comments as part of the decision record.

(a) If agreement is accepted, issue lease if all other requirements are met.

(b) If agreement is rejected, either resume negotiations or terminate discussion.

Approach 2

1. Analyze tract value as in Approach 1 above and also prepare presale estimate in accordance with existing guidelines.

2. Offer tract for coal lease sale.

(a) If competition occurs, use postsale guidelines to determine whether the high bid should be accepted or rejected.

(b) If there is only one bid and it exceeds a predetermined amount, accept. Issue lease if all other requirements are met.

(c) If the one bid received is lower than the predetermined amount, negotiate.

3–5. Negotiation is carried out as in steps 4–6 above for Approach 1.

Approach 3

1. Analyze tract value as in Approaches 1 and 2 above.

2. Offer tract for coal lease sale.

(a) Same as for step 2a of Approach 2 above.

(b) If only one bid is received, announce whether bid exceeds or is below the predetermined acceptable value.

(1) If the bid exceeds this value, accept. Issue lease if all other requirements are met.

(2) If the bid is below this value, offer bidder one opportunity to raise bid.

a. If the new bid exceeds predetermined value, accept. Issue lease if all other requirements are met.

b. If the new bid is below the predetermined value, reject. The tract may be reoffered at a later date in accordance with applicable regulations, including those at 43 CFR 3420.6.

Negotiation Issues:

These approaches make assumptions in several areas. The Department request comments on the areas discussed below as they affect the conduct of negotiated sales.

Negotiating agent. All conceptual approaches are silent on the issue of who should negotiate on behalf of the Federal Government, a Federal employees or agent bargaining on behalf of the Federal Government. Using a private agent instead of a Federal employee could benefit the public in several ways: It could provide negotiation skills, not often used in the Department, as needed; it would provide managers more time to meet ongoing program objectives, such as multiple use management and land use planning; and it might distance the negotiation process from the regular coal leasing process, which, in recent years, has proven to be very controversial. On the other hand, private negotiations might be very costly and conflict of interest may occur since persons with these skills typically have represented the coal industry in the past. Public comments are requested on whether or not the Federal Government should use a private party as its agent in the negotiations.

Negotiation objectives. The Department has not had any experience in negotiating the sale of Federal coal leases and is not certain as to whether or not the objectives applied to competitive lease sales are appropriate or sufficient for use in negotiated sale. Therefore, we seek comments on negotiation objectives and the rationale for those comments, especially from those who have experience in negotiating the sale of private leases. Comments are requested on what the objectives of the Government's negotiator should be. Concerning price, should the negotiator be instructed to get as much as possible for each lease but to accept no less than the Government's estimate of fair market value? Further, should the price paid for the tract vary with the situation? For example, a bypass situation in which the coal must be mined within a year or two because of the mining sequence may call for a different negotiation strategy than a captive new mine situation. It may be to the advantage of the Government to accept less for a bypass tract lease than it would for a new mine tract lease. Finally, what should be the measurement to indicate that the potential lessee is negotiating in good faith?

Public participation opportunities. The GAO stated that a primary objective of any negotiated sale process should be to insure adequate opportunities for public participation and at the same time to protect industry proprietary rights. All three conceptual approaches formally provide hearings on the environmental documents, during the comment period on request for fair market value and maximum economic recovery, and at regional coal team meetings at which tract activities are discussed.

Approaches 1 and 2 provide additional opportunities to participate through responding to **Federal Register** notices at various steps in the negotiation process. Approaches 2 and 3 assume that a coal lease sale will be held, and the public may of course attend the sales.

Comments are requested on the adequacy of the public participation opportunities outlined above and on any other possible opportunities for public participation.

Range of tract values. The terminology describing the estimated value of the coal lease tract for which negotiation is being considered has been kept vague. There may in fact be several different values which are applicable. Concerning the term "asking price," what should it mean? The asking price could mean the Government's best estimate of full value to the lessee/developer, also known as the expected net present worth, the economic rent, or the value in use. It could also mean a high estimate of fair market value based on optimistic assumptions of development conditions, prices and so forth; some percentage, say 20 percent, above the Government's best estimate of fair market value, of the Government's best estimate of fair market value. Comments are requested on how to best determine what constitutes the asking price for a lease whose sale is to be negotiated.

