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Thursday
January 24, 1985

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Decorations, Medals, and Awards
Federal Emergency Management Agency
Justice Department

Employee Benefit Plans
Pension and Welfare Benefit Programs Office

Flood Insurance
Federal Emergency Management Agency

Freedom of Information
Personnel Management Office

Government Employees
Personnel Mangement Office

Grant Programs—Law
Justice Assistance Bureau

Hazardous Waste
Environmental Protection Agency

Income Taxes
Internal Revenue Service

Manufactured Homes
Veterans Administration

Marketing Agreements
Agricultural Marketing Service

CONTINUED INSIDE

Selected Subjects

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Organization and Functions (Government Agencies)
Immigration and Naturalization Service

Revenue Sharing
Revenue Sharing Office

Contents

Federal Register
Vol. 50, No. 16
Thursday, January 24, 1985

Agricultural Marketing Service
RULES
3314 Oranges (navel) grown in Arizona and California

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Forest Service.

Animal and Plant Health Inspection Service
RULES
Viruses, serums, toxins, etc.:
3316 Vaccines prepared using cells and ingredients of animal origin; testing requirements; correction

Antitrust Division
NOTICES
National cooperative research notifications:
3425 Computer Aided Manufacturing-International, Inc.

Child Support Enforcement Office
NOTICES
3412 Privacy Act; systems of records

Commerce Department
See also Foreign-Trade Zones Board; International Trade Administration.
NOTICES
3370, 3371 Agency information collection activities under OMB review (2 documents)

Commodity Futures Trading Commission
NOTICES
3450 Meetings; Sunshine Act (9 documents)

Defense Department
NOTICES
Meetings:
3377 Women in Services Advisory Committee

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation petitions:
3381 J.R. Simplot Co.

Education Department
NOTICES
3378 Agency information collection activities under OMB review
Meetings:
3377 Bilingual Education National Advisory Council

Energy Department
See also Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission.
NOTICES
Meetings:
3379 International Energy Agency Industry Advisory Board

Energy Information Administration
NOTICES
3379 Natural gas, high cost; alternative fuel price ceilings and incremental price threshold

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States
3338 California
3336 Maine
3337 Missouri
Air quality implementation plans; delayed compliance orders:
3339 Alabama
3340 Florida
Air quality planning purposes; designation of areas:
3341 Michigan
Hazardous waste program authorizations:
3347 District of Columbia, Maryland, Pennsylvania, and West Virginia; extension of interim authorization period
3342 Iowa; extension of interim authorization period
3343 Kansas; extension of interim authorization period
3348 Louisiana
3344 Massachusetts
3345 Nebraska
PROPOSED RULES
Air quality implementation plans; preparation, adoption and submittal:
3365 Stack height requirements; extension of time
Water pollution; effluent guidelines for point source categories:
3366 Pesticide chemicals; availability of technical and economic data and reopening of comment period.
Water pollution control:
3494 National pollutant discharge elimination system; noncompliance and program reporting

Equal Employment Opportunity Commission
NOTICES
3451 Meetings; Sunshine Act

Federal Aviation Administration
RULES
Airworthiness directives:
3316 CFM International

Federal Communications Commission
NOTICES
3451 Meetings; Sunshine Act

Federal Election Commission
NOTICES
3451 Meetings; Sunshine Act

Federal Emergency Management Agency
RULES
3349 Public safety officers; awards; extension of cut-off date for nominations

PROPOSED RULES
Flood elevation determinations:
3367, 3368 North Dakota (2 documents)

NOTICES
Disaster and emergency areas:
3406 Arizona

Federal Energy Regulatory Commission
NOTICES
Environmental effects:
3385 Hydropower projects clustered in river basins; assessing procedures; inquiry
Hearings, etc.:
3404 Cairo/New York Associates
3404 Kuparuk Transportation Co.
3404 Pacific Hydropower Co.
3404 Panhandle Eastern Pipe Line Co.
3406 Transcontinental Gas Pipe Line Corp.
3406 Worcester/Southbridge Associates
Natural gas certificate filings:
3382 Williston Basin Interstate Pipeline Co. et al.
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
3384 Baker, L. Maurice, et al.

Federal Home Loan Bank Board
NOTICES
Applications, etc.:
3407 Detroit & Northern Savings, F.A.
3407 First Federal Savings & Loan Association of Kalamazoo, MI
3451 Meetings; Sunshine Act

Federal Maritime Commission
PROPOSED RULES
Agreements by ocean carriers, etc.:
3369 Transshipment agreements; environmental assessment
3368 Ports and marine terminal operators, tariff filing, etc.; proceeding terminated
NOTICES
3408 Agreements filed, etc. (2 documents)
Complaints filed:
3407 Carrier International Corp. et al.
Investigations, hearings, petitions, etc.:
3408 Flota Mercante Grancolombiana, S.A., et al.
3451 Meetings; Sunshine Act
Shipping Act of 1984:
3407 Controlled carriers listing; update

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
3411 Schroders Inc. et al.
3451 Meetings; Sunshine Act

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
3449 ITT Lyndon Property Insurance Co.

Fish and Wildlife Service
NOTICES
Comprehensive conservation plan/environmental statements; availability, etc:
3416 Nowitna National Wildlife Refuge, AK

Food and Drug Administration
NOTICES
Committees; establishment, renewals, terminations, etc.:
3411 Devices and Radiological Health Center committees, etc.

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
3371 Illinois

Forest Service
NOTICES
3370 Small timber business set-aside program; proposed changes; extension of time

Health and Human Services Department
See Child Support Enforcement Office; Food and Drug Administration; Health Resources and Services Administration; Public Health Service.

Health Resources and Services Administration
NOTICES
Grants; availability, etc.:
3415 Area health education center programs

Immigration and Naturalization Service
RULES
Organization, functions, and authority delegations:
3315 Mexico City district suboffice; transfer from Montevideo to Panama City

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

Internal Revenue Service
RULES
Income taxes:
3324 Mixed straddles; straddle-by-straddle identification and account establishment; temporary
3317 Straddles; loss deferral rules, wash sale rules, etc.; and 1256 contracts elections; temporary
PROPOSED RULES
Income taxes:
3351 Mixed straddles; straddle-by-straddle identification and account establishment; cross reference
3352 Straddles; loss deferral rules, wash sale rules, etc.; cross reference

International Trade Administratin
NOTICES
Antidumping:
3372 Hydrogenated castor oil from Brazil
3373 Hydoxystearic acid from Brazil
3372 Welded carbon steel pipes and tubes from Brazil; postponement
3373 Export trade certificates of review
Short supply determinations:
3375 Steel pipe and tube; inquiry

International Trade Commission
NOTICES
Import investigations:
3421 Aluminum frame, fabric-covered luggage and components
3421 Frozen beverage dispensing machines
3422 Oleoresin from Spain and India
3421 Stainless steel wire cloth from Japan
3423 Woodworking machines
3452 Meetings; Sunshine Act (2 documents)

Interstate Commerce Commission
NOTICES
Motor carriers:
3424 Finance applications
Railroad operation, acquisition, construction, etc.:
3423 Wheeling & Lake Erie Railway Co.

Justice Assistance Bureau
PROPOSED RULES
3353 Criminal justice block grants

Justice Department
See also Antitrust Division; Immigration and Naturalization Service; Justice Assistance Bureau; Parole Commission.
RULES
3349 Public safety officers; awards; extension of cut-off date for nominations
NOTICES
Pollution control; consent judgments:
3424 American Cyanamid Co.
3425 Clark, Dexter, et al.

Labor Department
See Pension and Welfare Benefit Programs Office.

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
3418 Pacific Texas pipeline project; scoping meetings
3418 Sunnyside combined hydrocarbon lease conversion, Utah
Exchange of public lands for private land:
3419 Arizona
3417 Colorado
3417 New Mexico
Meetings:
3417 Ukiah District Advisory Council
Research natural areas, etc.:
3416 California
Wilderness areas; characteristics, inventories, etc.:
3417 Colorado

Legal Services Corporation
NOTICES
Grant awards:
3435 Montana State Bar et al.

Minerals Management Service
NOTICES
Meetings:
3419, 3420 Outer Continental Shelf Advisory Board (2 documents)

National Park Service
NOTICES
Management and development plans:
3420 Chickasaw National Recreation Area, Oklahoma

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
3435 Alabama Power Co.
3435 Duke Power Co. et al.
3436 Georgia Power Co. et al.
3437 Philadelphia Electric Co.
3452 Meetings; Sunshine Act

Parole Commission
NOTICES
Federal prisoners; paroling and releasing, etc.:
3426 Parole date release; experimental procedures

Pension and Welfare Benefit Programs Office
PROPOSED RULES
Employee benefit plans:
3362 Reporting and disclosure requirements; exemption and alternative method of annual reporting for plans investing in entities with plan assets
NOTICES
Employee benefit plans; class exemptions:
3427 Employee benefit plans and securities broker-dealers

Personnel Management Office
RULES
3314 Absence and leave; use of restored annual leave; interim
3307 Freedom of Information Act; implementation; official personnel folders access, etc.

Public Health Service
NOTICES
Organization, functions, and authority delegations:
3415 Health Resources and Services Administration

Railroad Retirement Board
NOTICES
3437 Agency information collection activities under OMB review

Reclamation Bureau
NOTICES
3420 Central Valley Project, California; water service ratesetting policy; policy options document availability, etc.

Revenue Sharing Office
RULES
3454 Financial assistance to local governments

Securities and Exchange Commission
RULES
Investment companies:
3317 Separate accounts funding flexible premium variable life insurance contracts; comment period extended
PROPOSED RULES
Securities:
3351 Direct participation program interests exemption; broker-dealer credit extensions; extension of time
NOTICES
Applications, etc.:
3441 John Hancock Variable Life Insurance Co. et al.
3437 Joseph E. Seagram & Sons, Inc., et al.

3438 ML Venture Partners I, L.P., et al.
3442 National Fuel Gas Co. et al.
3443 SPR Fund, Inc.
3444 Worldwide Ventures Corp.
Self-regulatory organizations; proposed rule changes:
3443 Municipal Securities Rulemaking Board
3445 Options Clearing Corp.
3440 Pacific Securities Depository Trust Co.
3445 Philadelphia Stock Exchange, Inc.
Self-regulatory organizations; unlisted trading privileges:
3444 Pacific Stock Exchange
3444 Philadelphia Stock Exchange

Small Business Administration
NOTICES
Applications, etc.:
3447 Norstar Capital Inc.
Disaster loan areas:
3447 Texas

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
3375 Pakistan
3376 Singapore; correction
3376 Turkey
Export visa requirements; certification, etc.:
3376 Taiwan

Transportation Department
See Federal Aviation Administration.

Treasury Department
See also Fiscal Service; Internal Revenue Service; Revenue Sharing Office.
NOTICES
Notes, Treasury:
3448 R-1987 series

Veterans Administration
RULES
Loan guaranty:
3333 Manufactured home loans

Separate Parts in This Issue

Part II
3454 Department of the Treasury, Office of Revenue Sharing

Part III
3494 Environmental Protection Agency

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
293 3307
294 3307
300 3307
511 3307
532 3307
536 3307
630 3314
736 3307

7 CFR
907 3314

8 CFR
103 3315
204 3315

9 CFR
113 3316

14 CFR
39 3316

17 CFR
270 3317
274 3317
Proposed Rules:
240 3351

26 CFR
1 (2 documents) 3317, 3324
Proposed Rules:
1 (2 documents) 3351, 3352

28 CFR
Proposed Rules:
33 3353

29 CFR
Proposed Rules:
2520 3362

31 CFR
51 3454

38 CFR
36 3333

40 CFR
52 (3 documents) 3336-3338
65 (2 documents) 3339, 3340
81 3341
271 (6 documents) 3342-3348
Proposed Rules:
51 3365
123 3494
455 3366

44 CFR
150 3349
Proposed Rules:
67 (2 documents) 3367, 3368

46 CFR
Proposed Rules:
Ch. IV 3368
572 3369

Rules and Regulations

Federal Register
Vol. 50, No. 16
Thursday, January 24, 1985

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 Parts 293, 294, 300, 511, 532, 536 and 736

Personnel Records; Availability of Official Information; Employment (General); Classification Under the General Schedule; Prevailing Rate Systems; Grade and Pay Retention; and Investigations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is updating and reorganizing its regulations implementing the Freedom of Information Act (FOIA) to facilitate the handling of requests under the Act. In addition to making revisions resulting from case law, the regulations raise the threshold amount for advance payment of fees and revise the requirement for advance deposits. The Office has moved the guidelines on access to specific types of records to the parts of the regulations dealing with those records. The revised regulations on access to Official Personnel Folders also contain certain technical changes.

EFFECTIVE DATE: February 25, 1985.

FOR FURTHER INFORMATION CONTACT: On Parts 293, 511, 532, 536, and 736: William H. Lynch, Work Force Records Management Division, (202) 632-5433. On Part 294: John P. Weld, Information Management Division, (202) 632-7720. On Part 300: John Schultz, Office of Staffing Policy, (202) 632-6817.

SUPPLEMENTARY INFORMATION: Proposed revised regulations were published in the October 19, 1982, **Federal Register** (47 FR 46513). These regulations proposed to move the guidelines on access to Official Personnel Folders from Part 294 of Title 5 of the Code of Federal Regulations (5 CFR) to Part 293, and proposed to revise and update the Part 294 regulations on Availability of Official Information. In addition, notice was given that OPM was considering moving Subparts D, E, F, G, H, and I of Part 294 to the parts of the regulations which deal with the subject matter involved. The public comment period on the proposals ended on December 20, 1982. Two organizations commented on the Part 293 proposal, and three on the Part 294 proposal. OPM has modified the proposed regulations to incorporate the comments as explained below.

One commenter suggested that § 293.306 of the regulations could be misunderstood, as it may be construed to mean that records of service prior to April 1, 1947, need not be obtained at the time an individual is hired. This is not the intent. There were no Official Personnel Folders prior to that date. Therefore, agencies should request any files or records found for the individual. The Office is rewording this section to clarify its meaning.

A second commenter, while supportive of OPM's position on the releasability of performance elements and standards, suggested that § 293.311 be expanded to specify what the test of unwarranted invasion of personal privacy means. The commenter also requested that paragraph § 293.311(c) state that a summons, warrant, or subpoena are not "court orders," as that term is used in the Privacy Act, and that such documents would not therefore fall within the scope of that specific allowable disclosure provision. OPM is not making any changes as a result of these suggestions. In the first instance, a determination of what constitutes an invasion of personal privacy can only be made on a case-by-case basis after it is known what information is sought, by whom, and for what purpose. In the second instance, since only the Office of Management and Budget is empowered by the Privacy Act to issue guidelines to agencies on implementing the Act, it would be inappropriate for OPM to issue a regulation interpreting a provision of the Act.

One commenter suggested that the definition of the records covered in paragraph § 294.102(a) be changed "as information should be defined as broadly as possible to insure coverage over the largest amount of material." In our view, the definition of "information" in the proposed regulations already was quite broad. Nevertheless, in order to avoid any further misunderstandings, we are changing the definition so that it now describes "information" as having the same meaning as the term "agency records" in the Freedom of Information Act. In addition, the term "information available to the public" is being dropped from the definitions section of the regulations, since it is nowhere used in the regulations.

The proposed regulations removed material contained in the current § 294.103(c) regarding releasing "reasonably segregable" records after deleting exempt portions. One commenter felt that this paragraph should have been retained. This paragraph repeats the law and is covered adequately elsewhere in the regulations. Therefore, we are not adopting this recommendation.

One commenter suggested, regarding § 294.107, that "the criteria should specifically provide that release of information requested by labor unions be considered as primarily benefiting the public because Congress has determined that collective bargaining in both the private and public sector promotes the public interest." OPM has provided guidance on this subject in Federal Personnel Manual Supplement 711-1, Appendix C, and has prescribed a "routine use" statement applicable to disclosure of information to recognized labor organizations. We consider this to be sufficient for this purpose.

One commenter suggested that the phrase "for the purpose of making it available to the public without charge" be dropped from paragraph § 294.107(a). Some OPM publications are available for sale to the public through the Superintendent of Documents. If this phrase were deleted, we would be obligated to provide information that has been made available for purchase by any person free of charge in response to an FOIA request. Therefore, we are retaining this phrase.

The same commenter suggested that the "may" in the phrase "The Office may furnish information made available to the public * * * subject to payment of a fee * * *." at the beginning of paragraph § 294.107(b) be changed to "will," as the requirements of 5 U.S.C. are mandatory upon all agencies. The "may" in this paragraph, however, refers

to charging a fee for the material provided, and not to its disclosure. Changing the "may" to "will" in this paragraph would require that fees be charged in all cases in which information is provided (other than that information printed "for the purpose of making it available to the public without charge"). Therefore, we are not making this suggested change.

Paragraph § 294.107(f) states that fees will be charged for services, such as formal certification of records as true copies, performed but not required under the FOIA. An employee union stated that "it is unclear whether this particular fee is routinely charged for all requests or only for requests which specifically ask for certification." As these services are performed only when requested, we have added the phrase "requested and" before the word "performed" in this paragraph.

Two organizations commented on the proposed change of the deposit requirement from 20% to 50%. One organization suggested "that the present 20% deposit be retained, but that a minimum $20 deposit be required in cases where the estimated cost is less than $100." The other organization commented that the 50% deposit requirement "creates an unnecessary delay and burden on those who pay the fees. Many requesters may find it time-consuming and/or difficult to process the paperwork necessary to release funds * * * and thus be penalized by delay in the release of time-sensitive information." The deposit requirement is designed to protect the public by ensuring that the Government will be able to collect at least a significant share of the costs when larger sums are involved. There is no change in the current requirement of a deposit if the anticipated fee is to exceed $50. As there is no change in the total fees required, nor when a deposit is required, we believe that the additional protection of the general public overrides any inconveniences to an individual member of the public caused by this increased deposit requirement. Therefore, we are not adopting these recommended changes.

A commenter suggested that § 294.108 be amended to "include certain vital information on the consequences of a rejection of an appeal of the denial of information." We agree with this suggestion, and have added a new paragraph (e) to this section.

The existing paragraph § 249.402(b) on the release of certain medical information had been deleted from the proposed regulations as this information is also included elsewhere in the regulations. A commenter urged us to reinstate this information to make it easier to locate. We agree, and reinstated this information as paragraph § 294.106(d) in the revised regulations.

A Federal agency suggested that § 294.601, Investigative reports, would be "better placed in 5 CFR Part 297 in accordance with the stated intent of § 294.103." We are moving this section, but to Part 736 rather than to Part 297 as suggested. Information on general Privacy Act matters is being placed in Part 297, and information on the disclosure of specific records is being placed with the appropriate regulations on that subject area.

An employee union commented that they disagreed with our "decision to omit the existing § 294.110 from the revised regulations." This section stated that the right to control disclosure of information on a deceased person passed to that person's next of kin or executor. The section was eliminated because it is now well-established that after death, a person no longer possesses privacy rights. Some FOIA case law holds that if the information on the deceased person contains information on a living person, the disclosure of which would seriously invade the privacy of the living person, that part of the information can be withheld. This, however, is based on the right to privacy of the living person, and not of the deceased person. We are therefore not adopting this suggestion.

As proposed, § 294.701 stated that information contained in classification appeal files can be released to the parties concerned "except when the disclosure would violate the proscription against the disclosure of medical information in § 294.401." A Federal agency commented that they are not aware of any circumstances in which medical information would be found in classification appeal files. We agree with this comment, and the reference to medical information has been eliminated from this section (§§ 511.616, 532.707, and 536.307 in the final regulations).

A commenter suggested that the meaning of § 294.1001 would be clearer if the title was changed to "Cross References." In addition, another commenter pointed out that the correct citation for information on access to Official Personnel Folders should be § 293.311 rather than § 293.301 as shown. We have made these changes in the section (which has been renumbered § 294.401 in the final regulations).

OPM Changes

In addition to the changes made in response to comments received from outside organizations, the Office has made the following changes:

In § 293.305, the title "Federal Supply Service" has been changed to "Office of Federal Supply and Services" to reflect the new title of this General Services Administration office.

In § 294.101, the term "information" has been substituted for the word "agency records" in order to clarify the meaning of the section.

In § 294.104, the information source is identified by its title and Document number: *Index to Information*, OPM Document No. 1.

In the chart showing the responsibilities of the various OPM offices given in paragraph § 294.105(b), the responsibilities of several OPM offices have been revised to conform with recent agency reorganizations.

In § 294.106(f), a reference to the specific portion of the FOIA defining the term "unusual circumstances" has been added.

In § 294.107, we concluded that paragraph (a) could be interpreted to apply only to publications printed by OPM, and not to those printed for OPM by outside sources. We have therefore revised this statement by adding the word "had" between "has" and "printed."

Relocations

At the time that we published the proposed regulations, we stated that we were "considering relocating Subparts D, E, F, G, H, and I to the parts of [the] regulations which deal with the subject matter involved." These subparts have been moved, or eliminated, as follows:

Subpart D, Medical Information [previously paragraph § 294.401(a)], has been eliminated upon a determination that this guidance is already adequately covered in 5 CFR Part 297, §§ 297.213 and 297.503.

Subpart E, Examinations and Related Subjects, has been relocated to Subpart B of 5 CFR Part 300, Employment (General).

Subpart F, Investigations, has been relocated to 5 CFR Part 736, Investigations. Nonsubstantive, clarifying language changes were also made to this material.

Subpart G, Appeals, has been relocated to 5 CFR Part 511, Classification Under the General Schedule, 5 CFR Part 532, Prevailing Rate Systems; and 5 CFR Part 536, Grade and Pay Retention. As published in the proposed regulations, the current paragraph § 294.801(a), which deals with releasing information from appeal files to members of the general public, was eliminated. Upon further review, it was

determined that this paragraph is still relevant, and it has been reinstated, with the wording being the same as that in the current paragraph. Additionally, some administrative, non-substantive clarifying language has been added to Parts 511, 532, and 536. This language more clearly identifies information that is available. The material moved to Part 736 has also been modified to reflect an administrative change in the address where the requests for information are to be sent and to eliminate unnecessary and/or redundant sections.

Subpart H, Classified Information, has been eliminated based on a determination that this information is adequately covered in 5 CFR Part 175.

Subpart I, Leave Records, was eliminated based on a determination that this information is adequately covered by 5 CFR 297.502.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it relates only to Office policies for releasing information to the general public.

List of Subjects

5 CFR Part 293

Archives and records, Government employees, Privacy.

5 CFR Part 294

Administrative practice and procedure, Classified information, Freedom of information, Health records, Investigations, Retirement.

5 CFR Part 300

Administrative practice and procedure, Government employees.

5 CFR Part 511

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 536

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 736

Government employees, Investigations, Privacy.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM is amending Title 5 of the Code of Federal Regulations as follows:

1. Subpart C of Part 293 is revised to read as follows:

PART 293—PERSONNEL RECORDS

* * * * *

Subpart C—Official Personnel Folder

Sec.

293.301 Applicability of regulations.
293.302 Establishment of Official Personnel Folder.
293.303 Ownership of folder.
293.304 Maintenance and content of folder.
293.305 Type of folder to be used.
293.306 Use of existing folders upon transfer or reemployment.
293.307 Disposition of folders of former Federal employees.
293.308 Removal of temporary records from OPFs.
293.309 Reconstruction of lost OPFs.
293.310 Response to requests for information.
293.311 Availability of information.

Authority: 5 U.S.C. 552, 5 U.S.C. 552a E. O. 12107 (December 28, 1978); 5 U.S.C. 1302, 3 CFR 1954–1958 Compilation; 5 CFR 7.2; E. O. 9830; 2 CFR 1943–1948 Compilation.

* * * * *

Subpart C—Official Personnel Folder

§ 293.301 Applicability of regulations.

This subpart applies to, and within this subpart "agency" means, each executive department and independent establishment of the Federal Government, each corporation wholly owned or controlled by the United States, and with respect to positions subject to civil service rules and regulations, the legislative and judicial branches of the Federal Government.

§ 293.302 Establishment of Official Personnel Folder.

Each agency shall establish an Official Personnel Folder (OPF) for each employee occupying a position subject to this part, except as provided in § 293.306. Except as provided in the Federal Personnel Manual, there will be only one OPF maintained for each employee regardless of service in various agencies.

§ 293.303 Ownership of folder.

The OPF of each employee in a position subject to civil service rules and regulations is under the jurisdiction and control of, and is part of the records of, the Office of Personnel Management (the Office).

§ 293.304 Maintenance and content of folder.

The head of each agency shall cause to be maintained in the OPF the reports of selection and other personnel actions covered by section 2951 of title 5, United States Code. The OPF shall also contain long-term records affecting the employee's status and service, as required by the Office's instructions in the Federal Personnel Manual.

§ 293.305 Type of folder to be used.

Each agency shall use only OPFs from Office of Federal Supply and Services stock (Standard Form 66) for the folders required by this part.

§ 293.306 Use of existing folders upon transfer or reemployment.

When an agency hires a person who has served on or after April 1, 1947, in a position subject to this part, it shall request the transfer of the OPF pertaining to the person's employment. The folder so obtained shall be used in lieu of establishing a new OPF. In the event that the prior service occurred wholly before April 1, 1947, the agency shall request any files or records that may be located in the Federal records storage center. The request shall note that because of the dates of service there will likely be no OPF. Any such file or record found for this individual shall be incorporated into the OPF being established for the employee.

(a) When a person for whom an OPF has been established transfers from one agency to another, the last employing (losing) agency shall, on request, transfer the OPF to the new employing agency.

(b) Before transferring the OPF, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of the OPF; and

(2) Ensure that all permanent documents in the folder are complete, correct, and present in the OPF in accordance with Federal Personnel Manual instructions.

§ 293.307 Disposition of folders of former Federal employees.

(a) Folders of persons separated from Federal employment must be retained by the losing agency for 30 working days after separation, and may be retained for additional 60 days where administratively necessary, e.g., where an appeal or an allegation of discrimination is made or where an employee retires or dies in service). Thereafter, the OPF must be transferred to the General Services Administration, National Personnel Records Center (Civilian Personnel Records), 111

Winnebago Street, St. Louis, Missouri 63118.

(b) When a former Federal employee is reappointed in the Federal service, the National Personnel Records Center (Civilian Personnel Records) shall, upon request, transfer the OPF to the new employing agency.

§ 293.308 Removal of temporary records from OPFs.

The employing agency having possession of an OPF shall remove temporary records from the OPF before it is transferred to another agency. For these and also for temporary records of their current employees, maintenance of the records shall be in accordance with General Records Schedule 1, promulgated by the General Services Administration.

§ 293.309 Reconstruction of lost OPFs.

Agencies will take necessary precautions to safeguard all OPFs. In the event of a lost or destroyed OPF, the current (or last, in the case of a former Federal employee) employing agency shall take the necessary action to reconstruct the essential portions of the OPF as specified in the Federal Personnel Manual or other Office instructions.

§ 293.310 Response to requests for information.

The Office, or an agency in physical possession of an OPF in response to a third party Freedom of Information Act (FOIA) request may disclose information as provided in this subpart. A current employee's request for access to his/her own OPF (also included are employee performance file system folders and files) that cites the FOIA, as with all stated Privacy Act requests made by current employees, shall be processed in accordance with agency Privacy Act procedures consistent with Office regulations in Part 297 of this chapter. All requests for their OPFs from former employees, and FOIA requests for former employee OPFs, shall be referred to the Office's regional or area office nearest to the location of the requester.

§ 293.311 Availability of information.

(a) The following information from both the OPF and employee performance file system folders, their automated equivalent records, and from other personnel record files that constitute an agency record within the meaning of the FOIA and which are under the control of the Office, about most present and former Federal employees, is available to the public:

(1) Name.

(2) Present and past position titles and occupational series;

(3) Present and past grades;

(4) Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials);

(5) Present and past duty stations (includes room numbers, shop designations, or other identifying information regarding buildings or places of employment); and

(6) Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may be withheld when they are so interwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.

(b) The Office or agency will generally not disclose information where the data sought is a list of names, present or past position titles, grades, salaries, performance standards, and/or duty stations of Federal employees which, as determined by the official responsible for custody of the information:

(1) Is selected in such a way that would reveal more about the employee on whom information is sought than the six enumerated items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(2) Would otherwise be protected from mandatory disclosure under an exemption of the FOIA.

(c) In addition to the information described in paragraph (a) of this section, a Government official may provide other information from these records (or automated equivalents) of an employee, to others outside of the agency, under a summons, warrant, subpoena, or other legal process; as provided by the Privacy Act (5 U.S.C. 552a(b)(4) through (b)(11)), under those Privacy Act routine uses promulgated by the Office, and as required by the FOIA.

2. Part 294 is revised to read as follows:

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

Subpart A—General Provisions

Sec.
294.101 Purpose.
294.102 Definitions.
294.103 Access to the requester's own records.
294.104 Information available—Indexes of certain records.
294.105 Places to obtain information.
294.106 Procedures for obtaining information.
294.107 Service charges for information.
294.108 Appeal of a denial of information.
294.109 Custody of information; subpoenas.

Subpart B—The Public Information Function

294.201 Public information policy.

Subpart C—Office Operations

294.301 Policy and interpretations.

Subpart D—Cross References.

294.401 Cross References.

Authority: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

Subpart A—General Provisions

§ 294.101 Purpose.

This part states the time, place, fees, and procedures to follow in requesting information from the Office of Personnel Management.

§ 294.102 Definitions.

In this part:

(a) "Information" has the same meaning as does the term "agency records" in section 552 of title 5, United States Code.

(b) "Disclose or disclosure" means making information available, on request, for examination and copying, or furnishing a copy of the information.

§ 294.103 Access to the requester's own records.

When a request for a record from a Privacy Act system of records, as defined by 5 U.S.C. 552a(a)(5), comes from the subject of the record, or the subject's duly authorized representative, and the record is retrieved by the subject's name or other personal identifier, then the Office will handle the request under the procedures in 5 CFR Part 297.

§ 294.104 Information available—Indexes of certain records.

The Office maintains, and completely revises at mid-year and updates quarterly, *Index to Information*, OPM Document No. 1, an index of materials published and offered for sale or available for public inspection and copying.

A copy of this index is available at no cost from:

Internal Distribution Subunit, Room B443, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

The Office indexes these materials for the convenience of the public. Indexing does not constitute a determination that all of the materials listed are within the category of those required to be indexed

by 5 U.S.C. 552(a)(2). Most publications may be consulted in the OPM Library, Room 5H27, at the above address.

§ 294.105 Places to obtain information.

(a) A requester who believes that the Office headquarters in Washington, D.C., has the desired information should address the request to the associate director or head of other office indicated in the list in paragraph (b) of this section. The address for all such requests is:

Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

(b) The following lists the groups and offices of the Office in Washington, D.C., and their principal areas of responsibility:

Submit to—	For subject-matter about—
Associate Director for Administration.	Grants to State and local governments.
Associate Director for Compensation.	Employee compensation: pay, leave, retirement, insurance, and benefits, and incentive and performance pay guidelines.
Assistant Director for Agency Compliance and Evaluation.	Personnel management evaluations of agencies; appellate decisions on position classification, job grading, retained grade, and retained pay, Fair Labor Standards Act complaints decisions; and information about agency compliance with personnel laws, rules, and regulations.
Assistant Director for Workforce Information.	Government-wide statistical personnel information; and information principally in the official personnel folder and the central personnel data file.
Assistant Director for Personnel Investigations.	Background investigations of Federal employees and applicants for Federal employment.
Associate Director for Staffing.	Nationwide recruiting and job information; examining services for entry and promotion; selection methods; position classification standards; qualification standards; examination rating reviews; test scoring services; reduction-in-force policy; student employment programs; non-competitive case file records; and the Administrative Law Judge Program.
Associate Director for Workforce Effectiveness and Development.	Productivity and quality of work life; development of Government-wide occupational health programs; employee relations, discipline, and performance evaluation; incentive awards; job-related training, training information, and training available to Government employees, including developing and training executives; equal employment opportunity and affirmative action; veteran preference, the Presidential Management Intern Program and intergovernmental mobility; delegation agreements.
Assistant Director for Employee, Labor and Agency Relations.	Technical information and policy guidance about management and employee unions in the Federal service.
Assistant Director for Planning and Evaluation.	Merit system standards.
Director, Office of Government Ethics.	Executive branch policy relating to ethics and conflict of interest.
Assistant Director for Executive Personnel.	Senior Executive Service, selection of Federal executives.

(c) Direct a request for information on a subject not specifically referred to in this section or in the index, to:

Information Systems Plans and Policies Branch, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415

(d) A person who believes that a regional office, area office, or post of duty of the Office has the desired information should send the request to the Regional Director, Office of Personnel Management Regional Office, at the appropriate address indicated in the following list:

John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109
Jacob K. Javits Building, 26 Federal Plaza, New York, New York 10278
William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, Pennsylvania 19106
Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303
John C. Kluczynski Federal Building, 30th Floor, 230 South Dearborn Street, Chicago, Illinois 60604
1100 Commerce Street, Dallas, Texas 75242
300 Old Post Office Building, 815 Olive Street, St. Louis, Missouri 63101
Denver Federal Center, Building 20, Denver, Colorado 80225
211 Main Steet, 7th Floor, San Francisco, California 94105
Henry M. Jackson Federal Building, 26th Floor, 915 Second Avenue, Seattle, Washington 98174

(e) If an OPM group or office receives a request for information it does not have the recipient office will promptly forward the request to the appropriate group or office and will notify the requester that it has done so. However, for purposes of applying the time limits in section 552 of title 5, United States Code, the request will not be considered received until it arrives in the group or office having possession of the requested information.

§ 294.106 Procedures for obtaining information.

(a) A person may request information under section 552 of title 5, United States Code, by letter directed to one of the groups and other offices listed in § 294.105, or deliver a request in person at the addresses listed in that section during business hours on a regular business day.

(b) Each request for information under section 552 of title 5, United States Code should clearly and prominently have a notation on the first page, such as "Freedom of Information Act Request." In addition, if sent by mail or otherwise submitted in an envelope or other cover, mark the outside clearly and prominently with "FOIA Request" or "Freedom of Information Act Request."

(c) A request under this part should reasonably describe the information being requested by including relevant data such as name, number, date, subject, title of publication, or other identifying particulars sufficient to enable the Office to identify and locate the information.

(d) Medical information about an applicant, employee, or annuitant may be disclosed by the Office or another Government agency to the applicant, employee, or annuitant, or a representative designated in writing, except that medical information concerning a mental or other condition of such a nature that a prudent physical would hesitate to inform a person suffering from it of its exact nature and probable outcome may be disclosed only to a licensed physican designated in writing for that purpose by the individual or his designated representative.

(e) If a request includes materials published and offered for sale, e.g., by the Superintendent of Documents, the Office will advise the requester of the appropriate group or other office where the requester may review, and location where the requester may purchase, the materials.

(f) Except in unusual circumstances [as defined in 5 U.S.C. 552(a)(6)(b) (i), (ii), and (iii)], the Office will determine whether to disclose or deny the requested information within 10 working days after receipt of the request (excluding Saturdays, Sundays, and holidays) and will notify the requester immediately of its determination and the fees required, if any, as prescribed by § 294.107.

§ 294.107 Service charges for information.

(a) The Office will furnish reasonable quantities of information that it has had printed or otherwise reproduced for the purpose of making it available to the public without charge.

(b) The Office may furnish information made available to the public, other than that described in paragraph (a) of this section, subject to payment of a fee. Pay the fee by check or money order, payable to the Office of Personnel Management.

(c) Schedule of Fees—When responding to a request for information under section 552 of title 5, United States Code, the Office will charge fees for searching and duplicating the information at the following rates:

Photocopies per page	$0.10
Printed material per 25 pages or fraction thereof	.25
Manual records search, per hour:	
Professional employees	9.00

Clerical employees	5.00
Automated Records search:	
Programming, per hour	17.00
Keypunching, per 1,000 card-image records	183.00
Duplication, per hour	45.00
Computer time, per quarter-hour	219.00

(Charges will be assessed only for actual resources used.)

(d) Unless the request specifically states that the requester will accept any cost involved, or specifies an amount acceptable to the requester and sufficient to cover anticipated costs, the Office will not count as received a request which reasonably may exceed $25 in assessed fees until the requester, after prompt notification of the anticipated cost of the request, agrees to bear it.

(e) When the anticipated fees exceed $50, the requester must deposit at least 50 percent of the amount anticipated within 30 days after notification of that fact. The Office will not release the requested information until it has received the deposit.

(f) The Office will assess charges in cases of unproductive or unsuccessful searches unless an appropriate Office official waives charges. Services requested and performed but not required under the Freedom of Information Act, such as formal certification of records as true copies, will be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes, depending upon the services performed.

(g) The Office will furnish information under the Freedom of Information Act without charge or at a reduced charge when the official considering the request for information finds waiver or reduction of fee in the public interest because furnishing the information primarily benefits the general public.

§ 294.108 Appeal of a denial of information.

(a) A person may appeal a denial by an OPM official of a Freedom of Information Act request to:

General Counsel, U.S. Office of Personnel Management, Washington, D.C. 20415

(b) A person may appeal denial of a Freedom of Information Act request for information maintained by the General Counsel of the OPM to:

Deputy Director, U.S. Office of Personnel Management, Washington, D.C. 20415

(c) If an official of another agency denies a Freedom of Information Act request for information in one of OPM's Government-wide systems of records (see FPM Chapter 297, Appendix, for a list of these systems), the requestor should consult the agency's regulations for any appeal rights that may apply. An agency may, at its discretion, direct these appeals to OPM's General Counsel.

(d) An appeal should include a copy of the initial request, a copy of the letter denying the request, and a statement why the appellant believes the denying official erred.

(e) The appeals provided for in this section constitute the final levels of administrative review that are available. If a denial of information is affirmed, the requester may seek judicial review in the district court of the United States in the district in which he or she resides, or has his or her principal place business, or in which the agency records are situated, or in the District of Columbia.

§ 294.109 Custody of information; subpoenas.

(a) The Chief, Information Systems Plans and Policies Branch, Office of Management, has official custody of the official records of the Office. A subpoena or other judicial order for an official record from the Office should be served on the:

Chief, Information Systems Plans and Policies Branch, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

(b) See § 297.505 of this chapter for the steps other officials should take on receipt of a subpoena or other judicial order for an official personnel record.

Subpart B—The Public Information Function

§ 294.201 Public information policy.

(a) In addition to the basic policies of the Office relative to the disclosure of information when requested by a member of the public, the Office has an independent public information policy for bringing to the attention of the public through news releases, publications of the Office, or other methods, information concerning the functions of the Office as a Federal agency, and the programs administered by the Office.

(b) The Assistant Director for Public Affairs carries out the public information policy of the Office. In addition, each employee of the Office shall cooperate in carrying out this policy.

Subpart C—Office Operations

§ 294.301 Policy and interpretations.

(a) Statements of Office policy and interpretations of the laws and regulations administered by the Office which the Office has adopted, whether or not published in the Federal Personnel Manual or the **Federal Register**, are available to the public.

(b) Generally, memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material, when prepared for the purpose of internal communication within the Office or between the Office and other agencies, organizations, or persons, are not available to the public.

Subpart D—Cross References

§ 294.401 Cross References.

The table below provides assistance in locating OPM regulations in 5 CFR on disclosure of information not covered by Part 294:

Type of information	Location
Classification appeal records	511.616
Classified information	175.101
Examination and related subjects records	300.201
Grade and pay retention records	536.307
Investigative records	736.105
Job grading reviews and appeals records	532.706
Leave records	297.502
Medical information	297.213
	297.503
Official personnel folders	293.311
Protection of privacy and personnel records	297
Retirement	831.106

3. Subpart B of Part 300 is added to read as follows:

PART 300—EMPLOYMENT (GENERAL)

* * * * *

Subpart B—Examinations and Related Subjects

Sec.

300.201 Examinations.

Authority: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

Subpart B—Examinations and Related Subjects

§ 300.201 Examinations.