Approach 1 above is the most explicit in terms of how prices will be set. Step 4 c) assumes that the Government will accept the bid if the price offered by the company is at or above the asking price based on the most realistic assumptions of tract value. We request comments on how to determine whether or not to accept prices offered for tracts.

The other approaches use the term "predetermined amount." We request comments on how these amounts should be set.

The issues surrounding negotiated sales are complex. In summary, comments are requested on the following areas: Whether or not the Secretary should be given authority to negotiate prices for Federal coal leases where reasonable efforts to obtain competition have failed; what should consititute "reasonable efforts to obtain competition"; comments on the three conceptual approaches presented by the Secretary and on any other approaches that should be considered; what the negotiator's objectives should be; what criteria the Government should use to determine whether or not potential lessees are negotiating in good faith; what opportunities for public participation ought to be included in any coal lease negotiation process; and how the Government should determine both the asking price and the price that it will accept in negotiation for Federal coal leases.

Dated: October 26, 1984

James M. Parker,

Acting Director.

[FR Doc. 84-28713, Filed 10-30-84; 8:45 am]

BILLING CODE 4310-84-M

Request for Comments on Cooperative Leasing of Federal Coal Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Commission on Fair Market Value Policy for Federal Coal Leasing (the Commission) recommended that "cooperative leasing procedures are desirable to obtain logical mining units that may be reasonably expected to receive greater bidding competition than fragmented coal holdings" (recommendation IV–3 of Commision's

February 1984 report, page 192). The Secretary adopted this recommendation in his March 19, 1984 Review of Federal Coal Leasing. The purpose of this notice is to provide a status report on cooperative leasing and to request parties outside the Government to identify and bring forward specific proposals for cooperative leasing of fragmented or intermingled Federal and non-Federal coal lands.

A copy of this proposal was sent to Western State Governors and major interest groups and organizations at their request. Following this distribution, these groups asked the Department of the Interior to hold information briefings. The meetings took place in Denver on July 23 and 24, 1984. Written comments received as a result of this distribution are on file for public inspection at the address listed below. As a result of a comment received, the proposal has been amended to request comments concerning conditions under which a cooperating lessor would be allowed to bid.

DATE: Written comments will be received on or before 30 calendar days of publication of this notice.

ADDRESS: Send comments to Director (640), Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240. Comments will be available for public review in Room 5640 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Andrew Strasfogel, (202) 343–4786.

SUPPLEMENTARY INFORMATION: In its February 1984 report, the Commission observed that the Government is seldom able to offer all the mineral and surface rights needed for an entire economic mining unit. The ability to offer such a mining unit would guarantee to each potential bidder an opportunity to invest in a lease without uncertainty about the ability to acquire additional private rights, and at what cost. Cooperative leasing provides a vehicle to create tracts of competitive interest in checkerboard or fragmented Federal coal lands.

Prior to a lease sale, the Federal Government and holders of all other rights needed to form a stand-alone mining unit would negotiate an agreement to set the terms and conditions for acquiring the non-Federal rights. The Federal coal would be offered for lease with knowledge of the coal reserves in all lands in the mining unit and of the financial requirements to obtain the non-Federal rights. The bonus bid accepted for the Federal lands would serve as the basis for determining the bonus payment to the other coal mineral rights owners in the mining unit, who would be bound through the cooperative agreement to offer their rights under these conditions.

Cooperative leasing has been proposed by the Department twice in the past for public comment. On December 30, 1980, (45 FR 85833) a generic cooperative leasing proposal was published in the **Federal Register.** Commenters who favored the concept supported it on the basis that cooperative leasing would promote more competition and would permit efficient coal development in the checkerboard. Those commenting in opposition expressed concern that the rights of intervening land owners might be compromised unless the specific proposals were strictly voluntary.

A model cooperative leasing agreement between the Department and Rocky Mountain Energy Corporation (RME) to offer the Red Rim tract in the checkerboard area of southwest Wyoming was drafted in 1981. On November 18, 1981, this proposed agreement was published for public comment in the **Federal Register.** Although the comments received were largely in opposition to the proposal, respondents principally expressed concern about the issue of leasing Federal coal to RME, which is a corporate affiliate of the Union Pacific Railroad, rather than about cooperative leasing *per se.* Commenters interpreted the cooperative leasing agreement as an attempt to circumvent section 2(c) of the Mineral Lands Leasing Act of 1920 (MLLA) forbidding common carrier railroads from holding Federal coal leases.