(a) The Office makes available information that will assist members of the public in understanding the purpose of, and preparing for, civil service examinations. This includes the types of questions and the categories of knowledge or skill pertinent to a particular examination. The Office does not release the following: (1) Testing and examination materials used solely to determine individual qualifications, and (2) test material, including test plans, item analysis data, criterion instruments, and other material the disclosure of which would compromise the objectivity of the testing process.

(b) Each employee entrusted with test material has a positive duty to protect the confidentiality of that material and to assure release only as required to

conduct an examination authorized by the Office.

(c) An applicant may review his or her own answers in a written test, but only in the presence of an employee of the Office or, for the convenience of the Office and requester, in the presence of an employee of another agency designated by OPM. The applicant may not review a test booklet in connection with this review.

(d) The Office will release information concerning the results of examinations only to the individual concerned, or to parties explicitly designated by the individual.

(e) The Office will not reveal the names of applicants for civil service positions or eligibles on civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings.

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

4. Part 511 is amended as follows:

a. The authority for Part 511 reads as follows:

Authority: 5 U.S.C. 5115, 5338, 5351, unless otherwise noted.

b. Section 511.616 is added to read as follows:

§ 511.616 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) the classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned the information contained in an appeal file in proceedings under this part. For the purposes of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502)

PART 532—PREVAILING RATE SYSTEMS

5. Part 532 is amended as follows:

a. The authority for Part 532 reads as follows:

Authority: 5 U.S.C. 5343, 5346.

b. Section 532.707 is added to read as follows:

§ 532.707 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) The classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned the information contained in an appeal file in proceedings under this part. For the purposes of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502)

PART 536—GRADE AND PAY RETENTION

6. Part 536 is amended as follows:

a. The authority for Part 536 reads as follows:

Authority: 5 U.S.C. 5361–5366, Pub. L. 95–454, 92 Stat. 1111.

b. Section 536.307 is added to read as follows:

§ 536.307 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) The classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned, the information contained in an appeal file in proceedings under this part, except when the disclosure would violate the proscription against the disclosure of medical information in §297.204(c) of this chapter. For the purposes of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502) 7. Part 736 is amended as follows:

PART 736—INVESTIGATIONS

7. Part 736 is amended as follows:

a. The authority for Part 736 reads as follows:

Authority: Pub. L. 93–579; (5 U.S.C. 552a.)

b. Section 736.105 is added to read as follows:

§ 736.105 Public availability of investigative files.

(a) The Office or other Government agency does not disclose the personnel investigations records of individuals when the production of such records would (1) Interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; (5) disclose investigative techniques and procedures; or (6) endanger the life and physical safety of law enforcement personnel.

(b) Requests for investigative records are to be submitted to the Chief, OPM-NACI Center, FOI/PA, Boyers, Pennsylvania 16018. If the investigative file contains information that originated in another agency, the Chief, OPM-NACI Center will refer a copy of the request to that agency for decision concerning

release of the information that originated in that agency.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502)

[FR Doc. 85–1740 Filed 1–23–85; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 630

Absence and Leave

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking, with comments invited for consideration in final rulemaking.

SUMMARY: The Office of Personnel Management is amending its annual leave regulations in Subpart C, Part 630, 5 CFR, to increase the time period in which restored annual leave may be used in certain situations. Specifically, the change would apply only to situations that exist after termination of an extended exigency of the public business when the amount of restored annual leave and accrued leave cannot be used within the two years now specified in 5 CFR 630.306.

DATES: Interim regulations effective on January 24, 1985. Comments must be received on or before March 25, 1985.

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

FOR FURTHER INFORMATION CONTACT: Betty Roth, (202) 632–9677.

SUPPLEMENTARY INFORMATION: Section 630.306(b), 5 CFR, provides that annual leave forfeited because of a public business exigency and restored under 5 U.S.C. 6304(d) must be scheduled and used not later than the end of the leave year ending two years after the termination date of the exigency. However, while this regulatory provision carries out Congressional intent that there be ample time in which to use restored leave, it contemplates an exigency that does not last more than one leave year.

At present, there is no regulatory provision for the use of restored annual leave that was restored because of an extended exigency (of more than one year) and is more leave than can be used together with accrued leave within the two-year limitation. A regulation that would either cause an employee to lose restored leave or prevent the use of accrued leave is inequitable.

At the same time, restored leave must be used when possible and feasible. As an equitable solution, we are issuing an interim regulation that will permit agencies to increase the time for affected employees to use restored annual leave within a reasonable period after the termination of an extended exigency situation, provided the exigency was of such significance as to satisfy the proposed regulatory criteria.

Pursuant to sections 553(b)(3)(B) and 553(d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The regulations are effective immediately in order to give immediate and timely effect to a provision that corrects an inequity in the current leave 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 this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Government employees.

List of Subjects in 5 CFR Part 630

Government employees, Personnel management office, and Employee benefit plans.

Office of Personnel Management.
Donald J. Devine,
Director.

Accordingly, the Office of Personnel Management is amending Title 5, Code of Federal Regulations, as follows:

PART 630—ABSENCE AND LEAVE

In Part 630, in § 630.306 the introductory text is revised, and a § 630.309 is added to read as follows:

§ 630.306 Time limit for use of restored annual leave.

Except as otherwise authorized by regulation, annual leave restored under 5 U.S.C. 6304(d) must be scheduled and used not later than the end of the leave year ending two years after:

* * * * *

§ 630.309 Time limit for use of restored annual leave—extended exigency of the public business.

Annual leave restored under 5 U.S.C. 6304(d)(1)(B) because of an extended exigency must be scheduled and used within a time period not to exceed two years for each consecutive year or part year during which the exigency existed. The exigency must be of such significance as to:

(a) Threaten the national security, safety, or welfare;

(b) Last for more than one leave year;

(c) Affect a segment of an agency or occupational class; and

(d) Preclude subsequent use of both restored and accrued annual leave within the time limits specified in § 630.306(b).

[FR Doc. 85–1739 Filed 1–23–85; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 611, Amdt. 2]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 611, Amendment 2, increases the quantity of fresh oranges that may be shipped during the period January 11–17, 1985. Such action is needed to provide for orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATES: Amended Regulation 611 (§ 907.911) is effective for the period January 11–17, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This amendment is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the

recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act by establishing and maintaining, in the interests of producers and consumers, and orderly flow of oranges to market, and avoiding unreasonable fluctuations in supplies and prices for the week ending January 17, 1985. This action is not for the purpose of maintaining prices to farmers above the level which is declared to be the policy of Congress under the act.

This action is consistent with the marketing policy for 1984–85. The marketing policy was recommended by the committee following discussion at a public meeting on September 25, 1984. The committee met again publicly on January 15, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is excellent.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. It is necessary to effectuate the declared purposes of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing Agreements and Orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

In § 907.911, Navel Orange Regulation 611, paragraphs (a) through (d) are hereby revised to read:

§ 907.911 Navel Orange Regulation 611.

(a) *District 1:* 1,300,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

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

Dated: January 17, 1985.

Thomas R. Clark,

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

[FR Doc. 85–1839 Filed 1–23–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 204

Powers and Duties of Service Officers; Availability of Service Records; Petition To Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule changes the location of the Mexico City District suboffice formerly located in Montevideo, Uruguay to Panama City, Republic of Panama. This change is made to bring the operational jurisdiction of the Mexico City District Office in line with the principles of good management.

EFFECTIVE DATE: January 2, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048

For Specific Information: Robert H. Reed, Special Assistant, Office of Executive Associate Commissioner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–2961.

SUPPLEMENTARY INFORMATION: With a view towards more efficient management, the Service is relocating its suboffice of the Mexico City District office located in Montevideo, Uruguay to its new location in Panama City, Republic of Panama. Therefore, the delegation of authority for the officer in charge formerly located at Montevideo, Uruguay will be the same in the new location at Panama City, Republic of Panama. The jurisdiction assumed by the officer in charge formerly located at Montevideo, Uruguay will be the same in the new location at Panama City, Republic of Panama for the processing of orphan petitions.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is unnecessary because the rule relates to agency organization which will promote better service to the public.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is not a rule within the meaning of section 1(a) of E.O. 12291.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Organization and functions.

8 CFR Part 204

Administrative practice and procedure, Adoptions, Orphans, Petitions.

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

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

§ 103.1 [Amended]

Section 103.1(o)(2) is amended by removing the country "Montevideo, Uruguay" and inserting in its place the country "Panama City, Republic of Panama."

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF UNITED STATES CITIZEN OR AS PREFERENCE IMMIGRANT

Section 204.1 is amended by revising paragraph (b)(1)(iii)(B) to read as follows:

§ 204.1 Petition.

* * * * *

(b) * * *
(1) * * *
(iii) * * *

(B) *Jurisdiction assumed by American consulate or embassy.* In an advance processing case where the petitioner does not wish to have the jurisdiction retained by the stateside Service office as provided in paragraph 204.1(b)(1)(iii)(A) of this section, the orphan petition may be filed at the American consulate or embassy having jurisdiction over the place where the child is residing unless the child is residing in Austria, Germany, Greece, Italy, Korea, the Philippines, Hong Kong, Mexico, Singapore, Republic of Panama, or Thailand.

* * * * *

(Secs. 103 and 204, Immigration and Nationality Act, as amended [8 U.S.C. 1103 and 1154])

Dated: January 16, 1985.

Doris M. Meissner,

Executive Associate Commissioner, Immigration and Naturalization Service.

[FR Doc. 85-1774 Filed 1-23-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 84-105]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements for the Detection of Extraneous Agents in Vaccines Prepared Using Cells and Ingredients of Animal Origin; Relaxation of Testing Requirements

Correction

In FR Doc. 85-310 beginning on page 439 in the issue of Friday, January 4, 1985, make the following corrections:

§ 113.52 [Corrected]

On page 442, in the second column, in §113.52(b)(2)(i), first line, "four" should have read "two."

§ 113.53 [Corrected]

On page 443, in the second column, in § 113.53(b), second line, "or" should have read "of."

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-ANE-30, Amdt. 39-4976]

Airworthiness Directives; CFM International Model CFM56-2 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the replacement of fuel injectors not incorporating a heat shield sleeve on CFM International Model CFM56-2 turbofan engines. This AD is prompted by several reports of engine flameouts, including one multiple engine flameout, when using JP-4 fuel in engines without heat shield fuel injectors.

DATES: *Effective*— Februray 22, 1985.

Compliance schedule—As prescribed in the body of AD.

Incorporation by Reference— Approved by the Director of the Federal Register on February 22, 1985.

ADDRESSES: The applicable service bulletins (SBs) may be obtained from CFM International, Neumann Way, Cincinnati, Ohio 45215.

Copies of the SBs are contained in Rules Docket No. 83-ANE-30, Office of the Regional Counsel, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Transport Engine Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of fuel injectors which do not include a heat shield sleeve on CFM International Model CFM56-2 turbofan engines was published in the Federal Register on November 17, 1983, (48 FR 52321).

The proposal was prompted by a CFM56-2 powered DC8-71 aircraft experiencing a three engine flameout shortly after initiating a descent from flight level 350 on June 4, 1983. JP-4 fuel was being used and the aircraft boost pumps were on. There have been eight other flameouts reported under similar circumstances. Subsequent ground testing demonstrated that flameouts were repeatedly experienced on rapid decelerations while using JP-4 fuel. JP-4 is certified as an alternate fuel for the CFM56 series engines. The problem has been corrected by incorporating a heat shield sleeve in the fuel injectors. The FAA has determined that since this problem is likely to occur on other engines of the same type design when using JP-4 fuel, replacement of fuel injectors P/N 9984M90G20 with approved injectors or nozzles is required. It has also been determined that all P/N 9984M90G20 fuel injectors without heat shield sleeves should be removed from service, even for those engines using Jet A fuel. This prevents inadevertent use of fuel injectors without heat shield sleeves with JP-4 fuel (or equivalent) or a mixture containing JP-4.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Two commenters expressed concern with the July 31, 1985, compliance date for engines which are opearted only with Jet A fuel. One indicated that compliance should be 2 years after the AD's effective date, which would allow injectors to be replaced at normal engine shop visits and is consistent with anticipated availability of conforming hardware from the manufacturer. The other indicated the proposed date would be difficult to meet without extensive special routes and maintenance. A third commentator stated that AD 83-18-02 (DC8, Ignition On) provides the necessary safety margin against flameouts while using JP-4 fuel. This commentator suggested a first quarter 1986 compliance date.

The FAA concurs with an extension of the compliance date to January 31, 1986, for those aircraft using only Jet A fuel. This decision will allow aircraft that use only Jet A fuel to comply with this AD at a normal engine shop visit and is consistent with availability of conforming hardware. For aircraft that use JP-4 fuel (or equivalent), in any quantity, the compliance date will remain within 30 days of the effective date of this AD.

This will prevent the hazard of using JP-4 fuel (or equivalent) or a mixture containing JP-4 with injectors that do not have heat shield sleeves. In response to the statement that AD 83-18-02 provides a sufficient level of safety; the FAA believes that the engine should not be adversely affected by the use of approved alternate fuels, therefore, the interim operating practice required by Ad-83-18-02 cannot be a final basis for Federal Aviation Regulation Part 33 certification of engine operating characteristics.

Conclusion

The FAA has determined, in a regulatory evaluation, that the total cost impact of this AD will be approximately $5,614,080. It is also determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only domestic operators using DC8 Series 70 aircraft in which the CFM56-2 engines are installed, none of which are believed to be small entities. 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. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air Transportation, Aircraft, Aviation Safety, Incorporation by Reference.

Adoption of the Amendment

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

CFM International: Applies to all Model CFM56–2 turbofan engines incorporating fuel injector P/N 9984M90G20.

Compliance is required as indicated unless already accomplished.

To prevent flameouts in engines equipped with fuel injectors without heat shields, accomplish the following:

Replace all fuel injectors, P/N 9984M90G20 with P/N 9984M90G28 or P/N 9984M90G14 fuel injectors in accordance with CFM56 SB 73–021 dated August 12, 1983, or approved fuel nozzles in accordance with SB 73–024 dated August 8, 1984 and 73–034 dated August 17, 1984, or FAA approved equivalent.

(a) For engines being operated with JP–4 fuel (or equivalent) or with a mixture containing JP–4, compliance is required within 30 days of the effective date of this AD.

(b) For engines which are operated only with Jet A fuel (or equivalent), compliance is required by January 31, 1986.

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

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to CFM International, Neumann Way, Cincinnati, Ohio 45215. This document also may be examined at the Office of the Regional Counsel, FAA, New England Region, Attn: Rules Docket No. 83–ANE–30, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except Federal Holidays, between 8:00 a.m. and 4:30 p.m.

This amendment becomes effective on February 22, 1985.

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

Issued in Burlington, Massachusetts, on December 27, 1984.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 85–1854 Filed 1–23–85; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release No. IC–14328; S7–35–84]

Request for Comments on Issues Arising Under the Investment Company Act of 1940 Relating to Flexible Premium Variable Life Insurance

AGENCY: Securities and Exchange Commission.

ACTION: Extension of time for comment.

SUMMARY: The Securities and Exchange Commission today announced that it has extended from January 31 until March 29, 1985, the date by which comments on Investment Company Act Release No. 14234 (Nov. 14, 1984) [49 FR 47206, Dec. 3, 1984] must be submitted. The Commission has received a request that the comment period be extended and believes that an extension of time until March 29, 1985, will be beneficial since it will result in the receipt of additional useful comments.

DATE: Comments must be received on or before March 29, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 (Reference to File No. S7–35–84). All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Robert E. Plaze, Attorney (202) 272–2622, Office of Insurance Products and Legal Compliance, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In Investment Company Act Release No. 14234, the Commission requested written comments on Rule 6e–3 (T), a temporary Rule which grants insurance company separate accounts exemptive relief from various provisions of the Investment Company Act in order to permit the sale of a new type of insurance product known as flexible premium variable life insurance. The American Council of Life Insurance ("ACLI"), an insurance industry representative, previously submitted a petition asking that the Commission adopt such a rule. The ACLI has now requested that the comment period on the rule be extended. In view of this request and in order to receive the benefit of comments from the greatest number of interested persons, the Commission has extended the comment period for Investment Company Act Release No. 14234 from January 31 until March 29, 1985.

By the Commission.

John Wheeler,

Secretary.

January 17, 1985.

[FR Doc. 85–1802 Filed 1–23–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8007]

Application of Loss Deferral Rules and Rules Similar to Sections 1091 (a) and (d) and Sections 1233 (b) and (d) to Straddles Under Section 1092 and Elections With Respect to Section 1256 Contracts Held on or Before July 18, 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to straddles and section 1256 contracts under the Economic Recovery Tax Act of 1981, the Technical Corrections Act of 1982, and the Tax Reform Act of 1984. These regulations provide Internal Revenue Service personnel who administer the Internal Revenue Code and members of the public with the guidance necessary to comply with the law.

DATES: These temporary regulations are effective January 24, 1985. The regulations under § 1.1092(b)–1T, relating to the coordination of the loss deferral rules and wash sales rules, apply to the disposition of loss positions on or after January 24, 1985.

Generally, the regulations under § 1.1092(b)–2T, relating to the treatment of holding periods and losses with respect to straddle positions, apply to positions established after June 23, 1981. However, paragraph (b)(2) of § 1.1092 (b)–2T apply to positions of mixed straddles established on or after January

1, 1984. The regulations under § 1.1256(h)–1T, relating to the election under section 102(g)(1) of the Tax Reform Act of 1984, apply to section 1256 contracts held on July 18, 1984, in taxable years ending after such date. The regulations under § 1.1256(h)–2T, relating to the election under section 102(g)(2) of the Tax Reform Act of 1984, apply to section 1256 contracts held on or before July 18, 1984, during the taxable year of the taxpayer that includes such date. The regulations under § 1.1256(h)–3T, relating to the option to defer payment of tax, apply to stock options that are section 1256 contracts and positions in stock held as part of a straddle that includes such stock options held by the taxpayer during the taxable year that includes July 18, 1984.

FOR FURTHER INFORMATION CONTACT: Neil W. Zyskind of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) 202–566–3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary income tax regulations relating to the general loss deferral rule under section 1092(a), the application of rules similar to sections 1091 (a) and (d) and sections 1233 (b) and (d) to straddles under section 1092(b), and the elections under sections 102 (g) and (h) of the Tax Reform Act of 1984 (Act) for section 1256 contracts held on or before July 18, 1984. These amendments reflect section 501 of the Economic Recovery Tax Act of 1981 (Pub. L. 97–34; 95 Stat. 323), section 105 of the Technical Corrections Act of 1982 (Pub. L. 97–448; 96 Stat. 2384), and sections 102 and 103 of the Act (Pub. L. 98–369; 98 Stat. 620). The temporary regulations contained in this document will remain in effect until superseded by final regulations on this subject. Additional issues arising under these provisions and other issues under sections 263(g), 1092, and 1256 will be dealt with in another regulation project.

Coordination of Loss Deferral Rules and Wash Sale Rules

Section 1.1092(b)–1T sets forth the general loss deferral rule and wash sale rule applicable to positions of a straddle. Generally, § 1.1092(b)–1T(a) provides that if a taxpayer disposes of less than all of the positions of straddle, any loss sustained with respect to the disposition of that position or positions will be disallowed to the extent that there is unrecognized gain in: (1) Successor positions, (2) offsetting positions to the loss positions, and (3) offsetting positions to the successor positions. Section 1.1092(b)–5T provides definitions for the terms used in § 1.1092(b)–1T. Paragraph (c) of § 1.1092(b)–1T provides that the character of the disallowed loss remains the same regardless of the character of the successor positions. Paragraph (d) of § 1.1092(b)–1T sets forth certain exceptions.