The Department announced on December 7, 1982, that it would halt future leasing of Federal coal deposits to energy firms which are corporate affiliates of common carrier railroads. This decision came as the result of a legal opinion issued by the Solicitor which modified the Department's interpretation of section 2(c) of the MLLA. This new position would effectively prevent RME from bidding on the Federal portions of the Red Rim tract if that tract were offered for lease. Future cooperative leasing agreements involving railroad affilitates will provide that the affiliate will not bid on the Federal coal offered as part of such an agreement.

In 1982, several environmental and wildlife protection organizations filed a petition on the Red Rim tract to have it declared unsuitable for mining under the Surface Mining Control and Reclamation Act of 1977. Because the disposition of this petition has not been resolved, no decision has been reached on leasing the Red Rim tract or offering it under a cooperative leasing arrangement.

An April 1982 report by the General Accounting Office GAO EMD–82–72) concluded that cooperative leasing was a valid concept to enhance competition for Federal coal in checkerboard areas. The GAO recommended that the Department give priority to cooperative leasing agreements containing all the surface and underlying coal rights. Cooperative leasing was similarly endorsed by the Commission in February 1984 and the Secretary committed the Department in March 1984 to pursue cooperative leasing opportunities aggressively.

In order to assist the Bureau of Land Management (BLM) in identifying cooperative leasing opportunities in areas of fragmented, checkerboard or mixed coal ownership, the BLM is soliciting comment on specific lands that might lend themselves to this approach. These opportunities will be screened and presented to the appropriate regional coal teams (RCTs). The BLM is also interested in comments on possible ways to equalize bonus payments and advance and production royalty revenues among the Federal government and the private coal owners in a cooperative leasing agreement. Suggestions on accommodating qualified surface owners in such agreements are also requested.

In studying the issue of repealing section 2(c) of the MLLA, the Commission believed that competition for individual coal leases in railroad checkerboard areas would not be increasesd significantly by repeal of section 2(c), unless repeal were linked to a requirement for cooperative leasing of any coal offered in the checkerboard. See page 341–343 of Commission report. The coal industry, however, has traditionally expressed concern that railroads would have an unfair bidding advantage for Federal coal in checkerboard areas. The BLM specifically requests comments concerning conditions under which a cooperating lessor should be allowed to bid.

As a means of further increasing possibilities for cooperative leasing, the BLM is instructing its field offices to utilize land ownership records to identify and contact private land owners to determine their interest in cooperative leasing. This effort will be undertaken at appropriate times in land use planning and activity planning. Field offices will advise RCTs of proposals that bear further analysis and followup.

Dated: October 26, 1984.

James M. Parker,

Acting Director.

[FR Doc. 84–28710 Filed 10–30–84; 8:45 am]

BILLING CODE 4310–84–M

federal register

Wednesday
October 31, 1984

Part VI

Veterans Administration

38 CFR Part 3
Cost-of-Living Adjustments

VETERANS ADMINISTRATION

38 CFR Part 3

Cost-of-Living Adjustments

AGENCY: Veterans Administration.

ACTION: Cost-of-Living Adjustments.

SUMMARY: As required by law the Veterans Administration (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1984. A proposed rule concerning § 3.250 was published on August 17, 1984 (49 FR 32863). The final regulatory amendment including these cost-of-living adjustments, will appear in the **Federal Register** shortly.

DATE: These COLAs are effective December 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert M. White (202) 389–3005.

SUPPLEMENTARY INFORMATION: Under the provisions of 38 U.S.C. 3112 and section 306 of Pub. L. 95–588 the VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 3.5 percent cost-of-living increase in social security benefits effective December 1, 1984. Therefore, applying the same percentage, the following increased rates and income limitations for the VA's pension and parents' DIC programs will be effective December 1, 1984.

Dated: October 30, 1984.

Harry N. Walters,

Administrator.

Improved Pension

Table 1

Maximum Annual Rates

(1) *Veterans permanently and totally disabled (38 U.S.C. 521).*

Veteran with no dependents, $5,709.