Treatment of Holding Periods and Losses With Respect to Straddle Positions

Section 1.1092(b)–2T(a) provides that the holding period of any position included in a straddle begins anew when the straddle is terminated unless the position was held for more than the long-term capital gain or loss holding period (or longer) before the straddle is established. However, for purposes of section 851(b)(3) (relating to the definition of a regulated investment company), the regulations provide that the rules of section 1233(b) apply to positions of a straddle only if section 1233(b) (without regard to sections 1233(e)(2)(A) and 1092(b)) would have applied to such positions. The Treasury Department and the Internal Revenue Service are continuing to study whether the rules of § 1.1092(b)–2T should apply to offsetting positions for purposes of section 851(b)(3).

Paragrph (b)(1) of § 1.1092(b)–2T provides that loss of any position included in a straddle shall be treated as a long-term capital loss if at the time the loss position was acquired the taxpayer held offsetting positions with respect to such loss position that would give rise only to long-term capital loss. Paragraph (b)(2) of § 1.1092(b)–2T provides a special rule for losses on non-section 1256 positions included in a mixed straddle.

Elections

Sections 1.1256(h)–1T through 1.1256(h)–3T describe the elections under sections 102(g) and 102(h) of the Act. Generally, the amendments made by section 102 of the Act apply to section 1256 contracts established after July 18, 1984, in taxable years ending after such date. The election under section 102(g)(1) of the Act applies the amendments made by section 102 of the Act to all section 1256 contracts held on July 18, 1984. The election under section 102(g)(2) of the Act applies the amendments made by section 102 of the Act to section 1256 contracts held by the taxpayer at any time during the taxable year of the taxpayer that includes July 18, 1984. In addition, taxpayers that make the election under section 102(g)(2) of the Act may make another election under section 102(h) of the Act to pay part of the tax over a period of up to 5 years, with interest. The regulations explain how to make these elections.

The elections govern all section 1256 contracts held by the electing taxpayer. Section 1256 contracts held by flowthrough entities, such as partnerships and trusts, are generally treated as held by the taxpayer, or taxpayers, on whose return the gain or loss therefrom is properly taken into account. These regulations provide that only elections made by such flowthrough entities govern their section 1256 contracts and that such an election, or failure to elect, does not limit the alternatives available to taxpayers taking such income or loss into account with respect to section 1256 contracts held directly by the taxpayer. However, such taxpayers must treat section 1256 12contracts held by the flowthrough entity in accordance with that entity's election or failure to elect.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary regulation is not a major rule as defined in Executive Order 12291 or the Treasury and Office of Management and Budget (OMB) implementation of the Order dated April 29, 1983. Accordingly, a Regulatory Impact Analysis is not required.

A general notice of proposed rulemaking is not required by 5. U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

The collection of information requirements contained in this regulation have been submitted to OMB in accordance with the requirements of the Paperwork Reduction Act of 1980. There requirements have been approved by OMB, control number 1545–0644.

Drafting Information

The principal author of these regulations is Neil W. Zyskind 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 both on matters of substance and style.

List of Subjects

26 CFR 1.1001–1—1.1102–3

Income taxes, Gain and loss, Basis, Nontaxable exchanges, Straddles.

26 CFR 1.1201—1.1256(h)–3T

Income taxes, Capital gain and losses, Recapture, Straddles, Section 1256 contracts.

PART 1—[AMENDED]

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. The following new sections 1.1092(b)–1T, 1.092(b)–5T, 1.1256(h)–1T, 1.1256(h)–2T, 1.1256(h)–3T are added immediately following § 1.1091–2 to read as set forth below.

§1.1092(b)–1T Coordination of loss deferral rules and wash sale rules (temporary).

(a) *In general.* Except as otherwise provided, if a taxpayer disposes of less than all of the positions of a straddle, any loss sustained with respect to the disposition of that position or positions (hereinafter referred to as "loss position") shall not be taken into account for purposes of this subtitle to the extent that there is unrecognized gain in one or more of the following positions:

(1) Successor positions;

(2) Offsetting positions to the loss position; and

(3) Offsetting positions to the successor positions.

See § 1.1092(b)–5T relating to definitions.

(b) *Carryover of disallowed loss.* Any loss that is disallowed under paragraph (a) of this section shall, subject to the limitations under paragraph (a) of this section, be treated as sustained in the succeeding taxable year.

(c) *Character of disallowed loss.* If the disposition of a loss position would (but for the application of this section) result in a capital loss, the loss allowed under paragraph (b) of this section with respect to the disposition of the loss position shall be treated as a capital loss. In any other case, a loss allowed under paragraph (b) of this section shall be treated as an ordinary loss. Thus, for example, if the disposition of a loss position would, but for the application of paragraph (a) of this section, give rise to a capital loss, that loss when allowed pursuant to paragraph (b) of this section will be treated as a capital loss on the date the loss is allowed regardless of whether any gain or loss with respect to one or more successor positions would be treated as ordinary income or loss.

(d) *Exceptions.* This section shall not apply to losses sustained—

(1) With respect to the disposition of one or more positions that constitute part of a hedging transaction;

(2) With respect to the disposition of a loss position included in a mixed straddle account (as defined in paragraph (b) of § 1.1092(b)–4T);

(3) With respect to the disposition of a loss position included in an identified straddle; and

(4) With respect to the disposition of a position that is part of a straddle consisting only of section 1256 contracts.

(e) *Effective date.* The provisions of this section apply to dispositions of loss positions on or after January 24, 1985.

(f) *Examples.* This section may be illustrated by the following examples. It is assumed in each example that the following positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year and none of the exceptions contained in paragraph (d) of this section apply.

Example (1). On December 1, 1985, A enters into offsetting long and short positions. On December 10, 1985, A disposes of the short position at an $11 loss, at which time there is $5 of unrealized gain in the offsetting long position. At year-end there is still $5 of unrecognized gain in the offsetting long position. Under these circumstances, $5 of the $11 loss will be disallowed for 1985 because there is $5 of unrecognized gain in the offsetting long position; the remaining $6 of loss, however, will be taken into account in 1985.

Example (2). Assume the facts are the same as in example (1), except that at year-end there is $11 of unrecognized gain in the offsetting long position. Under these circumstances, the entire $11 loss will be disallowed for 1985 because there is $11 of unrecognized gain at year-end in the offsetting long position.

Example (3). Assume the facts are the same as in example (1), except that at year-end there is no unrecognized gain in the offsetting long position. Under these circumstances, the entire $11 loss will be allowed for 1985.

Example (4). On November 1, 1985, A enters into offsetting long and short positions. On November 10, 1985, A disposes of the long position at a $10 loss, at which time there is $10 of unrealized gain in the short position. On November 11, 1985, A enters into a new long position (successor position) that is offsetting with respect to the retained short position. A holds both positions through year-end, at which time there is $10 of unrecognized gain in the successor long position and no unrecognized gain in the offsetting short position. Under these circumstances, the entire $10 loss will be disallowed for 1985 because there is $10 of unrecognized gain in the successor long position.

Example (5). Assume the facts are the same as in example (4), except that at year-end there is $4 of unrecognized gain in the successor long position and $6 of unrecognized gain in the offsetting short position. Under these circumstances, the entire $10 loss will be disallowed for 1985 because there is a total of $10 of unrecognized gain in both the successor long position and offsetting short position.

Example (6). Assume the facts are the same as in example (4), except that at year-end A disposes of the offsetting short position at a $2 loss. Under these circumstances, $10 of the total $12 loss will be disallowed because there is $10 of unrecognized gain in the successor long position.

Example (7). Assume the facts are the same as in example (4), and on January 10, 1986, A disposes of the successor long position at no gain or loss. A holds the offsetting short position until year-end, at which time there is $10 of unrecognized gain. Under these circumstances, the $10 loss will be disallowed for 1986 because there is $10 of unrecognized gain in an offsetting position at year-end.

Example (8). On October 1, 1985, A enters into offsetting long and short positions. On October 2, 1985, A disposes of the short position at a $10 loss and the long position at a $10 gain. On October 3, 1985, A enters into a long position identical to the original long position. At year-end there is $10 of unrecognized gain in the second long position. Under these circumstances, the $10 loss is allowed because the second long position is not a successor position or offsetting position to the short loss position.

Example (9). On November 1, 1985, A enters into offsetting long and short positions. On November 10, 1985, there is $20 of unrealized gain in the long position and A disposes of the short position at a $20 loss. By November 15, 1985, the value of the long position has declined eliminating all unrealized gain in the position. On November 15, 1985, A establishes a second short position (successor position) that is offsetting with respect to the long position. At year-end there is no unrecognized gain in the offsetting long position or in the successor short position. Under these circumstances, the $20 loss sustained with respect to the short loss position will be allowed for 1985 because at year-end there is no unrecognized gain in the successor short position or the offsetting long position.

Example (10). Assume the facts are the same as in example (9), except that the second short position was established on November 8, 1985, and there is $20 of unrecognized gain in the second short position at year-end. Since the second short position was entered into within 30 days before the disposition of the loss position, the second short position is considered a successor position to the loss position. Under these circumstances, the $20 loss will be disallowed because there is $20 of unrecognized gain in a successor position.

Example (11). Assume the facts are the same as in example (9), except that at year-end there is $18 of unrecognized gain in the offsetting long position and $18 of

unrecognized gain in the successor short position. Under these circumstances, the entire loss will be disallowed because there is more than $20 of unrecognized gain in both the successor short position and offsetting long position.

Example (12). Assume the facts are the same as in example (9), except that there is $20 of unrecognized gain in the successor short position and no unrecognized gain in the offsetting long position at year-end. Under these circumstances, the entire $20 loss will be disallowed because there is $20 of unrecognized gain in the successor short position.

Example (13). On January 1, 1986, A enters into offsetting long and short positions. On March 1, 1986, A disposes of the long position at a $10 gain. On March 10, 1986, A disposes of the short position at a $10 loss. On March 15, 1986, A enters into a new short position that would have been offsetting to the long position disposed of on March 1, 1986. On April 10, 1986, A enters into an offsetting long position. A holds both positions to year-end, at which time there is $10 of unrecognized gain in the offsetting long position. Under these circumstances, the $10 loss will be disallowed because the second short position is a successor position and there is $10 of unrecognized gain in an offsetting position to the successor position at year-end.

Example (14). Assume the facts are the same as in example (13), except that at year-end there is $5 of unrecognized gain in the successor position and $5 of unrecognized gain in the offsetting long position. Under these circumstances, the entire $10 loss will be disallowed because at year-end there is a total of $10 of unrecognized gain in both the successor position and offsetting position to the successor position.

Example (15). Assume the facts are the same as in example (13), except that the second short position was acquired on April 2, 1986. Under these circumstances, since the second short position was not entered into within 30 days after the straddle was terminated, it is not treated as a successor position. Under these circumstances, the $10 loss will be allowed in 1986.

Example (16). On December 1, 1985, A enters into offsetting long and short positions. On December 4, 1985, A disposes of the short position at a $10 loss. On December 5, 1985, A establishes a new short position. On December 6, 1985, A disposes of the long position at a $10 gain. On December 7, 1985, A enters into a second long position. A holds both positions to year-end at which time there is no unrecognized gain in the second short position and $10 of unrecognized gain in the offsetting long position. Under these circumstances, the entire $10 loss will be disallowed for the 1985 taxable year because the second long position is an offsetting position with respect to the second short position which is a successor position.

Example (17). On September 1, 1985, A enters into offsetting positions consisting of a long section 1256 contract and short non-section 1256 position. No elections under sections 1256(d)(1) or 1092(b)(2)(A), relating to mixed straddles, are made. On November 1, 1985, at which time there is $20 of unrecognized gain in the short non-section 1256 position, A disposes of the long section 1256 contract at a $20 loss and on the same day acquires a long non-section 1256 position (successor position) that is offsetting with respect to the short non-section 1256 position. But for the application of this section, A's disposition of the section 1256 contract would give rise to a capital loss. At year-end there is a $20 of unrecognized gain in the offsetting short non-section 1256 position and no unrecognized gain in the successor long position. Under these circumstances, the entire $20 loss will be disallowed for 1985 because there is $20 unrecognized gain in the offsetting short position. In 1986, A disposes of the successor long non-section 1256 position and there is no unrecognized gain at year-end in the offsetting short position. Under these circumstances, the $20 loss disallowed in 1985 with respect to the section 1256 contract will be treated in 1986 as 60 percent long-term capital loss and 40 percent short-term capital loss.

§ 1.1092(b)-2T Treatment of holding periods and losses with respect to straddle positions (Temporary).

(a) *Holding period*—(1) *In general.* Except as otherwise provided in this section, the holding period of any position that is part of a straddle shall not begin earlier than the date the taxpayer no longer holds directly or indirectly (through a related person or flowthrough entity) an offsetting position with respect to that position. See § 1.1092(b)-5T relating to definitions.

(2) *Positions held for the long-term capital gain holding period (or longer) prior to establishment of the straddle.* Paragraph (a)(1) of this section shall not apply to a position held by a taxpayer for the long-term capital gain holding period (or longer) before a straddle that includes such position is established. The determination of whether a position has been held by a taxpayer for the long-term capital gain holding period (or longer) shall be made by taking into account the application of paragraph (a)(1) of this section. See section 1222(3) relating to the holding period for long-term capital gains.

(b) *Treatment of loss*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, loss on the disposition of one or more positions ("loss position") of a straddle shall be treated as a long-term capital loss if—

(i) On the date the taxpayer entered into the loss position the taxpayer held directly or indirectly (through a related person or flowthrough entity) one or more offsetting positions with respect to the loss position; and

(ii) All gain or loss with respect to one or more positions in the straddle would be treated as long-term capital gain or loss if such positions were disposed of on the day the loss position was entered into.

(2) *Special rules for non-section 1256 positions in a mixed straddle.* Loss on the disposition of one or more positions ("loss position") that are part of a mixed straddle and that are non-section 1256 positions shall be treated as 60 percent long-term capital loss and 40 percent short-term capital loss if—

(i) Gain or loss from the disposition of one or more of the positions of the straddle that are section 1256 contracts would be considered gain or loss from the sale or exchange of a capital asset;

(ii) The disposition of no position in the straddle (other than a section 1256 contract) would result in a long-term capital gain or loss; and

(iii) An election under section 1092(b)(2)(A)(i)(I) (relating to straddle-by-straddle identification) or 1092(b)(2)(A)(i)(II) (relating to mixed straddle accounts) has not been made.

(c) *Exceptions*—(1) *In general.* This section shall not apply to positions that—

(i) Constitute part of a hedging transaction;

(ii) Are included in a straddle consisting only of section 1256 contracts; or

(iii) Are included in a mixed straddle account (as defined in paragraph (b) of § 1.1092(b)-4T).

(2) *Straddle-by-straddle identification.* Paragraphs (a)(2) and (b) of this section shall not apply to positions in a section 1092(b)(2) identified mixed straddle. See § 1.1092(b)-3T.

(d) *Special rule for positions held by regulated investment companies.* For purposes of section 851(b)(3) (relating to the definition of a regulated investment company), the holding period rule of paragraph (a) of this section shall not apply to positions of a straddle. However, if section 1233(b) (without regard to sections 1233(e)(2)(A) and 1092(b)) would have applied to such positions, then for purposes of section 851(b)(3) the rules of section 1233(b) shall apply.

(e) *Effective date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the provisions of this section apply to positions in a straddle established after June 23, 1981, in taxable years ending after such date.

(2) *Special effective date for mixed straddle positions.* The provisions of paragraph (b)(2) of this section shall apply to positions in a mixed straddle established on or after January 1, 1984.

(f) *Examples.* Paragraphs (a) through (e) may be illustrated by the following examples. It is assumed in each example that the following positions are the only positions held directly or indirectly

(through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year and none of the exceptions in paragraph (c) of this section apply.

Example (1). On October 1, 1984, A acquires gold. On January 1, 1985, A enters into an offsetting short gold forward contract. On April 1, 1985, A disposes of the short gold forward contract at no gain or loss. On April 10, 1985, A sells the gold at a gain. Since the gold had not been held for more than 6 months before the offsetting short position was entered into, the holding period for the gold begins no earlier than the time the straddle is terminated. Thus, the holding period of the original gold purchased on October 1, 1984, and sold on April 10, 1985, begins on April 1, 1985, the date the straddle was terminated. Consequently, gain recognized with respect to the gold will be treated as short-term capital gain.

Example (2). On January 1, 1985, A enters into a long gold forward contract. On May 1, 1985, A enters into an offsetting short gold regulated futures contract. A does not make an election under section 1256(d) or 1092(b)(2)(A). On August 1, 1985, A disposes of the gold forward contract at a gain. Since the forward contract had not been held by A for more than 6 months prior to the establishment of the straddle, the holding period for the forward contract begins no earlier than the time the straddle is terminated. Thus, the gain recognized on the closing of the gold forward contract will be treated as short-term capital gain.

Example (3). Assume the facts are the same as in example (2), except that A disposes of the short gold regulated futures contract on July 1, 1985, at no gain or loss and the forward contract on November 1, 1985. Since the forward contract had not been held for more than 6 months before the mixed straddle was established, the holding period for the forward contract begins July 1, 1985, the date the straddle terminated. Thus, the gain recognized on the closing of the forward contract will be treated as short-term capital gain.

Example (4). On January 1, 1985, A enters into a long gold forward contract and on August 4, 1985, A enters into an offsetting short gold forward contract. On September 1, 1985, A disposes of the short position at a loss. Since an offsetting long position had been held by A for more than 6 months prior to the acquisition of the offsetting short position, the loss with respect to the closing of the short position will be treated as long-term capital loss.

Example (5). On March 1, 1985, A enters into a long gold forward contract and on July 17, 1985, A enters into an offsetting short gold regulated futures contract. A does not make an election under section 1256(d) or 1092(b)(2)(A). On August 10, 1985, A disposes of the long gold forward contract at a loss. Since the gold forward contract was part of a mixed straddle, and the disposition of no position in the straddle (other than the regulated futures contract) would give rise to a long-term capital loss, the loss recognized on the termination of the gold forward contract will be treated as 40 percent short-term capital loss and 60 percent long-term capital loss.

Example (6). Assume the facts are the same as in example (5), except that on August 11, 1985, A disposes of the short gold regulated futures contract at a gain. Under these circumstances, the gain will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain since the holding period rules of paragraph (a) of this section are not applicable to section 1256 contracts.

Example (7). Assume the facts are the same as in example (5), except that A enters into the long gold forward contract on January 1, 1985, and does not dispose of the long gold forward contract but instead on August 10, 1985, disposes of the short gold regulated futures contract at a loss. Under these circumstances, the loss will be treated as a long-term capital loss since A held an offsetting non-section 1256 position for more than 6 months prior to the establishment of the straddle. However, such loss may be subject to the rules of § 1.1092(b)-1T.

§ 1.1092(b)-5T Definitions (temporary).

The following definitions apply for purposes of §§ 1.1092(b)-1T through 1.1092(b)-4T.

(a) *Disposing, disposes, or disposed.* The term "disposing," "disposes," or "disposed" includes the sale, exchange, cancellation, lapse, expiration, or other termination of a right or obligation with respect to personal property (as defined in section 1092(d)(1)).

(b) *Hedging transaction.* The term "hedging transaction" means a hedging transaction as defined in section 1256(e).

(c) *Identified straddle.* The term "identified straddle" means an identified straddle as defined in section 1092(a)(2)(B).

(d) *Loss.* The term "loss" means a loss otherwise allowable under section 165(a) (without regard to the limitation contained in section 165(f)) and includes a write-down in inventory.

(e) *Mixed straddle.* The term "mixed straddle" means a straddle—

(1) All of the positions of which are held as capital assets;

(2) At least one (but not all) of the positions of which is a section 1256 contract;

(3) For which an election under section 1256(d) has not been made; and

(4) Which is not part of a larger straddle.

(f) *Non-section 1256 position.* The term "non-section 1256 position" means a position that is not a section 1256 contract.

(g) *Offsetting position.* The term "offsetting position" means an offsetting position as defined in section 1092(c)(2).

(h) *Position.* The term "position" means a position as defined in section 1092(d)(2).

(i) [Reserved]

(j) *Related person or flowthrough entity.* The term "related person or flowthrough entity" means a related person or flowthrough entity as defined in sections 1092(d)(4) (B) and (C) respectively.

(k) *Section 1256 contract.* The term "section 1256 contract" means a section 1256 contract as defined in section 1256(b).