Veteran with one dependent, $7,478.

For each additional dependent, $968.

(2) *Veterans in need of aid and attendance (38 U.S.C. 521).*

Veteran with no dependents, $9,132.

Veteran with one dependent, $10,902.

For each additional dependent, $968.

(3) *Veterans who are housebound (38 U.S.C. 521).*

Veteran with no dependents, $6,977.

Veteran with one dependent, $8,747.

For each additional dependent, $968.

(4) *Two veterans married to one another; combined rates (38 U.S.C. 521).*

Neither veteran in need of aid and attendance or housebound, $7,478.

Either veteran in need of aid and attendance, $10,902.

Both veterans in need of aid and attendance, $14,324.

Either veteran housebound, $8,747.

Both veterans housebound, $10,017.

One veteran housebound and one veteran in need of aid and attendance, $12,170.

For each dependent child, $968.

(5) *Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 541).*

Surviving spouse alone, $3,825.

Surviving spouse and one child in his or her custody, $5,011.

For each additional child in his or her custody, $968.

(6) *Surviving spouses in need of aid and attendance (38 U.S.C. 541).*

Surviving spouse alone, $6,119.

Surviving spouse with one child in his or her custody, $7,303.

For each additional child in his or her custody, $968.

(7) *Surviving spouses who are housebound (38 U.S.C. 541).*

Surviving spouse alone, $4,677.

Surviving spouse and one child in his or her custody, $5,860.

For each additional child in his or her custody, $968.

(8) *Surviving child alone (38 U.S.C. 542),* $968.

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 521, 541, and 542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,289. (38 U.S.C. 521(g)).

Parents' DIC

DIC (dependency and indemnity compensation) shall be paid monthly to parents of a deceased veteran in the following amounts. (38 U.S.C. 415).

Table 2

One parent. If there is only one parent the monthly rate of DIC paid to such parent shall be $266 reduced on the basis of the parent's annual income according to the following formula:

FOR EACH $1 OF ANNUAL INCOME

The $266 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	$800	6,493

No DIC is payable under this table if annual income exceeds $6,493.

One Parent Who Has Remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under table 2 or under table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rate is table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $190 reduced on the basis of each parent's annual income, according to the following formula:

Table 3

FOR EACH $1 OF ANNUAL INCOME

The $190 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.05	800	1,000
.07	1,000	1,200
.08	1,200	6,493

No DIC is payable under this table if annual income exceeds $6,493.

Two parents living together or remarried parents living with spouses. The rates in table 4 apply to each parent living with another parents; and each remarried parents, when both parents are alive. The monthly rate of DIC paid to such parents will be $179 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

Table 4

FOR EACH $1 OF ANNUAL INCOME

The $179 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$1,000
.03	1,000	1,800
.04	1,800	2,300

FOR EACH $1 OF ANNUAL INCOME—Continued

The $179 monthly rate shall be reduced by	Which is more than	But not more than
.05	2,300	2,800
.06	2,800	3,300
.07	3,300	3,600
.08	3,600	8,731

No DIC is payable under this table if combined annual income exceeds $8,731.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under tables 2 through 4 shall be increased by $140 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under tables 2 through 4 shall not be less than $5.

Section 306 Pension Income Limitations

Table 5

(1) Veteran or surviving spouse with no dependents, $6,493 (Pub. L. 95–588, section 306(a)).

(2) Veteran with no dependents in need of aid and attendance, $6,993 (38 U.S.C. 521(d) as in effect on December 31, 1978).

(3) Veteran or surviving spouse with one or or dependents, $8,731 (Pub. L. 95–588, section 306(a)).

(4) Veteran with one or more dependents in need of aid and attendance, $9,231 (38 U.S.C. 521(d) as in effect on December 31, 1978).

(5) Child (no entitled veteran or surviving spouse), $5,306 (Pub. L. 95–588, section 306(a)).

(6) Spouse income exclusion (38 CFR 3.262), $2,068 (Pub. L. 95–588, section 306(a)(2)(B)).

Old-Law Pension Income Limitations

Table 6

(1) Veteran or surviving spouse without dependents or an entitled child, $5,683 (Pub. L. 95–588, section 306(b)).

(2) Veteran or surviving spouse with one or more dependents, $8,197 (Pub. L. 95–588, section 306(b)).

[FR Doc. 84-28921 Filed 10-30-84; 2:45 pm]
BILLING CODE 8320-01-M

Reader Aids

Federal Register

Vol. 49, No. 212

Wednesday, October 31, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

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, OCTOBER

38525-38926.....1
38927-39034.....2
39035-39152.....3
39153-39272.....4
39273-39504.....5
39505-39652.....9
39653-39828.....10
39829-39994.....11
39995-40156.....12
40157-40382.....15
40383-40556.....16
40557-40774.....17
40775-41008.....18
41009-41226.....19
41227-42538.....22
42539-42690.....23
42691-42906.....24
42907-43034.....25
43035-43442.....26
43443-43542.....29
43543-43618.....30
43619-43942.....31

PARTS AFFECTED DURING OCTOBER

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.

1 CFR

3.....39511

Proposed Rules:

Ch. III.....40040

3 CFR

Executive Orders:

April 17, 1926
Revoked in part by PLO 6575.....40407
5327 Revoked in part by PLO 6574.....40406
6843 Revoked in part by PLO 6573.....40406
11145 (See EO 12489).....38927
11157 (Amended by EO 12488).....38525
11183 (See EO 12489).....38927
11287 (See EO 12489).....38927
11776 (See EO 12489).....38927
12131 (See EO 12489).....38927
12190 (See EO 12489).....38927
12196 (See EO 12489).....38927
12216 (See EO 12489).....38927
12296 (See EO 12489).....38927
12345 (See EO 12489).....38927
12367 (See EO 12489).....38927
12395 (See EO 12489).....38927
12488.....38525
12489.....38927
12490.....40393
12491.....43443
12492.....43445

Proclamations:

5240.....39273
5241.....39275
5242.....39277
5243.....39279
5244.....39281
5245.....39283
5246.....39285
5247.....39505
5248.....39507
5249.....39509
5250.....39653
5251.....39655
5252.....39829
5253.....39831
5254.....39833
5255.....40383
5256.....40385
5257.....40387
5258.....40389
5259.....40391
5260.....40557
5261.....40775
5262.....41227
5263.....41229
5264.....41231
5265.....42539
5266.....42541
5267.....42543
5268.....42545
5269.....42547

4 CFR

81.....38527

5 CFR

315.....39287
550.....43619
2429.....43447

Proposed Rules:

930.....43691

7 CFR

2.....38929
53.....43045
272.....39035
273.....39035
301.....38930, 40157, 42691, 43448
319.....39038
355.....42907
356.....42907
371.....38529, 41009
427.....40777
431.....41009
432.....40781
444.....39512
651.....40395
910.....39288, 39995, 41014, 43039
920.....39657
927.....43449
928.....40559
966.....39153, 40397
981.....38530, 40788
985.....42549
1065.....39995
1079.....40397
1097.....39835
1435.....38532
1910.....40789
1944.....40789
1951.....41220
1980.....41223
3015.....38533

Proposed Rules:

58.....39166

443 41064
725 43552
800 ..... 40582, 40583
910 40182
985 39166
1004 42737
1030 40183
1126 43692
1434 39167

8 CFR

103 41014
214 ..... 39663, 41014
292a 41014
Proposed Rules:
248 39685

9 CFR

78 39836
81 ..... 39517, 43620
92 41015
201 39516
203 39516
Proposed Rules:
93 41257
113 39853
145 43555
147 43555
319 39560
327 ..... 39560, 42740

10 CFR

2 38534
50 ..... 38534, 42693
51 42693
55 42693
1035 41233
Proposed Rules:
7 43070
20 38643
34 39168
50 39066

11 CFR

4 41016
5 41016

12 CFR

205 40794
226 40560
407 41237
523 43040
541 43040
543 41237
544 41237
545 43040
549 43040
552 41237
561 43040
562 41237
563 ..... 38924, 43040
564 38924
571 41237
584 43040
615 39518
741 ..... 40561, 42918
746 40561
Proposed Rules:
5 ..... 38954, 39066
563 40584
563c 43555
564 40584
571 43557