(l) [Reserved]

(m) *Straddle.* The term "straddle" means a straddle as defined in section 1092(c)(1).

(n) *Successor position.* The term "successor position" means a position ("P") that is offsetting to a second position (or would have been offsetting to the second position had the second position been held at the time P is entered into) if—

(1) The second position was offsetting to a loss position disposed of;

(2) P is entered into during a period commencing 30 days prior to, and ending 30 days after, the disposition of the loss position; and

(3) P is entered into within 30 days after the loss position is no longer included in a straddle.

(o) *Unrecognized gain.* The term "unrecognized gain" means unrecognized gain as defined in section 1092(a)(3)(A).

Par. 2. The following new sections are added immediately following § 1.1252-2 to read as set forth below.

§ 1.1256(h)-1T Election with respect to all section 1256 contracts held on July 18, 1984, under section 102(g)(1) of the Tax Reform Act of 1984 (temporary).

(a) *In general.* If a taxpayer elects in accordance with the requirements of this section, the amendments made by section 102 of the Tax Reform Act of 1984 (Act) (98 Stat. 625) shall apply to all section 1256 contracts (as defined in section 1256(b)) held by the taxpayer on July 18, 1984. Such election shall not preclude the taxpayer from income averaging under sections 1301 through 1305.

(b) *Time for making the election.* The election under this section shall be made by the due date (taking extensions into account) of the income tax return for the taxable year which includes July 18, 1984. If the taxpayer has made an election under section 102(g)(1) of the Act that does not conform to the requirements of this section, the taxpayer must conform such election (and computation of tax) to the requirements of this section by filing an amended return on or before the later of such due date or April 15, 1985.

(c) *Manner for making the election.* The election shall be made on Form 6781 which must be completed and attached

to the taxpayer's income tax return (or amended return) for the taxable year which includes July 18, 1984.

(d) *Scope of election.* An election under this section applies to all section 1256 contracts (as defined in section 1256(b)) held by the electing taxpayer on July 18, 1984. The election applies to a section 1256 contract only if the electing taxpayer is the person or entity that directly held that section 1256 contract on that date. If a flowthrough entity (as described in section 1092(d)(4)(C)) held a section 1256 contract on that date, only the flowthrough entity may make an election under this section. If the flowthrough entity does not make an election under this section, no other person or entity may make an election under this section for such section 1256 contract. Thus, for example, if a partnership held dealer equity options on July 18, 1984, only the partnership and not the partners may make the election under this section for those dealer equity options. A taxpayer who is a partner in a partnership may make an election under section 102(g)(1) of the Act and this section for section 1256 contracts held directly by the partner on July 18, 1984, without regard to whether the partnership makes an election under this section for the partnership's section 1256 contracts.

(e) *Limitations on election.* The taxpayer may make the election under section 102(g)(1) of the Act and this section only if—

(1) The taxpayer does not make the election under section 102(g)(2) of the Act and § 1.1256(h)-2T; and

(2) All persons related to the taxpayer (within the meaning of section 1092(d)(4)(B)) also make such election, unless the related person did not hold directly nonequity options or dealer equity options (as defined in section 1256(g)) during the taxable year that includes July 18,1984.

(f) *Period for which election is effective.* The election under this section shall be effective for all taxable years ending after July 18, 1984, unless it is revoked. This election may be revoked only with the consent of the Commissioner. An application for consent to revoke the election shall be filed with the service center with which the election was filed and shall—

(1) Contain the name, address, and taxpayer identification number of the taxpayer and the name, address, and the taxpayer identification number of all persons related to the taxpayer (within the meaning of section 1092(d)(4)(B)) who also made the election under this section;

(2) State that the taxpayer is seeking to revoke the election under section 102(g)(1) of the Act and this section; and

(3) Explain why the taxpayer seeks to revoke the election.

(Approved by the Office of Management and Budget under control number 1545-0644.)

§ 1.1256(h)-2T Election with respect to all section 1256 contracts held by the taxpayer at any time during the taxable year which includes July 18,1984, under section 102(g)(2) of the Tax Reform Act of 1984 (temporary).

(a) *In general.* If a taxpayer elects in accordance with the requirements of this section, the amendments made by section 102 of the Tax Reform Act of 1984 (Act) shall apply to all section 1256 contracts (as defined in section 1256(b)) held by the taxpayer during the taxable year of the taxpayer which includes July 18, 1984 (except that the identification requirement of section 1256(e)(2)(C) (relating to hedging transactions) shall not apply to any position in stock or any option to buy or sell stock entered into on or before September 16, 1984). Such election shall not preclude the taxpayer from income averaging under sections 1301 through 1305.

(b) *Time for making the election.* The election under this section shall be made by the due date (taking extensions into account) of the income tax return for the taxable year which includes July 18, 1984. If the taxpayer has made an election under section 102(g)(2) of the Act that does not conform to the requirements of this section, the taxpayer must conform such election (and computation of tax) to this section by filing an amended return on or before the later of such due date or April 15, 1985.

(c) *Manner for making the election*—(1) *In general.* The election shall be made on Form 6781 which must be completed and attached to the taxpayer's income tax return.

(2) *Flowthrough entities.* In addition to the information required by Form 6781, a flowthrough entity shall also list the allocation of aggregate gain or loss attributable to a section 1256 contract subject to the election under this section among the persons sharing such gain or loss. This list must be attached to the entity's return of income for the taxable year (or an amended return required under paragraph (b) of this section).

(d) *Scope of election.* An election under this section applies to all section 1256 contracts (as defined in section 1256(b)) held by the electing taxpayer during the taxable year which includes July 18, 1984. The election applies to a section 1256 contract only if the electing taxpayer is the person or entity that directly held the section 1256 contract during that taxable year. If a flowthrough entity (as described in section 1092(d)(4)(C)) held section 1256 contracts during the taxable year, only the flowthrough entity may make an election under this section. If the flowthrough entity does not make an election under this section, no other person or entity may make an election under this section for such section 1256 contracts. Thus, for example, if a calendar year partnership held dealer equity options during the taxable year which includes July 18, 1984, only the partnership and not the partners may make the election under this section. A taxpayer who is a partner in a partnership, however, may make an election under this section for section 1256 contracts held directly by the partner during the taxable year which includes July 18, 1984, without regard to whether the partnership made an election under this section for the section 1256 contracts held by the partnership.

(e) *Limitations on election.* The taxpayer may make an election under this section only if—

(1) The taxpayer does not make an election under section 102(g)(1) of the Act and § 1.1256(h)-1T; and

(2) All persons related to the taxpayer (within the meaning of section 1092(d)(4)(B)) also make such election, unless the related person did not hold directly nonequity options or dealer equity options (as defined in section 1256(g)) during the taxable year which includes July 18, 1984.

(f) *Period for which election is effective.* The election under this section shall be effective for the taxable year for which the election is made and for all succeeding taxable years, unless it is revoked. This election may be revoked only with the consent of the Commissioner. An application for consent to revoke the election shall be filed with the service center with which the election was filed and shall—

(1) Contain the name, address, and taxpayer identification number of the taxpayer and the name, address, and the taxpayer identification number of all persons related to the taxpayer (within the meaning of section 1092(d)(4)(B)) who also made an election under this section;

(2) State that the taxpayer is seeking to revoke the election under section 102(g)(2) of the Act and this section; and

(3) Explain why the taxpayer seeks to revoke the election.

(g) *Coordination with sections 1402 and 1362.* If a commodities dealer or options dealer (as defined in sections

1402(i)(2) (A) and (B)) makes an election under section 102(g)(2) of the Act and this section, any gain or loss derived in the ordinary course of trading in section 1256 contracts during the taxable year that includes July 18, 1984, will be treated as earnings from self-employment for purposes of applying the tax on self-employment income under section 1402. If a commodities dealer or options dealer makes both an election under this section and an election under section 102(d)(3) of the Act (relating to Subchapter S elections), the election under this section shall be applied to the taxable year of such taxpayer which includes July 18, 1984, without regard to the election under section 102(d)(3). See paragraph (c)(3) of § 18.1362-1.

(Approved by the Office of Management and Budget under control number 1545-0644.)

§ 1.1256(h)-3T Option to defer payment of tax (temporary).

(a) *In general.* If a taxpayer (other than a flowthrough entity (as described in section 1092(d)(4)(C))) makes an election under § 1.1256(h)-2T or has an interest in a flowthrough entity that makes such an election, the taxpayer may elect to pay part or all of the deferrable tax (as defined in paragraph (b) of this section) for the taxable year to which the election applies in 2 or more, but not more than 5, equal installments. For a taxpayer other than a commodities dealer or options dealer (as defined in sections 1402(i)(2) (A) and (B)) that has also made an election under section 102(d)(3) of the Tax Reform Act of 1984 (Act) (relating to Subchapter S elections), the election under this paragraph applies to the deferrable tax for the taxable year which includes July 18, 1984. Paragraph (c)(3) of § 18.1362-1 defines the taxable year to which the election under this paragraph applies for a commodities dealer or options dealer that makes an election under section 102(d)(3) of the Act.

(b) *Deferrable tax.* The deferrable tax is the excess of—

(1) The tax for the taxable year for which the election is made computed by applying the amendments made by section 102 of the Act (other than the amendments made by section 102(c) of the Act) to all section 1256 contracts held by the taxpayer during the taxable year which includes July 18, 1984; over

(2) The tax for the taxable year for which the election is made computed by—

(i) Applying the amendments made by section 102 of the Act (other than the amendments made by section 102(c) of the Act) to all section 1256 contracts held by the taxpayer during the taxable year which includes July 18, 1984; and

(ii) Treating all stock options that are section 1256 contracts and positions in stock held as part of a straddle that includes such stock options (provided such stock options and stock were held as ordinary assets on the last day of the preceding taxable year) as having been acquired for a purchase price equal to their fair market value on the last business day of the preceding taxable year.

(c) *Time and manner for making the election.* A taxpayer making an election under this section must attach to Form 6781 the following information:

(1) A list including—

(i) Each position in stock and stock option held as part of a straddle that includes such stock that was held by the taxpayer on the last business day of the taxable year preceding the taxable year described in paragraph (a) of this section (excluding those stock options described in paragraph (a) of § 1.1256(h)-2T as part of a hedging transaction);

(ii) The date each such stock option and position in stock was acquired or entered into and the settlement price for each such stock option;

(iii) The fair market value of each such stock option and position in stock on the last business day of the taxable year preceding the taxable year described in paragraph (a) of this section;

(iv) The amount realized with respect to each such stock option and stock upon their sale or termination during the taxable year described in paragraph (a) of this section or, if it was not sold or terminated, then the amount realized by treating it as sold for its fair market value on the last business day of the taxable year described in paragraph (a) of this section; and

(2) A settlement showing—

(i) The computation of the deferrable tax;

(ii) The number of installments in which the taxpayer elects to pay the deferrable tax; and

(iii) The amount of each such payment.

(d) *Date for payment of deferrable tax*—(1) *In general.* If a taxpayer elects to defer payment of tax under this section, the first installment shall be paid on or before the due date for filing the return for the taxable year which includes July 18, 1984, and each succeeding installment shall be paid on or before the date which is one year after the last date prescribed for payment of the preceding installment. Each succeeding installment (including accrued interest as determined under paragraph (d)(3) of this section) may only be offset by refundable tax credits or by credits that may be carried back to offset tax liability for the taxable year for which the election was made. Credits which may be carried back to such taxable year reduce the amount of each of the installments by an equal amount.

(2) *Special rule in the case of bankruptcy or insolvency.* If a bankruptcy case or insolvency proceeding involving the taxpayer is commenced before the final installment is paid, then the total amount of any unpaid installments shall be treated as due and payable on the day preceding the day on which such case or proceeding is commenced.

(3) *Interest imposed on deferred tax payments.* For purposes of section 6601, the date prescribed for payment of tax under this section shall be the time for payment of such tax, determined without regard to the election to defer payment of such tax under paragraph (a) of this section. Therefore, interest accrues on such tax without regard to the right to defer payment of a portion thereof. Interest on each unpaid installment shall accrue from the last day prescribed for payment of the first installment to the date the installment is paid. With respect to chapters 68 and 75 of Subtitle F, the last date when such tax (or portion thereof) may be timely paid shall be determined under the rules prescribed by this section.

(4) *Relationship to estimated tax.* The first installment due under paragraph (d)(1) of this section shall be taken into account in determining the taxpayer's estimated tax under section 6015 or 6154. Succeeding installments shall be disregarded in determining estimated tax for the taxable year in which the election is made, but each succeeding installment shall be taken into account in determining the taxpayer's estimated tax under section 6015 or 6154 for the taxable year in which each installment is due.

(e) *Acceleration of deferrable tax.* Notwithstanding the foregoing, a taxpayer may, without the prior consent of the Commissioner, accelerate payment of deferrable tax to be paid in installments under paragraph (a) of this section. To do this a taxpayer must file a statement with the service center with which the election was filed containing—

(1) The name, address, and taxpayer identification number of the taxpayer;

(2) The information required by paragraph (d)(1) of this section with respect to the original schedule of payments; and

(3) The accelerated schedule of payment or payment.

Approved by the Office of Management and Budget under control number 1545-0644

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable 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.

This Treasury decision is issued under the authority contained in section 1092(b) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 95 Stat. 324, 26 U.S.C. 1092(b), 7805) and section 102(h) of the Tax Reform Act of 1984 (98 Stat. 625).

(Approved by the Office of Management and Budget under control number 1545-0644

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: January 18, 1985.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

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26 CFR Part 1

[T.D. 8008]

Income Tax; Taxable Years Beginning After December 31, 1953; Mixed Straddles: Straddle-by-Straddle Identification and Mixed Straddle Account Elections Under Section 1092(b)(2)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to the elections under the Tax Reform Act of 1984 for straddle-by-straddle identification of mixed straddles and for the establishment of mixed straddle accounts. These regulations provide Internal Revenue Service personnel who administer the Internal Revenue Code and members of the public with the guidance necessary to comply with the law.

DATES: The regulations under § 1.1092(b)-3T (relating to straddle-by-straddle identification) are effective for straddles established on or after January 1, 1984. The regulations under § 1.1092(b)-4T (relating to mixed straddle accounts) are effective for positions held on or after January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Neil W. Zyskind of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary income tax regulations relating to rules for straddle-by-straddle identification of mixed straddles and establishment of mixed straddle accounts under section 1092(b)(2). These amendments reflect the changes made by section 103 of the Tax Reform Act of 1984 (Pub. L. 98-369; 98 Stat. 627). The temporary regulations contained in this document will remain in effect until superseded by final regulations on this subject. Additional issues arising under these provisions and other issues under sections 263(g), 1092, and 1256 will be dealt with in another regulation project.

In General

Section 1092(b)(2)(A) permits taxpayers to avoid the application of the principles of section 1233(d) to positions that are part of a mixed straddle by electing either to (1) offset gains and losses from positions that are part of a mixed straddle by separately identifying the positions of each mixed straddle for which such offsetting treatment is elected (section 1092(b)(2)(A)(i)(I)), or (2) establish a mixed straddle account with respect to a class of activities for which gains and losses will be recognized and offset on a periodic basis (section 1092(b)(2)(A)(i)(II)). Section 1092(b)(2)(B) provides that in no event shall more than 50 percent of mixed straddle account net gain be treated as long-term capital gain and in no event shall more than 40 percent of mixed straddle account net loss be treated as short-term capital loss.

Straddle-by-Straddle Identification

Generally, under section 1092(b)(2)(A)(i)(I) and § 1.1092(b)-3T a taxpayer may elect to offset gains and losses from the disposition of positions that are part of a mixed straddle by separately identifying each mixed straddle ("section 1092(b)(2) identified mixed straddle") for which the taxpayer elects to have the provisions of § 1.1092(b)-3T apply. Paragraph (b) of 1.1092(b)-3T sets forth the manner in which gains and losses with respect to positions in a section 1092(b)(2) identified mixed straddle are offset. Paragraph (c) of § 1.1092(b)-3T provides that the loss deferral and wash sale rules of § 1.1092(b)-1T apply after the application of § 1.1092(b)-3T. Paragraph (d) of § 1.1092(b)-3T sets forth the identification necessary for a taxpayer to elect to have a mixed straddle treated as a section 1092(b)(2) identified mixed straddle.

Mixed Straddle Accounts

Generally, under section 1092(b)(2)(A)(i)(II) and § 1.1092(b)-4T a taxpayer may elect to establish one or more mixed straddle accounts. A mixed straddle account is defined in paragraph (b)(1) of § 1.1092(b)-4T as an account for determining gains and losses from all positions in a designated class of activities. A separate mixed straddle account must be established for each separate designated class of activities. Paragraph (b)(2) of § 1.1092(b)-4T sets forth the permissible designations. Paragraph (b)(3) of § 1.1092(b)-4T requires taxpayers to allocate gains and losses on positions that are offsetting with respect to positions in more than one mixed straddle account among such accounts. Paragraph (b)(4) through (b)(6) of § 1.1092(b)-4T describes the circumstances under which the Commissioner may include or exclude positions from a mixed straddle account.

Paragraphs (c) through (e) of § 1.1092(b)-4T provide rules for determining and offsetting gains and losses from positions in one or more mixed straddle accounts. Paragraph (c)(3) of § 1.1092(b)-4T provides that no deduction shall be allowed for interest and carrying charges (as defined in section 263(g)(2)) properly allocable to a mixed straddle account.

Paragraph (f) of § 1.1092(b)-4T sets forth rules for making the election to establish a mixed straddle account.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary regulation is not a major rule as defined in Executive Order 12291 or the Treasury and Office of Management and Budget (OMB) implementation of the Order dated April 29, 1983. Accordingly, a Regulatory Impact Analysis if not required.

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

The collection of information requirements contained in this regulation have been submitted to OMB in accordance with the requirements of the Paperwork Reduction Act of 1980.

These requirements have been approved by OMB, control number 1545-0644.

Drafting Information

The principal author of these regulations is Neil W. Zyskind 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 both on matters of substance and style.

List of Subjects in 26 CFR 1.1001-1—1.1102-3

Income taxes, Gain and loss, Basis, Nontaxable exchanges, Straddles.

PART 1—[AMENDED]

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. The following new §§ 1.1092(b)-3T and 1.1092(b)-4T are added in their appropriate place.

§ 1.1092(b)-3T Mixed straddles; straddle-by-straddle identification under section 1092(b)(2)(A)(i)(I) (Temporary).

(a) *In general.* Except as otherwise provided, a taxpayer shall treat in accordance with paragraph (b) of this section gains and losses on positions that are part of a mixed straddle for which the taxpayer has made an election under paragraph (d) of this section (hereinafter referred to as a "section 1092(b)(2) identified mixed straddle"). No election may be made under this section for any straddle composed of one or more positions that are includible in a mixed straddle account (as defined in paragraph (b) of § 1.1092(b)-4T) or for any straddle for which an election under section 1256(d) has been made. See § 1.1092(b)-5T relating to definitions.

(b) *Treatment of gains and losses from positions included in a section 1092(b)(2) identified mixed straddle*—(1) *In general.* Gains and losses from positions that are part of a section 1092(b)(2) identified mixed straddle shall be determined and treated in accordance with the rules of paragraph (b) (2) through (7) of this section.

(2) *All positions of a section 1092(b)(2) identified mixed straddle are disposed of on the same day.* If all positions of a section 1092(b)(2) identified mixed straddle are disposed of (or deemed disposed of) on the same say, gains and losses from section 1256 contracts in the straddle shall be netted, and gains and losses from non-section 1256 positions in the straddle shall be netted. Net gain or loss from the section 1256 contracts shall then be offset against net gain or loss from the non-section 1256 positions to determine the net gain or loss from the straddle. If net gain or loss from the straddle is attributable to the positions of the straddle that are section 1256 contracts, such gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. If net gain or loss from the straddle is attributable to the positions of the straddle that are non-section 1256 positions, such gain or loss shall be treated as short-term capital gain or loss. This paragraph (b)(2) may be illustrated by the following examples. It is assumed in each example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxpayer year.