13 CFR

Ch. IV 42696
102 40564
107 43540
121 ..... 39996, 40398
122 39837
123 39268
140 38931
Proposed Rules:
121 40877
122 43476

14 CFR

21 39650
25 ..... 43182, 43188
29 43188
39 ..... 38534–38537, 38931, 39288–39291, 39997, 40799, 40800, 42556, 42696, 42918, 42919, 43046, 43621
71 ..... 38538, 38539, 40158, 40400, 42557–42559, 42919, 43450, 43543
73 42919
75 ..... 39291, 40801
91 38933
95 39998
97 ..... 40003, 42920
121 ..... 43182, 43188
221 40004
234 40565
250 ..... 40401, 43622
255 40401
291 40401
399 40567
Proposed Rules:
Ch. I 39336, 42943, 43020
21 ..... 40154, 40184
23 40186
25 40041
39 ..... 38643, 39336, 39565, 40042, 42742, 42944, 43707
45 40154
71 ..... 38644, 39686, 40042, 40187, 40878, 42575, 42740, 42945–42947, 43559
73 42740
302 39337
375 42948
389 39337
398 40043
399 ..... 39337, 40043, 40588, 43709

15 CFR

Ch. XIV 42697
373 40568
399 40568
Proposed Rules:
371 39154
373 ..... 38955, 39154
376 38955
390 39154
399 39154

16 CFR

13 ..... 39040, 39159, 39839, 39840, 41017, 42699, 43451, 43454
305 43047
1010 39663
1030 39292
1602 39669
1632 39790
Proposed Rules:
13 39070

17 CFR

1 ..... 39518, 40159, 43048
3 39518
16 ..... 40159, 43048
33 40005
140 39518
145 39518
200 43454
239 40569
240 ..... 40573, 43454
241 40159
249 43454
270 40569
274 40569
Proposed Rules:
210 38956
229 38956
240 ..... 40188, 40416
270 40879

18 CFR

2 ..... 39293, 40802
35 39293
154 ..... 39042, 39293, 40802, 43543, 43625, 43635
201 ..... 39293, 40802
270 ..... 39293, 40802
271 ..... 39293, 39535, 40802, 43544
282 43455
294 39536
301 39293
341 38540
342 38540
343 38540
344 38540
345 38540
346 38540
347 38540
385 39538
389 ..... 38934, 39293
Proposed Rules:
154 38956
271 39032

19 CFR

4 ..... 41152, 43049
6 41152
7 41152
10 ..... 39043, 41152
11 41152
12 41152
18 ..... 39044, 41152
19 41152
24 41152
54 41152
101 41152
112 41152
113 41152
114 41152
123 ..... 39044, 41152
125 41152
127 41152
132 41152
133 41152
134 ..... 40802, 41152
141 41152
142 41152
144 ..... 39044, 41152
145 41152
146 41152
147 41152
148 41152
151 41152
162 41152
171 39047
172 ..... 39048, 41152
174 41152
191 41152
Proposed Rules:
Ch. I 39854
4 39072
6 39075
19 39077
24 39075
151 40882
158 42576

20 CFR

404 ..... 38935, 41244
618 41017
621 41018
632 42559
655 41018
Proposed Rules:
Ch. V 39686

21 CFR

Ch. I 41019
73 42922
81 ..... 38935, 38936
176 40402
177 43050
193 40575
312 43637
430 39670
436 ..... 39670, 40006
440 39670
442 40006
455 39670
510 39539
520 43051
522 ..... 38937, 38938
558 ..... 39539, 39842
561 42700
866 40380
1308 39307
Proposed Rules:
58 43530
166 43560
201 40188
808 ..... 38645, 38646

22 CFR

Ch. VIII 40804
51 40403
305 38939
514 43638

23 CFR

625 38940
660 40006
Proposed Rules:
Ch. III 38648
658 38956

24 CFR

17 39675
115 39676
232 43545
235 43545
251 38943
571 42701
905 42701
Proposed Rules:
105 40528
200 ..... 39855, 41212
203 ..... 39686, 40188, 41212
204 41212

207.....39688, 39690, 41068, 43561
220.....39690, 41068, 41212, 43561
221.....39690, 41068, 41212, 43561
226.....39686
231.....41068, 43561
234.....39686
235.....41212
236.....43561
237.....41212
241.....40044, 434561
242.....40044, 40047
246.....39690
255.....39690
290.....40888
570.....39693, 43852
882.....41072
886.....40888
941.....39694