Example (1). On April 1, 1985, A enters into a non-section 1256 position and an offsetting section 1256 contract and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On April 10, 1985, A disposes of the non-section 1256 position at a $600 loss and the section 1256 contract at a $600 gain. Under these circumstances, the $600 loss on the non-section 1256 position will be offset against the $600 gain on the section 1256 contract and the net gain or loss from the straddle will be zero.

Example (2). Assume the facts are the same as in example (1), except that the gain on the section 1256 contract is $800. Under these circumstances, the $600 loss on the non-section 1256 position will be offset against the $600 gain on the section 1256 contract. The net gain of $200 from the straddle will be treated as 60 percent long-term capital gain and 40 percent short-term gain because it is attributable to the section 1256 contract.

Example (3). Assume the facts are the same as in example (1), except that the loss on the non-section 1256 position is $800. Under these circumstances, the $600 gain on the section 1256 contract will be offset against the $800 loss on the non-section 1256 position. The net loss of $200 from the straddle will be treated as short-term capital loss because it is attributable to the non-section 1256 position.

Example (4). On May 1, 1985, A enters into a straddle consisting of two non-section 1256 positions and two section 1256 contracts and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. On May 10, 1985, A disposes of the non-section 1256 positions, one at a $700 loss and the other at a $500 gain, and disposes of the section 1256 contracts, one at a $400 gain and the other at a $300 loss. Under these circumstances, the gain and losses from the section 1256 contracts and non-section 1256 positions will first be netted, resulting in a net gain of $100 ($400-$300) on the section 1256 contracts and a net loss of $200 ($700-$500) on the non-section 1256 positions. The net gain of $100 from the section 1256 contracts will then be offset against the $200 net loss on the non-section 1256 positions. The net loss of $100 from the straddle will be treated as short-term capital loss because it is attributable to the non-section 1256 positions.

Example (5). On December 30, 1985, A enters into a section 1256 contract and an offsetting non-section 1256 position and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On December 31, 1985, A disposes of the non-section 1256 position at a $2,000 gain. A also realizes a $2,000 loss on the section 1256 contract because it is deemed disposed of under section 1256(a)(1). Under these circumstances, the $2,000 gain on the non-section 1256 position will be offset against the $2,000 loss on the section 1256 contract, and the net gain or loss from the straddle will be zero.

Example (6). Assume the facts are the same as in example (5), except that the section 1092(b)(2) identified mixed straddle was entered into on November 12, 1985. A realizes a $2,200 loss on the section 1256 contract, and on December 15, 1985, A enters into a non-section 1256 position that is offsetting to the non-section 1256 loss position of the section 1092(b)(2) identified mixed straddle. At year-end there is $200 of unrecognized gain in the non-section 1256 position that was entered into on December 15. Under these circumstances, the $2,200 loss on the section 1256 contract will be offset against the $2,000 gain on the non-section 1256 position. The net $200 loss from the straddle will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain because it is attributable to the section 1256 position. The net loss of $200 from the straddle will be disallowed in 1985 under the loss deferral rules of section 1092(a) because there is $200 of unrecognized gain in a successor position (as defined in paragraph (n) of § 1.1092(b)-5T) at year-end. See paragraph (c) of this section.

(3) *All of the non-section 1256 positions of a section 1092(b)(2) identified mixed straddle disposed of on the same day.* This paragraph (b)(3) applies if all of the non-section 1256 positions of a section 1092(b)(2) identified mixed straddle are disposed of on the same day or if this paragraph (b)(3) is made applicable by paragraph (b)(5) of this section. In the case to which this paragraph (b)(3) applies, gain and loss realized from non-section 1256 positions shall be netted. Realized and unrealized gain and loss with respect to the section 1256 contracts of the straddle also shall be netted on that day. Realized net gain or loss from the non-section 1256 positions shall then be offset against net gain or loss from the section 1256 contracts to determine the net gain or loss from the straddle on that day. Net gain or loss from the straddle that is attributable to the non-section 1256 positions shall be realized and treated as short-term capital gain or loss

on that day. Net gain or loss from the straddle that is attributable to realized gain or loss with respect to section 1256 contracts shall be realized and treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. Any gain or loss subsequently realized on the section 1256 contracts shall be adjusted (through an adjustment to basis or otherwise) to take into account the extent to which gain or loss was offset by unrealized gain or loss on the section 1256 contracts on that day. This paragraph (b)(3) may be illustrated by the following examples. It is assumed in each example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year.

Example (1). On July 20, 1985, A enters into a section 1256 contract and an offsetting non-section 1256 position and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On July 27, 1985, A disposes of the non-section 1256 position at a $1,500 loss, at which time there is $1,500 of unrealized gain in the section 1256 contract. A holds the section 1256 contract at year-end at which time there is $1,800 of gain. Under these circumstances, on July 27, 1985, A offsets the $1,500 loss on the non-section 1256 position against the $1,500 gain on the section 1256 contract and realizes no gain or loss. On December 31, 1985, A realizes a $300 gain on the section 1256 contract because the position is deemed disposed of under section 1256(a)(1). The $300 gain is equal to $1,800 of gain less a $1,500 adjustment for unrealized gain offset against the loss realized on the non-section 1256 position on July 27, 1985, and the gain will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain.

Example (2). Assume the facts are the same as in example (1), except that on July 27, 1985, A realized a $1,700 loss on the non-section 1256 position. Under these circumstances, on July 27, 1985, A offsets the $1,700 loss on the non-section 1256 position against the $1,500 gain on the section 1256 contract. A realizes a $200 loss from the straddle on July 27, 1985, which will be treated as short-term capital loss because it is attributable to the non-section 1256 position. On December 31, 1985, A realizes a $300 gain on the section 1256 contract, computed as in example (1), which will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain.

Example (3). On March 1, 1985, A enters into a straddle consisting of two non-section 1256 positions and two section 1256 contracts and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On March 11, 1985, A disposes of the non-section 1256 positions, one at a $100 loss and the other at a $150 loss, and disposes of one section 1256 contract at a $100 loss. On that day there is $100 of unrealized gain on the section 1256 contract retained by A. A holds the remaining section 1256 contract at year-end, at which time there is $150 of gain. Under these circumstances, on March 11, 1985, A will first net the gains and losses from the section 1256 contracts and net the gains and losses from the non-section 1256 positions resulting in no gain or loss on the section 1256 contracts and a net loss of $250 on the non-section 1256 positions. Since there is no gain or loss to offset against the non-section 1256 positions, the net loss of $250 will be treated as short-term capital loss because it is attributable to the non-section 1256 positions. On December 31, 1985, A realizes a $50 gain on the remaining section 1256 contract because the position is deemed disposed of under section 1256(a)(1). The $50 gain is equal to $150 gain less a $100 adjustment to take into account the $100 unrealized gain that was offset against the $100 loss realized on the section 1256 contract on March 11, 1985.

Example (4). Assume the facts are the same as in example (3), except that A disposes of the section 1256 contract at a $500 gain. As in example (3), A has a net loss of $250 on the non-section 1256 positions disposed of. In this example, however, A has net gain of $600 ($500+$100) on the section 1256 contracts on March 11, 1985. Therefore, of the net gain from the straddle of $350 ($600–$250), $250 ($500–$250) is treated as 60 percent long-term capital gain and 40 percent short-term capital gain because only $250 is attributable to the realized gain from the section 1256 contract. In addition, because none of the $100 unrealized gain from the remaining section 1256 contract was offset against gain or loss on the non-section 1256 positions, no adjustment is made under paragraph (b)(3) of this section and the entire $150 gain on December 31 with respect to that contract is realized on that date.

(4) *All of the section 1256 contracts of a section 1092(b)(2) identified mixed straddle disposed of on the same day.* This paragraph (b)(4) applies if all of the section 1256 contracts of a section 1092(b)(2) identified mixed straddle are disposed of (or deemed disposed of) on the same day or if this paragraph (b)(4) is made applicable by paragraph (b)(5) of this section. In the case to which this paragraph (b)(4) applies, gain and loss realized from section 1256 contracts shall be netted. Realized and unrealized gain and loss with respect to the non-section 1256 positions of the straddle also shall be netted on that day. Realized net gain or loss from section 1256 contracts shall be treated as short-term capital gain or loss to the extent of net gain or loss on the non-section 1256 positions on that day. Net gain or loss with respect to the section 1256 contracts that exceeds the net gain or loss with respect to the non-section 1256 positions of the straddle shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. See paragraph (b)(7) of this section relating to the gain or loss on such non-section 1256 positions. This paragraph (b)(4) may be illustrated by the following examples. It is assumed in each example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year.

Example (1). On December 30, 1985, A enters into a section 1256 contract and an offsetting non-section 1256 position and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On December 31, 1985, A disposes of the section 1256 contract at a $1,000 gain, at which time there is $1,000 of unrealized loss in the non-section 1256 position. Under these circumstances, the $1,000 gain realized on the section 1256 contract will be treated as short-term capital gain because there is a $1,000 loss on the non-section 1256 position.

Example (2). Assume the facts are the same as in example (1), except that A realized a $1,500 gain on the disposition of the section 1256 contract. Under these circumstances, $1,000 of the gain realized on the section 1256 contract will be treated as short-term capital gain because there is a $1,000 loss on the non-section 1256 position. The net gain of $500 from the straddle will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain because it is attributable to the section 1256 contract.

Example (3). Assume the facts are the same as in example (1), except that A realized a $1,000 loss on the section 1256 contract and there is $1,000 of unrecognized gain on the non-section 1256 position. Under these circumstances, the $1,000 loss on the section 1256 contract will be treated as short-term capital loss because there is a $1,000 gain on the non-section 1256 position. Such loss, however, will be disallowed in 1985 under the loss deferral rules of section 1092(a) because there is $1,000 of unrecognized gain in an offsetting position at year-end. See paragraph (c) of this section.

Example (4). Assume the facts are the same as in example (1), except that the section 1256 contract is disposed of on December 19, 1985, for a $1,000 gain, at which time there is $1,000 of unrealized loss on the non-section 1256 position. At year-end there is only $800 of unrealized loss in the non-section 1256 position. Under these circumstances, the result is the same as in example (1) because there was $1,000 of unrealized loss on the non-section 1256 position at the time of the disposition of the section 1256 contract.

Example (5). On July 15, 1985, A enters into a straddle consisting of two non-section 1256 positions and two section 1256 contracts and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On July 20, 1985, A disposes of one non-section 1256 position at a gain of $1,000 and both section 1256 contracts at a net loss of $1,000. On the same day there is $200 of unrealized loss on the non-section 1256 position retained by A. Under these circumstances, realized and unrealized gain and loss with respect to the non-section 1256 positions is netted, resulting in a net gain of $800. Thus, $800 of the net loss on the section 1256 contracts disposed of will be treated as short-term capital loss because there is $800

of net gain on the non-section 1256 positions. In addition, the net loss of $200 from the straddle will be treated as 60 percent long-term capital loss and 40 percent short-term capital loss because it is attributable to the section 1256 contract.

(5) *Disposition of one or more, but not all, positions of a section 1092(b)(2) identified mixed straddle on the same day.* If one or more, but not all, of the positions of a section 1092(b)(2) identified mixed straddle are disposed of on the same day, and paragraph (b)(3) and (4) of this section are not applicable (without regard to this paragraph (b)(5)), the gain and loss from the non-section 1256 positions that are disposed of on that day shall be netted, and the gain and loss from the section 1256 contracts that are disposed of on that day shall be netted. In order to determine whether the rules of paragraph (b)(3) or (b)(4) of this section apply, net gain or loss from the section 1256 contracts disposed of shall then be offset against net gain or loss from the non-section 1256 positions disposed of to determine net gain or loss from such positions of the straddle. If net gain or loss from the disposition of such positions of the straddle is attributable to the non-section 1256 positions disposed of, the rules prescribed in paragraph (b)(3) of this section apply. If net gain or loss from the disposition of such positions is attributable to the section 1256 contracts disposed of, the rules prescribed in paragraph (b)(4) of this section apply. If the net gain or loss from the netting of non-section 1256 positions disposed of and the netting of section 1256 contracts disposed of are either both gains or losses, the rules prescribed in paragraph (b)(3) of this section shall apply to net gain or loss from such non-section 1256 positions, and the rules prescribed in paragraph (b)(4) of this section shall apply to net gain or loss from such section 1256 contracts. However, for purposes of determining the treatment of gain or loss subsequently realized on a position of such straddle, to the extent that unrealized gain or loss on other positions was used to offset realized gain or loss on a non-section 1256 position under paragraph (b)(3) of this section, or was used to treat realized gain or loss on a section 1256 contract as short-term capital gain or loss under paragraph (b)(4) of this section, such amount shall not be used for such purposes again. This paragraph (b)(5) may be illustrated by the following examples. It is assumed that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year.

Example (1). On July 15, 1985, A enters into a straddle consisting of four non-section 1256 positions and four section 1256 contracts and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On July 20, 1985, A disposes of one non-section 1256 position at a gain of $800 and one section 1256 contract at a loss of $300. On the same day there is $400 of unrealized net loss on the section 1256 contracts retained by A and $100 of unrealized net loss on the non-section 1256 positions retained by A. Under these circumstances, the loss of $300 on the section 1256 contract disposed of will be offset against the gain of $800 on the non-section 1256 position disposed of. The net gain of $500 is attributable to the non-section 1256 position. Therefore, the rules of paragraph (b)(3) of this section apply. Under the rules of paragraph (b)(3) of this section, the net loss of $700 on the section 1256 contracts is offset against the net gain of $800 attributable to the non-section 1256 position disposed of. The net gain of $100 will be treated as short-term capital gain because it is attributable to the non-section 1256 position disposed of. Gain or loss subsequently realized on the section 1256 contracts will be adjusted to take into account the unrealized loss of $400 that was offset against the $800 gain attributable to the non-section 1256 position disposed of.

Example (2). Assume the facts are the same as in Example (1), except that A disposes of the non-section 1256 position at a gain of $300 and the section 1256 contract at a loss of $800, and there is $200 of unrealized net gain in the non-section 1256 positions retained by A. Under these circumstances, the gain of $300 on the non-section 1256 position disposed of will be offset against the loss of $800 on the section 1256 contract disposed of. The net loss of $500 is attributable to the section 1256 contract. Therefore, the rules of paragraph (b)(4) of this section apply. Under the rules of paragraph (b)(4) of this section, $500 of the net loss realized on the section 1256 contract will be treated as short-term capital loss because there is $500 of realized and unrealized gain in the non-section 1256 positions. The remaining net loss of $300 will be treated as 60 percent long-term capital loss and 40 percent short-term capital loss because it is attributable to a section 1256 contract disposed of. In addition, A realizes a $300 short-term capital gain attributable to the disposition of the non-section 1256 position.

Example (3). (i) Assume the facts are the same as in example (1), except that the section 1256 contract was disposed of at a $500 gain. Under these circumstances, there is gain of $500 attributable to the section 1256 contact disposed of and a gain of $800 attributable to the non-section 1256 position. Therefore, the rules of both paragraph (b)(3) and (b)(4) apply.

(ii) Under paragraph (b)(3) of this section, the realized and unrealized gains and losses on the section 1256 contracts are netted, resulting in a net gain of $100 ($500–$400). The section 1256 net gain does not offset the gain on the non-section 1256 position disposed of. Therefore, the gain of $800 on the non-section 1256 position disposed of will be treated as a short-term capital gain because there is net loss on the section 1256 contracts.

(iii) Under paragraph (b)(4) of this section, the realized and unrealized gains and losses on the non-section 1256 positions are netted, resulting in a non-section 1256 net gain of $700 ($800–$100). Because there is no net loss on the non-section 1256 positions, the $500 gain realized on the section 1256 contract will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain.

(6) *Accrued gain and loss with respect to positions of a section 1092(b)(2) identified mixed straddle.* If one or more positions of a section 1092(b)(2) identified mixed straddle were held by the taxpayer on the day prior to the day the section 1092(b)(2) identified mixed straddle is established, such position or positions shall be deemed sold for their fair market value as of the close of the last business day preceding the day such straddle is established. See §§ 1.1092(b)–1T and 1.1092(b)–2T for application of the loss deferral and wash sale rules and for treatment of holding periods and losses with respect to such positions. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss realized with respect to such to such position or positions for any gain or loss recognized under this paragraph (b)(6). This paragraph (b)(6) may be illustrated by the following examples. It is assumed in each example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year.

Example (1). On January 1, 1985, A enters into a non-section 1256 position. As of the close of the day on July 9, 1985, there is $500 of unrealized long-term capital gain in the non-section 1256 position. On July 10, 1985, A enters into an offsetting section 1256 contract and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. Under these circumstances, on July 9, 1985, A will recognize $500 of long-term capital gain on the non-section 1256 position.

Example (2). On February 1, 1985, A enters into a section 1256 contract. As of the close of the day on February 4, 1985, there is $500 of unrealized loss on the section 1256 contract. On February 5, 1985, A enters into an offsetting non-section 1256 position and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. Under these circumstances, on February 4, 1985, A will recognize a $500 loss on the section 1256 contract, which will be treated as 60 percent long-term capital loss and 40 percent short-term capital loss.

Example (3). Assume the facts are the same as in example (2) and that on February 10, 1985, there is $2,000 of unrealized gain in the

section 1256 contract. A disposes of the section 1256 contract at a $2,000 gain and disposes of the offsetting non-section 1256 position at a $1,000 loss. Under these circumstances, the $2,000 gain on the section 1256 contract will be reduced to $1,500 to take into account the $500 gain recognized when the section 1092(b)(2) identified mixed straddle was established. The $1,500 gain on the section 1256 contract will be offset against the $1,000 loss on the non-section 1256 position. The net $500 gain from the straddle will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain because it is attributable to the section 1256 contract.

Example (4). On March 1, 1985, A enters into a non-section 1256 position. As of the close of the day on March 2, 1985, there is $400 of unrealized short-term capital gain in the non-section 1256 position. On March 3, 1985, A enters into an offsetting section 1256 contract and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. On March 10, 1985, A disposes of the section 1256 contract at a $500 loss and the non-section 1256 position at a $500 gain. Under these circumstances, on March 2, 1985, A will recognize $400 of short-term gain attributable to the gain accrued on the non-section 1256 position prior to the day the section 1092(b)(2) identified mixed straddle was established. On March 10, 1985, the gain of $500 on the non-section 1256 position will be reduced to $100 to take into account the $400 of gain recognized when the section 1092(b)(2) identified mixed straddle was established. The $100 gain on the non-section 1256 position will be offset against the $500 loss on the section 1256 contract. The net loss of $400 from the straddle will be treated as 60 percent long-term capital loss and 40 percent short-term capital loss because it is attributable to the section 1256 contract.

(7) *Treatment of gain and loss from non-section 1256 positions after disposition of all section 1256 contracts.* Gain or loss on a non-section 1256 position that is part of a section 1092(b)(2) identified mixed straddle and that is held after all section 1256 contracts in the straddle are disposed of shall be treated as short-term capital gain or loss to the extent attributable to the period when the positions were part of such straddle. See § 1.1092(b)–2T for rules concerning the holding period of such positions. This paragraph (b)(7) may be illustrated by the following example. It is assumed that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) during the taxable years.

Example. On December 1, 1985, A, an individual calendar year taxpayer, enters into a section 1256 contract and an offsetting non-section 1256 position and makes a valid election to treat such straddle as an identified section 1092(b)(2) mixed straddle. On December 31, 1985, A disposes of the section 1256 contract at a $1,000 loss. On the same day, there is $1,000 of unrecognized gain in the non-section 1256 position. The $1,000 loss on the section 1256 contract is treated as short-term capital loss because there is a $1,000 gain on the non-section 1256 position, but the $1,000 loss is disallowed in 1985 because there is $1,000 of unrecognized gain in the offsetting nonsection 1256 position. See section 1092(a) and § 1.1092(b)–1T. On July 10, 1986, A disposes of the non-section 1256 position at a $1,500 gain, $500 of which is attributable to the post-straddle period. Under these circumstances, $1,000 of the gain on the non-section 1256 position will be treated as short-term capital gain because that amount of the gain is attributable to the period when the position was part of a section 1092(b)(2) identified mixed straddle. The remaining $500 of the gain will be treated as long-term capital gain because the position was held for more than six months after the straddle was terminated. In addition, the $1,000 short-term capital loss disallowed in 1985 will be taken into account at this time.

(c) *Coordination with loss deferral and wash sale rules of § 1.1092(b)–1T.* This section shall apply prior to the application of the loss deferral and wash sale rules of § 1.1092(b)–1T.

(d) *Identification required*—(1) *In general.* To elect the provisions of this section, a taxpayer must clearly identify on a reasonable and consistently applied economic basis each position that is part of the section 1092(b)(2) identified mixed straddle before the close of the day on which the section 1092(b)(2) identified mixed straddle is established. If the taxpayer disposes of a position that is part of a section 1092(b)(2) identified mixed straddle before the close of the day on which the straddle is established, such identification must be made at or before the time that the taxpayer disposes of the position. In the case of a taxpayer who is an individual, the close of the day is midnight (local time) in the location of the taxpayer's principal residence. In the case of all other taxpayers, the close of the day is midnight (local time) in the location of the taxpayer's principal place of business. Only the person or entity that directly holds all positions of a straddle may make the election under this section.

(2) *Presumptions.* A taxpayer is presumed to have identified a section 1092(b)(2) identified mixed straddle by the time prescribed in paragraph (d)(1) of this section if the taxpayer receives independent verification of the identification (within the meaning of paragraph (d)(4) of this section). The presumption referred to in this paragraph (d)(2) may be rebutted by clear and convincing evidence to the contrary.

(3) *Corroborating evidence.* If the presumption of paragraph (d)(2) of this section does not apply, the burden shall be on the taxpayer to establish that an election under paragraph (d)(1) of this section was made by the time specified in paragraph (d)(1) of this section. If the taxpayer has no evidence of the time when the identification required by paragraph (d)(1) of this section is made, other than the taxpayer's own testimony, the election is invalid unless the taxpayer shows good cause for failure to have evidence other than the taxpayer's own testimony.

(4) *Independent verification.* For purposes of this section, the following constitute independent verification:

(i) *Separate Account.* Placement of one or more positions of a section 1092(b)(2) identified mixed straddle in a separate account designated as a "section 1092(b)(2) identified mixed straddle account" that is maintained by a broker (as defined in § 1.6045–1(a)(1)), futures commission merchant (as defined in 7 U.S.C. 2 and 17 CFR 1.3(p)), or similar person and in which notations are made by such person identifying all positions of the section 1092(b)(2) identified mixed straddle and stating the date the straddle is established.

(ii) *Confirmation.* A written confirmation from a person referred to in paragraph (d)(4)(i) of this section, or from the party from which one or more positions of the section 1092(b)(2) identified mixed straddle are acquired, stating the date the straddle is established and identifying the other positions of the straddle.

(iii) *Other methods.* Such other methods of independent verification as the Commissioner may approve at the Commissioner's discretion.

(5) *Section 1092 (b)(2) identified mixed straddles established before February 25, 1985.* Notwithstanding the provisions of paragraph (d)(1) of this section, relating to the time of identification of a section 1092(b)(2) identified mixed straddle, a taxpayer may identify straddles that were established before February 25, 1985 as section 1092(b)(2) identified mixed straddles after the time specified in paragraph (d)(1) of this section if the taxpayer adopts a reasonable and consistent economic basis for identifying the positions of such straddles.

(e) *Effective date*—(1) *In general.* The provisions of this section shall apply to straddles established on or after January 1, 1984.

(2) *Pre-1984 accrued gain.* If the last business day referred to in paragraph (b)(6) of this section is contained in a period to which paragraph (b)(6) does not apply, the gains and losses from the

deemed sale shall be included in the first period to which paragraph (b)(6) applies.

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§ 1.1092(b)-4T Mixed straddles; Mixed straddle account.

(a) *In general.* A taxpayer may elect (in accordance with paragraph (f) of this section) to establish one or more mixed straddle accounts (as defined in paragraph (b) of this section). Gains and losses from positions includible in a mixed straddle account shall be determined and treated in accordance with the rules set forth in paragraph (c) of this section. A mixed straddle account is treated as established as of the first day of the taxable year for which the taxpayer makes the election or January 1, 1984, whichever is later. See § 1.1092(b)-5T relating to definitions.

(b) *Mixed straddle account defined*—(1) *In general.* The term "mixed straddle account" means an account for determining gains and losses from all positions held as capital assets in a designated class of activities by the taxpayer at the time the taxpayer elects to establish a mixed straddle account. A separate mixed straddle account must be established for each separate designated class of activities.

(2) *Permissible designations.* Except as otherwise provided in this section, a taxpayer may designate as a class of activities the types of positions that a reasonable person, on the basis of all the facts and circumstances, would ordinarily expect to be offsetting positions. This paragraph (b)(2) may be illustrated by the following example. It is assumed in the example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) during the taxable year, and that gain or loss from the positions is treated as gain or loss from a capital asset.

Example. B engages in transactions in dealer equity options on XYZ Corporation stock, stock in XYZ Corporation, dealer equity options on UVW Corporation stock, and stock in UVW Corporation. A reasonable person, on the basis of all the facts and circumstances, would not expect dealer equity options on XYZ Corporation stock and stock in XYZ Corporation to offset any dealer equity options on UVW Corporation stock or any stock in UVW Corporation. If B makes the mixed straddle account election under this section for all such positions, B must designate two separate classes of activities, one consisting of transactions in dealer equity options on XYZ Corporation stock and stock in XYZ Corporation, and the other consisting of transactions in dealer equity options on UVW Corporation stock and stock in UVW Corporation, and maintain two separate mixed straddle accounts.

(3) *Positions that offset positions in more than one mixed straddle account.* Gains and losses from positions that a reasonable person, on the basis of all the facts and circumstances, ordinarily would expect to be offsetting with respect to positions in more than one mixed straddle account shall be allocated among such accounts under a reasonable and consistent method that clearly reflects income. This paragraph (b)(2) may be illustrated by the following example. It is assumed that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) during the taxable year, and that gain or loss from the positions is treated as gain or loss from a capital asset.

Example. B holds stock in XYZ Corporation, UVW Corporation, and RST Corporation, and options on a broad based stock index future. A reasonable person, on the basis of all the facts and circumstances, would expect the stock in XYZ Corporation, UVW Corporation, and RST Corporation to be offsetting positions with respect to the options on the broad based stock index future. A reasonable person, on the basis of all the facts and circumstances, would not expect that stock in XYZ Corporation, UVW Corporation, or RST Corporation would be offsetting positions with respect to each other. If B makes the mixed straddle account election under this section for all such positions, B must designate three separate classes of activities: one consisting of stock in XYZ Corporation; one consisting of stock in UVW Corporation; and one consisting of stock in RST Corporation, and maintain three separate mixed straddle accounts. Options on the broad based stock index future must be designated as part of all three classes of activities and gains and losses from such options must be allocated among such accounts under a reasonable and consistent method that clearly reflects income, because such options are a type of position expected to be offsetting with respect to the positions in all three mixed straddle accounts.

(4) *Impermissible designations*—(i) *Types of positions that are not offsetting included in designated class of activities.* If the Commissioner determines, on the basis of all the facts and circumstances, that a class of activities designated by a taxpayer includes types of positions that a reasonable person, on the basis of all the facts and circumstances, ordinarily would not expect to be offsetting positions with respect to other types of positions in the account, the Commissioner may—

(A) Amend the class of activities designated by the taxpayer and remove positions from the account that are not within the amended designated class of activities; or

(B) Amend the class of activities designated by the taxpayer to establish two or more mixed straddle accounts.

(ii) *Types of positions that are offsetting not included in designated class of activities.* If the Commissioner determines, on the basis of all the facts and circumstances, that a designated class of activities does not include types of positions that are offsetting with respect to types of positions within the designated class, the Commissioner may—

(A) Amend the class of activities designated by the taxpayer to include types of positions that are offsetting with respect to the types of positions within the designated class and place such positions in the account; or

(B) Amend the class of activities designated by the taxpayer to exclude types of positions that are offsetting with respect to the types of positions that are not in the account.

(iii) *Treatment of positions removed from or included in the account.* (A) Positions removed from a mixed straddle account will be subject to the rules of taxation generally applicable to such positions. Thus, for example, if the positions removed from the account are offsetting positions with respect to other positions outside the account, the rules of §§ 1.1092(b)-1T and 1.1092(b)-2T apply.

(B) If the taxpayer acted consistently and in good faith in designating the class of activities of the account and in placing positions in the account, the rules of § 1.1092(b)-2T(b)(2) shall not apply to any mixed straddles resulting from the removal of such positions from the account and the Commissioner, at the Commissioner's discretion, may identify such mixed straddles as section 1092(b)(2) identified mixed straddles and apply the rules of § 1.1092(b)-3T(b) to such straddles.

(C) If positions are placed in a mixed straddle account, such positions shall be treated as if they were originally included in the mixed straddle account in which they are placed.

(5) *Positions included in a mixed straddle account that are not within the designated class of activities.* The Commissioner may remove one or more positions from a mixed straddle account if, on the basis of all the facts and circumstances, the Commissioner determines that such positions are not within the designated class of activities of the account. See paragraph (b)(4)(iii) of this section for rules concerning the treatment of such positions.

(6) *Positions outside a mixed straddle account that are within the designated class of activities.* If a taxpayer holds

types of positions outside of a mixed straddle account (including positions in another mixed straddle account) that are within the designated class of activities of a mixed straddle account, the Commissioner may require the taxpayer to include such types of positions in the mixed straddle account, move positions from one account to another, or remove from the mixed straddle account types of positions that are offsetting with respect to the types of positions held outside the account. See paragraph (b)(4)(iii) of this section for the treatment of such positions.

(c) *Treatment of gains and losses from positions in a mixed straddle account*—(1) *Daily account net gain or loss.* Except as provided in paragraphs (d) and (e) of this section (relating to positions in a mixed straddle account before January 1, 1985) as of the close of each business day of the taxable year, gain or loss shall be determined for each position in a mixed straddle account that is disposed of during the day. Positions in a mixed straddle account that have not been disposed of as of the close of the day shall be treated as if sold for their fair market value at the close of each business day. Gains and losses for each business day from non-section 1256 positions in each mixed straddle account shall be netted to determine "net non-section 1256 position gain or loss" for the account, and gains and losses for each business day from section 1256 contracts in each mixed straddle account shall be netted to determine "net section 1256 contract gain or loss" for the account. Net non-section 1256 position gain or loss from the account is then offset against net section 1256 contract gain or loss from the same mixed straddle account to determine the "daily account net gain or loss" for the account. If daily account net gain or loss is attributable to the net non-section 1256 position gain or loss, daily account net gain or loss for such account shall be treated as short-term capital gain or loss. If daily account net gain or loss is attributable to the net section 1256 contract gain or loss, daily account net gain or loss for such account shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. If net non-section 1256 position gain or loss and net section 1256 contract gain or loss are either both gains or both losses, that portion of the daily account net gain or loss attributable to net non-section 1256 position gain or loss shall be treated as short-term capital gain or loss and that portion of the daily account net gain or loss attributable to net section 1256 contract gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss determined under this paragraph (c)(1) to take into account any gain or loss determined for prior business days under this paragraph (c)(1).

(2) *Annual account net gain or loss; total annual account net gain or loss.* On the last business day of the taxable year, the "annual account net gain or loss" for each mixed straddle account established by the taxpayer shall be determined by netting the daily account net gain or loss for each business day in the taxable year for each account. Annual account net gain or loss for each mixed straddle account shall be adjusted pursuant to paragraph (c)(3) of this section. The "total annual account net again or loss" shall be determined by netting the annual account net gain or loss for all mixed straddle accounts established by the taxpayer, as adjusted pursuant to paragraph (c)(3) of this section. Total annual account net loss is subject to the limitations of paragraph (c)(4) of this section. See paragraphs (d) and (e) of this section for determining the annual account net gain or loss for mixed straddle accounts establish for taxable years beginning before January 1, 1985.

(3) *Application of section 263(g) to mixed straddle accounts.* No deduction shall be allowed for interest and carrying charges (as defined in section 263(g)(2)) properly allocable to a mixed straddle account. Interest and carrying charges properly allocable to a mixed straddle account means the excess of—

(i) The sum of—

(A) Interest on indebtedness incurred or continued during the taxable year to purchase or carry any position in the account; and

(B) All other amounts (including charges to insure, store or transport the personal property) paid or incurred to carry any position in the account; over

(ii) The sum of—

(A) The amount of interest (including original issue discount) includible in gross income for the taxable year with respect to all positions in the account;

(B) Any amount treated as ordinary income under section 1271(a)(3)(A), 1278, or 1281(a) with respect to any position in the account for the taxable year; and

(C) The excess of any dividends includible in gross income with respect to positions in the account for the taxable year other the amount of any deduction allowable with respect to such dividends under section 243, 244, or 245.

For purposes of paragraph (c)(3)(i) of this section, the term "interest" includes any amount paid or incurred in connection with positions in the account used in a short sale. Any interest and carrying charges disallowed under this paragraph (c)(3) shall be capitalized by treating such charges as an adjustment to the annual account net gain or loss and shall be allocated pro rata between net short-term capital gain or loss.

(4) *Limitation on total annual account net gain or loss.* No more than 50 percent of total annual account net gain for the taxable year shall be treated as long-term capital gain. Any long-term capital gain in excess of the 50 percent limit shall be treated as short-term capital gain. No more than 40 percent of total annual account net loss for the taxable year shall be treated as short-term capital loss. Any short-term capital loss in excess of the 40 percent limit shall be treated as long-term capital loss.

(5) *Accrued gain and loss with respect to positions includable in a mixed straddle account.* Positions includable in a mixed straddle account that are held by a taxpayer on the day prior to the day the mixed straddle account is established shall be deemed sold for their fair market value as of the close of the last business day preceding the day such mixed straddle account is established. See §§ 1.1092(b)–1T and 1.1092(b)–2T for application of the loss deferral and wash sale rules and for treatment of holding periods and losses with respect to such positions. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss realized with respect to such positions for any gain or loss recognized under this paragraph (c)(5).

(6) *Examples.* This paragraph (c) may be illustrated by the following examples. It is assumed in each example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year, and that gain or loss from the positions is treated as gain or loss from a capital asset.

Example (1). A establishes a mixed straddle account for a class of activities consisting of transactions in stock of XYZ Corporation and dealer equity options on XYZ Corporation stock. Assume that A enters into no transactions in XYZ Corporation stock or dealer equity options on XYZ Corporation stock prior to December 26, 1985. Thus, the net non-section 1256 position gain or loss and the net section 1256 contract gain or loss for the account are zero for each business day except the following days:

	Net non-section 1256 position gain or loss (XYZ corporation stock)	Net section 1256 contract gain or loss (XYZ corporation dealer equity options)
December 26, 1985	$1,000	$20,000
December 27, 1985	(9,000)	3,000
December 30, 1985	(5,000)	15,000
December 31, 1985	7,000	(2,000)

The daily account net gain or loss is as follows:

	Daily account net gain or loss	Treatment of daily account net gain or loss	Long-term	Short-term
December 26, 1985	$21,000	$1,000 short-term capital gain, $20,000 60 percent long-term capital gain and 40 percent short-term capital gain.	$12,000	$9,000
December 27, 1985	(6,000)	Short-term capital loss		(6,000)
December 30, 1985	10,000	60 percent long-term capital gain and 40 percent short-term capital gain.	6,000	4,000
December 31, 1985	5,000	Short-term capital gain		5,000

The annual account net gain or loss is $18,000 of long-term capital gain and $12,000 of short-term capital gain. Because A has no other mixed straddle accounts, total annual account net gain or loss is also $18,000 long-term capital gain and $12,000 short-term capital gain. Because more than 50 percent of the total annual account net gain is long-term capital gain, $3,000 of the $18,000 long-term capital gain will be treated as short-term capital gain.

Example (2). Assume the facts are the same as in example (1), except that interest and carrying charges in the amount of $6,000 are allocable to the mixed straddle account and are capitalized under paragraph (c)(3) of this section. Under these circumstances, $3,600 [($18,000/$30,000)×$6,000] of the interest and carrying charges will reduce the $18,000 long-term capital gain to $14,400 long-term capital gain and $2,400 [($12,000/$30,000)×$6,000] of the interest and carrying charges will reduce the $12,000 short-term capital gain to $9,600 short-term capital gain. Because more than 50 percent of the total annual account net gain is long-term capital gain, $2,400 of the $14,000 long-term capital gain will be treated as short-term capital gain.

Example (3). Assume the facts are the same as in example (1), except that A has a second mixed straddle account, which has an annual account net loss of $14,000 of long-term capital loss and $6,000 of short-term capital loss. Under these circumstances, the total annual account net gain is $4,000 [$18,000 − $14,000] of long-term capital gain and $6,000 [$12,000 − $6,000] of short-term capital gain. Because not more than 50 percent of the total annual account net gain is long-term capital gain, none of the long-term capital gain will be treated as short-term capital gain.

Example (4). Assume the facts are the same as in example (3), except that interest and carrying charges in the amount of $4,000 are allocable to the second mixed straddle account and are capitalized under paragraph (c)(3) of this section. Under these circumstances, $2,800 [($14,000/$20,000)×$4,000)] of the interest and carrying charges will increase the $14,000 long-term capital loss to $16,800 of long-term capital loss and $1,200 [($6,000/$20,000)×$4,000)] of the interest and carrying charges will increase the $6,000 short-term capital loss to $7,200 short-term capital loss. The total annual account net gain is $1,200 of long-term capital gain ($18,000 − /$16,800) and $4,800 ($12,000 − $7,200) of short-term capital gain. Because not more than 50 percent of the total annual account net gain is long-term capital gain, none of the $1,200 long-term capital gain will be treated as short-term capital gain.

Example (5). Assume the facts are the same as in example (1), except that A has a second mixed straddle account, which has an annual account net loss of $20,000 of long-term capital loss and $15,000 of short-term capital loss. Under these circumstances, the total annual account net loss is $2,000 ($20,000 − $18,000) of long-term capital loss and $3,000 ($15,000 − $12,000) of short-term capital loss and $3,000 ($15,000 − $12,000) of short-term capital loss. Because more than 40 percent of the total annual account net loss is short-term capital loss, $1,000 of the short-term capital loss will be treated as long-term capital loss.

Example (6). A establishes two mixed straddle accounts. Account 1 has an annual account net gain of $5,000 short-term capital gain, which results from netting $5,000 of long-term capital loss and $10,000 of short-term capital gain. Account 2 has an annual account net loss of $2,000 long-term capital loss, which results from netting $3,000 of long-term capital loss against $1,000 of short-term capital gain. The total annual account net gain is $3,000 short-term capital gain, which results from netting the annual account net gain of $5,000 short-term capital gain from Account 1 against the annual account net loss of $2,000 long-term capital loss from Account 2.

(d) *Treatment of gains and losses from positions in a mixed straddle account established on or before December 31, 1984, in taxable years ending after December 31, 1984; pre-1985 account net gain or loss.* For mixed straddle accounts established on or before December 31, 1984, in taxable years ending after December 31, 1984, the taxpayer on December 31, 1984, shall determine gain or loss for each position in the mixed straddle account that has been disposed of on any day during the period beginning on the first day of the taxpayer's taxable year that includes December 31, 1984, and ending on December 31, 1984. Positions in the mixed straddle account that have not been disposed of as of the close of December 31, 1984, shall be treated as if sold for their fair market value as of the close of December 31, 1984. Gains and losses for such period from non-section 1256 positions in each mixed straddle account shall be netted to determine "pre-1985 net non-section 1256 position gain or loss" and gains and losses for such period from section 1256 contracts in each mixed straddle account shall be netted to determine "pre-1985 net section 1256 contract gain or loss." Pre-1985 net non-section 1256 position gain or loss is then offset against pre-1985 net section 1256 contract gain or loss from the same mixed straddle account to determine the "pre-1985 account net gain or loss" for the period. If the pre-1985 account net gain or loss is attributable to pre-1985 net non-section 1256 position gain or loss, the pre-1985 account net gain or loss from such account shall be treated as short-term capital gain or loss. If the pre-1985 account net gain or loss is attributable to pre-1985 net section 1256 contract gain or loss, the pre-1985 account net gain or loss from such account shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. If pre-1985 net non-section 1256 position gain or loss and pre-1985 net section 1256 contract gain or loss are either both gains or losses, that portion of the pre-1985 account net gain or loss attributable to pre-1985 net non-section 1256 position gain or loss shall be treated as short-term capital gain or loss and that portion of the pre-1985 account net gain or loss attributable to pre-1985 net section 1256 contract gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss realized with respect to such positions for any gain or loss recognized under this paragraph (d). To determine the annual account net gain or loss for such account, the pre-1985 account net gain or loss shall be treated as daily account net gain or loss for purposes of paragraph (c)(2) of this section. See paragraph (c)(5) of this section for treatment of

accrued gain or loss with respect to positions includible in a mixed straddle account.