25 CFR

5.....39157
244.....39308

Proposed Rules:

151.....43568

26 CFR

1.....39051, 39314, 39540, 39677, 40011, 40016, 41246, 42701–42715, 43052
5f.....39677
5h.....43639
18.....38920
25.....38540, 39843
35a.....40403
41.....39544
51.....42922
150.....40804
301.....43640
601.....40808

Proposed Rules:

1.....39078, 39344, 39571, 41261, 42743, 42744, 43714
51.....40896
301.....39566, 42745, 43714

27 CFR

9.....42563, 42719, 43053, 43455
19.....42567
240.....42567
285.....41020

Proposed Rules:

4.....42577

28 CFR

0.....39843, 41246
2.....40403
545.....38914

29 CFR

1601.....39053
2619.....40161
2705.....38542

30 CFR

210.....40576
212.....40576
217.....40576
218.....40576
219.....40576
228.....40576
229.....40024, 40576
241.....40576
243.....40576
914.....41020
917.....39053
925.....43055
935.....41024
938.....40028
942.....38874

Proposed Rules:

250.....41077
779.....38958, 43479
780.....38958, 43479
783.....38958, 43479
784.....38958, 43479
816.....38958, 43479
817.....38958, 43479
906.....38653
913.....43568
917.....41262
926.....43071
935.....42745
944.....40421
950.....42579

32 CFR

199.....42569, 42570
242b.....42927
544.....39946

Proposed Rules:

505.....40589

33 CFR

100.....40403, 43455
110.....40809
117.....39157, 40404, 43457
164.....43463
165.....40405, 40810, 43455
181.....39327
183.....39327
320.....39478
323.....39478
325.....39478
330.....39478, 39843

Proposed Rules:

100.....38654, 38655
117.....38656, 40422, 40423, 43715 40900, 41264

34 CFR

760.....43226

Proposed Rules:

221.....40362
361.....38656
362.....38656
366.....38656
369.....38656
373.....38656
379.....38656
385.....38656
386.....38656
389.....38656

35 CFR

253.....41025

Proposed Rules:

121.....38660

36 CFR

50.....39677

37 CFR

Proposed Rules:

Ch. II.....39171
201.....39174

38 CFR

3.....43940
5.....39328
8.....39328
13.....39328
17.....39328
21.....39544, 40810, 42725
36.....42570, 43055, 43546

Proposed Rules:

21.....39572

39 CFR

10.....38543
265.....43468
447.....40768
601.....40858
956.....40768

Proposed Rules:

10.....39573, 41265
111.....38661

40 CFR

30.....38943
45.....41004
46.....41006
51.....43202
52.....39057–39062, 39545–39547, 39843, 40029, 40162, 40164, 41026–41029, 43072, 43202, 43468, 43469, 43546
60.....40031, 41030, 43616, 43838
61.....38946, 43647
62.....43057
65.....43647
81.....41029, 43471, 43546
87.....41000
123.....39063, 42572
133.....40405
136.....43234
147.....42727
158.....42856
180.....42728–42733, 43648
233.....38947
271.....39328, 39683, 41036, 41038
721.....42928, 43058–43061, 43649
790.....39774
799.....39810, 42932

Proposed Rules:

Ch. I.....39696
51.....43211
52.....38962, 39574–39582, 39696, 39866, 39869, 40051, 40052, 40607, 42670, 42746–42749, 42957, 42958, 43211, 43479
60.....40542
61.....43906–43916
65.....38963, 39080, 39583–39587
81.....40053, 40424, 40425, 42750
86.....40258, 43480
122.....38812, 39697
136.....43437
180.....39698, 40608, 42752–42758, 43716
232.....39012
233.....39012
260.....38786
261.....38786, 42580
264.....38786
265.....38786
270.....38786
271.....38671, 38786, 39175, 40055, 40610, 42759–42761, 42959, 43072
300.....40320
406.....40611
407.....40611
408.....40611
409.....40611
411.....40611
422.....40611
424.....40611
426.....40611
430.....40611
431.....40611
432.....40611
439.....40611
721.....39703, 42762, 42960
761.....39966

41 CFR

Ch. 201.....39159
51–7.....43065
51–8.....43065
101–41.....42932
105–61.....42933
201–1.....38948
201–4.....38948
201–35.....38948
201–36.....38948

Proposed Rules:

101–11.....41265

42 CFR

57.....40406
400.....43654
401.....43654
405.....40167

43 CFR

3100.....39329
3200.....39329
3470.....39329
3500.....39329

Public Land Orders:

4690.....42934
6572.....40031
6573.....40406
6574.....40406
6575.....40407
6576.....42934

Proposed Rules:

2650.....41266
3160.....40354
3410.....43920, 43926

44 CFR

64.....40552, 42572, 43547
67.....39684
83.....43471
150.....39844

Proposed Rules:

67.....39176, 40901, 43074

45 CFR

3.....39160

Proposed Rules:

90.....43074
205.....39488
305.....39488
1180.....39346

46 CFR

33.....40407

35 40407
75 40407
78 40407
94 40407
97 40407
107 39161
108 39161
109 39161
161 40407
167 40407
180 40407
185 40407
192 40407
196 40407
381 39847
510 38544
515 38544
550 ..... 38836, 42934
552 ..... 38836, 42934
553 ..... 38836, 42934
555 ..... 38836, 42934
558 ..... 38836, 42934
559 ..... 38836, 42934
560 ..... 38836, 42934
561 ..... 38836, 42934
562 ..... 38836, 42934
564 ..... 38836, 42934
566 ..... 38836, 42934
568 ..... 38836, 42934
569 ..... 38836, 42934

Proposed Rules:
Subchapter D
(30–40) 38672
Subchapter H
(70–89) 38672
Subchapter I
(90–106) 38672
510 43718
550 40940
580 40940

47 CFR

Ch. I 43667
0 42935
1 ..... 40168, 40858
2 ..... 39330, 40410, 41247
13 ..... 39064, 40170
61 40858
73 ..... 38544–38548, 39064, 40032, 41249, 42936, 43473, 43474
78 42938
81 ..... 40170, 40410
83 ..... 40170, 40172, 40410, 41249
87 39330
90 ..... 40175, 40177, 41247
97 40414

Proposed Rules:
Ch. I 39081
2 ..... 39082, 40611
15 ..... 42593, 42594
67 40192
68 39349
73 ..... 38673–38679, 39352, 42964, 43480
74 43718
81 ..... 40193, 43718
83 43718
87 43718
90 ..... 39082, 42594
97 ..... 40194, 40611

48 CFR

Ch. 2 ..... 38549, 38599, 38605
Ch. 5 ..... 39335, 40576
Ch. 9 ..... 38949, 42938
Ch. 18 41038
501 40032
504 40577

Proposed Rules:
Ch. 5 ..... 39872, 40615
5 ..... 38680, 39151
6 ..... 38680, 39151
14 ..... 38680, 39151
15 ..... 38680, 39151

49 CFR

1 38609
173 ..... 40033, 42733
177 42733
178 ..... 40033, 42733
179 42733
533 41250
571 ..... 38610, 39335
574 ..... 38610, 39335
575 ..... 38610, 39335
700 40036
1002 ..... 39548, 43065
1011 43065
1033 39162
1103 38613
1152 43065
1177 43065
1180 43065
1182 43065
1300 ..... 38540, 38614
1303 38614
1304 38614
1305 38614
1306 38614
1307 38614
1308 38614
1309 38614
1310 38614
1312 ..... 38614, 40415

Proposed Rules:
Ch. VI 40426
107 40056
173 39177
192 43728
571 ..... 39872, 42965
701 40057
1152 39085

50 CFR

17 ..... 40036, 43065
20 40038
24 42938
32 ..... 38642, 43549
285 ..... 38641, 38642, 39684, 39851, 40415, 40580
424 38900
611 43676
630 40415
638 40415
641 ..... 39548, 41063, 43679
650 39065
652 ..... 39558, 40580
654 39162
655 41063
658 39162
661 43679

Proposed Rules:
13 42594
17 ..... 39179, 39353, 39873, 40058, 40196, 41266, 42594, 43076
20 43570
611 40615
630 ..... 40621, 43076

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 October 16, 1984