(e) *Treatment of gains and losses from positions in a mixed straddle account for taxable years ending on or before December 31, 1984*—(1) *In general.* For mixed straddle accounts established on or before December 31, 1984, in taxable years ending on or before December 31, 1984, the taxpayer at the close of the taxable year shall determine gain or loss for each position in the mixed straddle account that has been disposed of on any day during the period beginning on the later of the first day of the taxable year or January 1, 1984, and ending on the last day of the taxable year. Positions in the mixed straddle account that have not been disposed of as of the close of the last business day of the taxable year shall be treated as if sold for their fair market value at the close of such day. Gains and losses from non-section 1256 positions in each mixed straddle account shall be netted to determine "1984 net non-section 1256 position gain or loss" for the account and gains and losses from section 1256 contracts shall be netted to determine "1984 net section 1256 contract gain or loss" for the account. The 1984 net non-section 1256 position gain or loss is then offset against 1984 net section 1256 contract gain or loss from the same mixed straddle account to determine "annual account net gain or loss" for the account. If annual account net gain or loss is attributable to 1984 net non-section 1256 position gain or loss, annual account net gain or loss shall be treated as short-term capital gain or loss. If annual account net gain or loss is attributable to 1984 net section 1256 contract gain or loss, annual account net gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. If 1984 net non-section 1256 position gain or loss and 1984 net section 1256 contract gain or loss are either both gains or both losses, that portion of annual account net gain or loss attributable to 1984 net non-section 1256 position gain or loss shall be treated as short-term capital gain or loss and that portion of annual account net gain or loss attributable to 1984 net section 1256 contract gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss realized with respect to such positions for any gain or loss recognized under this paragraph (e). See paragraph (c) (2) through (5) of this section relating to determining the total annual account net gain or loss, application of section 263(g) to mixed straddle accounts, the limitation on the total annual account net gain or loss, and treatment of accrued gain or loss with respect to positions includible in a mixed straddle account.

(2) *Pre-1984 accrued gain.* If the last business day referred to in paragraph (c)(5) of this section is contained in a period to which such paragraph (c)(5) does not apply, the gains and losses from the deemed sale shall be included in the first period to which paragraph (c)(5) applies.

(f) *Election*—(1) *Time for making the election.* The election under this section shall be made by the due date (taking extensions into account) of the taxpayer's income tax return for the taxable year for which the mixed straddle account is established. If the taxpayer has filed the taxpayer's income tax return prior to February 25, 1985, the taxpayer may make the election under this section by filing an amended return on or before April 15, 1985. If an election is made after the time specified in the preceding sentences, the election will be permitted only if the Commissioner concludes that the taxpayer had reasonable cause for failing to make a timely election.

(2) *Manner for making the election.* The election shall be made in the manner prescribed by the appropriate form, if any, or otherwise on a statement attached to the taxpayer's income tax return (or amended return). In addition, the taxpayer must attach a statement to the return designating with specificity the class of activities for which a mixed straddle account is established. The designation must describe the class of activities in sufficient detail so that the Commissioner may determine, on the basis of the designation, whether specific positions are includible in the mixed straddle account. In the case of a taxpayer who elects to establish more than one mixed straddle account, the Commissioner must be able to determine, on the basis of the designations, that specific positions are placed in the appropriate account. The election applies to all positions in the designated class of activities held by the taxpayer during the taxable year.

(3) *Period for which election is effective.* For taxable years beginning on or after January 1, 1984, an election under this section shall be effective for the entire taxable year for which the election is made and for all subsequent taxable years. For taxable years beginning prior to January 1, 1984, an election shall be effective for that part of the year beginning on or after January 1, 1984, for which the election is made and for all subsequent taxable years. This election may be revoked only with the consent of the Commissioner. An application for consent to revoke the election shall be filed with the service center with which the election was filed and shall—

(i) Contain the name, address, and taxpayer identification number of the taxpayer;

(ii) Show that the volume or nature of the taxpayer's activities has changed substantially since the election was made, and that the taxpayer's activities no longer warrant the use of such mixed straddle account; and

(iii) Any other relevant information.

(4) *Amendment of election.* A taxpayer may amend an election to expand a designated class of activities to include positions that were not held by the taxpayer during the taxable year for which the election first applied. This amended election shall be made by the due date (taking extensions into account) of the taxpayer's income tax return for the taxable year for which the amendment applies and shall—

(i) Contain the name, address, and taxpayer identification number of the taxpayer; and

(ii) Describe the specific positions that are now to be included in the mixed straddle account in the manner prescribed in paragraph (f)(2) of this section.

(g) *Effective date.* The provisions of this section apply to positions held on or after January 1, 1984.

(Approved by the Office of Management and Budget under control number 1545-0644)

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable 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.

This Treasury decision is issued under the authority contained in sections 1092(b)(1), 1092(b)(2) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 98 Stat. 627; 26 U.S.C. 1092(b)(1), 1092(b)(2), 7805).

(Approved by the Office of Management and Budget under control number 1545-0644)

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: January 18, 1985.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-1817 Filed 1-18-85; 3:36 pm]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty To Authorize the Guaranty of Certain Manufactured Home Loans Under 38 U.S.C. 1810

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration), in implementing the Veterans' Compensation and Program Improvements Amendments of 1984, is amending its regulations to allow the guaranty of some manufactured home loans under 38 U.S.C. 1810 instead of 38 U.S.C. 1819. Only loans secured by manufactured homes that are permanently situated on a lot (the loan may include funds for the purchase of the lot and must be treated as a single real estate transaction) and are considered to be real property, instead of personal property, in the State where they are located, may be guaranteed under the provisions of 38 U.S.C. 1810 and the corresponding VA regulations. Manufactured home loans that were guaranteed previously under 38 U.S.C. 1819 and meet the above qualifications may be refinanced under 38 U.S.C. 1810 in order to purchase a lot on which to permanently situate the unit or to reduce the interest rate of the original loan.

EFFECTIVE DATE: January 3, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, Washington, D.C. 20420 (202) 389-3042.

SUPPLEMENTARY INFORMATION: On September 4, 1984, the VA published in the **Federal Register** (49 FR 34847) proposed amendments to the § 36.4300 series of the VA loan guaranty regulations. Public comments were requested on the proposed regulations which were developed to implement the provisions of section 205 of the Veterans' Compensation and Program Improvements Amendments of 1984 (Pub. L. 98-223, 98 Stat. 37). Pub. L. 98-223 provided for the guaranty of loans that are for the purchase of manufactured homes permanently affixed to a lot owned, or being purchased by a veteran simultaneously with the unit, under 38 U.S.C. 1810 if, under the laws of the State in which they are located, they are considered to be real property. Please refer to the September 4, 1984, **Federal Register** for a complete discussion of the proposed regulations.

Eight comments were received on the proposed regulations. Several of the comments were submitted solely to concur with the proposed regulations.

One respondent asked about insurance requirements for manufactured homes guaranteed as real estate. The VA cannot dictate insurance standards, requirements or rates. It is up to the insuring body, working with buyers and lenders, to specify the insurance requirements for such properties.

A comment was received concerning the interpretation of the term "state law" in the proposed regulations. The respondent questioned whether "State law" should be interpreted as State statute, State case law, or both. The VA's position is that both State statutes and case law may be considered. As we stated in the proposed regulations, the status of a manufactured home as real versus personal property is not always clear and, therefore, the amended regulations will permit a lender to have the option of requesting guarantees for manufactured home loans under sections 1810 or 1819 of 38 U.S.C.

Another comment dealt with the policy of publishing final regulations with the effective date being 30 days after the regulations are published in the **Federal Register**. After further review of the amended regulations and the 5 U.S.C. 553(d) requirements for publication of a rule 30 days before its effective date, it has been decided that these amendments may be made effective on the date they are published in the **Federal Register**. The VA believes that these regulation changes are simply a restatement of 38 U.S.C. 1810 and a liberalization of existing regulations in order to conform with Pub. L. 98-223 and, therefore, they are exempt from the requirements of 5 U.S.C. 553(d).

The Administrator certifies that these final regulation changes will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C., 601 through 612. Pursuant to 5 U.S.C. 605(b), these final regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The amended regulations will have no impact on small private and nonprofit organizations and small government jurisdictions and should have a minor but beneficial economic impact upon lenders participating in the Loan Guaranty Program who until now did not make manufactured home loans.

These final regulations have been reviewed under Executive Order 12291, entitled Federal Regulation, and are not considered major regulation changes as defined in the Executive Order. These regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more, cause major increase in costs or prices for consumers, individual industries or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program Number 64.114)

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—housing and community development, Manufactured Home, Veterans.

These amendments are issued under authority granted the Administrator by sections 210(c), 1810 and 1819 of title 38, United States Code. The regulations are hereby adopted as final.

Approved: January 3, 1985.

Harry N. Walters,

Administrator.

PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is amended as follows:

1. In § 36.4301, the definitions of "Dwelling", "Real estate loan", and "Residential property" are revised and new definitions for "Lot" and "Manufactured home" are added following the definition of "Lien"; so that the revised and added material reads as follows:

§ 36.4301 Definitions

* * * * *

Dwelling. Any building designed primarily for use as a home consisting of not more than four family units plus an added unit for each veteran if more than one eligible veteran participates in the ownership thereof, except that in the case of a condominium housing development or project within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a the term is limited to one single-family residential unit. Also, a manufactured home,

permanently affixed to a lot owned by a veteran that is classified as real property under the laws of the State where it is located. (38 U.S.C. 1810(a)(9) and (f))

* * * * *

Lot. A parcel of land acceptable to the Administrator as a manufactured home site. (38 U.S.C. 1810(a)(9))

Manufactured home. A moveable dwelling unit designed and constructed for year-round occupancy by a single family, on land, containing permanent eating, cooking, sleeping and sanitary facilities. A double-wide manufactured home is a moveable dwelling designed for occupancy by one family and consisting of: (1) Two or more units intended to be joined together horizontally when located on a site, but capable of independent movement or (2) a unit having a section or sections which unfold along the entire length of the unit. For the purposes of this section of the VA regulations, manufactured home/lot loans guaranteed under the purview of §§ 36.4300 to 36.4393, inclusive, must be for units permanently affixed to a lot and considered to be real property under the laws of the State where it is located. If the loan is for the purchase of a manufactured home and lot it must be considered as one loan. (38 U.S.C. 1810(A)(9))

* * * * *

Real-estate loan. Any obligation incurred for the purchase of real property or a leasehold estate as limited in §§ 36.4300 to 36.4393, inclusive, or for the construction of fixtures or appurtenances thereon or for alterations, improvements, or repairs thereon required by §§ 36.4300 to 36.4393, inclusive, to be secured by a lien on such property or is so secured. Loans for the purpose specified in 38 U.S.C. 1810(a)(5) (refinancing of mortgage loans or other liens on a dwelling or farm residence), loans for the purpose specified in 38 U.S.C. 1810(a)(8) (refinancing of a VA guaranteed, insured or direct loan to lower the interest rate), loans for the purposes specified in 38 U.S.C. 1810(a)(9) (purchase of manufactured homes/lots or the refinancing of such loans in order to reduce the interest rate or purchase a lot, in States in which manufactured homes, when permanently affixed to a lot, are considered real property, and loans to purchase one-family residential units in condominium housing developments or projects within the purview of 38 U.S.C. 1810(A)(6) and §§ 36.4356 through 36.4360a shall also be considered real estate loans.

* * * * *

Residential property. (1) Any one-family residential unit in a condominium housing development within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a, (2) any manufactured home permanently affixed to a lot owned or being purchased by a veteran and considered to be real property under the laws of the State where it is located, and (3) any improved real property (other than a condominium housing development or a manufactured home and/or lot) or leasehold estate therein as limited by §§ 36.4300 to 36.4393, inclusive, the primary use of which is for occupancy as a home, consisting of not more than four family units, plus an added unit for each eligible veteran if more than one participates in the ownership thereof, or (4) any land to be purchased out of the proceeds of a loan for the construction of a dwelling, and on which such dwelling is to be erected. (38 U.S.C. 1810(f)(2) and (3))

* * * * *

2. In § 36.4302, paragraphs (a), (c)(1), (2) and (3), (f), (h)(3) and (i)(2) are revised to read as follows:

§ 36.4302 Computation of guaranties or insurance credits.

(a) With respect to a loan to a veteran guaranteed under 38 U.S.C. 1810 the guaranty may not exceed sixty (60) percent of the original principal amount or $27,500, whichever is less. With respect to a loan guaranteed under 38 U.S.C. 1810(a)(8) or (9)(B)(i), the dollar amount of guaranty may not exceed the original dollar amount of guaranty on the loan being refinanced. (38 U.S.C. 1803(a), 1810(c)).

* * * * *

(c) * * *

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from $27,500. The sum remaining is the amount of available entitlement for use, except that entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 1819 may not exceed $20,000.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from $27,500. The sum remaining is the amount of available entitlement for use, except that entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 1819 may not exceed $20,000.

(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 1819, the amount of entitlement used for that loan is subtracted from $27,500. The sum remaining is the amount of available entitlement for home loans or manufactured home/lot loans guaranteed under 38 U.S.C. 1810 only. To determine the amount of entitlement available for manufactured home loans processed under 38 U.S.C. 1819, the amount of entitlement previously used for that purpose is subtracted from $20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C. 1819.

(38 U.S.C. 1810(c), 1819(c)(4))

* * * * *

(f) A guaranty is reduced or increased pro rata with any deduction or increase in the amount of the guaranteed indebtedness, but in no event will the amount payable on a guaranty or the percentage of the indebtedness corresponding to that of the original guaranty whichever is less. However, on a graduated payment mortgage loan, the percentage of guaranty applicable to the original loan amount pursuant to paragraph (a) of this section shall apply to the loan indebtedness to the extent scheduled deferred interest is added to principal during the graduation period without regard to the original maximum dollar amount of guaranty. (38 U.S.C. 1803(b) and (d))

* * * * *

(h) * * *

(3) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor has been used originally. (38 U.S.C. 1810(e)(3))

* * * * *

(i) * * *

(2) An unmarried surviving spouse who was a co-obligor under an existing VA guaranteed, insured or direct loan shall be considered to be a veteran eligible for an interest rate reduction refinancing loan pursuant to 38 U.S.C. 1810(a)(8) or (9)(B)(i). (38 U.S.C. 1810 (e)(3))

3. In § 36.4306, new paragraph (g) is added to read as follows:

§ 36.4306 Refinancing of mortgage or other lien indebtedness.

* * * * *

(g) A veteran may refinance (38 U.S.C. 1810(a)(9)(B)(ii)) an existing loan that was for the purchase of, and is secured by, a manufactured home in order to purchase the lot on which the manufactured home is or will be permanently affixed, provided the following requirements are met:

(1) The refinancing of a manufactured home and the purchase of a lot must be considered as one loan;

(2) The manufactured home upon being permanently affixed to the lot will be considered real property under the laws of the State where it is located;

(3) The loan must be secured by the same manufactured home which is being refinanced and the real property on which the manufactured home is or will be located;

(4) The amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced; the purchase price, not to exceed the reasonable value of the lot; the costs of the necessary site preparation of the lot as determined by the Administrator; a reasonable discount as authorized in § 36.4312(d)(6) with respect to that portion of the loan used to refinance the existing purchase money lien on the manufactured home, and closing costs as authorized in § 36.4312.

(5) If the loan being refinanced was guaranteed by the VA, the portion of the loan made for the purpose of refinancing an existing purchase money manufactured home loan may be, guaranteed without regard to the outstanding guaranty entitlement available for use by the veteran, and the verteran's guaranty entitlement shall not be charged as a result of any guaranty provided for the refinancing portion of the loan. For the purposes enumerated in 38 U.S.C. 1802(b) the refinancing portion of the loan shall be considered to have been obtained with the guaranty entitlement used to obtain the VA-guaranteed loan being refinanced. The total guaranty for the new loan shall be the sum of the guaranty entitlement used to obtain the VA-guaranteed loan being refinanced and any additional guaranty entitlement available to the veteran. However, the total guaranty may not exeed sixty (60) percent of the new loan. [38 U.S.C. 1810(a)(9)(B)(ii), 1819(a) (1)(G) and (5)]

4. In § 36.4306a, the introduction of paragraph (a), subparagraphs (a)(3) and (4), and paragraphs (b) and (c) are revised to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) Pursuant to 38 U.S.C. 1810 (a)(8) and (9)(B)(i), a veteran may refinance an existing VA guaranteed, insured or direct loan to reduce the interest rate payable on the VA loan provided the following requirements are met:

* * * * *

(3) The dollar amount of the guaranty of the 38 U.S.C. 1810(a)(8) or (9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(4) The term of the refinancing loan (38 U.S.C. 1810(a)(8) may not exceed the original term of the loan being refinanced. For manufactured home loans that were previously guaranteed under 38 U.S.C. 1819 the loan term, if being refinanced under 38 U.S.C. 1810(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 1803(d)(1).

(b) Notwithstanding any other regulatory provision, the interest rate reduction refinancing loan may be guaranteed without regard to the amount of guaranty entitlement available for use by the veteran and the amount of the veteran's remaining guaranty entitlement, if any, shall not be charged for an interest rate reduction refinancing loan. The interest rate reduction refinancing loan will be guaranteed with the entitlement used by the veteran to obtain the loan being refinanced. The veteran's loan guaranty entitlement originally used for a purpose as enumerated in 38 U.S.C. 1810(a) (1) through (7) and (9)(A) (i) and (ii) and subsequently transferred to an interest rate reduction refinancing loan (38 U.S.C. 1810(a) (8) or (9)(B)(i)) shall be eligible for restoration when the interest rate reduction refinancing loan or subsequent interest rate reduction refinancing loans on the same property meets the requirements of § 36.4302(h).

(c) Title to the estate which is refinanced for the purpose of an interest rate reduction must be in conformity with § 36.4350.

(38 U.S.C. 1810(a) (8), (9)(B) (i) and (e))

§ 36.4308 [Amended]

5. In § 36.4308, paragraph (b) is amended by adding "or (9)(B)(i)" following the cite "38 U.S.C. 1810(a)(8)".

6. In 36.4311, paragraphs (a), (b), (c) and (e) are revised to read as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 13½ per centum per annum, effective August 13, 1984, the interest rate on on any home, manufactured home/lot loan guaranteed under 38 U.S.C. 1810, or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 13½ per centum per annum on the upaid principal balance. [38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 13¾ per centum per annum, effective August 13, 1984, the interest rate of any graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 13¾ per centum per annum. [38 U.S.C. 1803(c)(1))

(c) Effective August 13, 1984, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 15 per centum per annum on the unpaid principal balance. (38 U.S.C 1803(c)(1))

* * * * *

(e) Refinancing loans for the purpose of an interest rate reduction (38 U.S.C. 1810(a)(8) and (9)(B)(i) may specify an interest rate in excess of the rate specified in paragraph (a), (b) and (c) of this section provided the interest rate of the refinancing loan is less than the interest rate of the current VA loan being refinanced. (38 U.S.C. 1803(c)(1) and 1810(c))

7. In § 36.4312, paragraph (d)(6)(i) is revised to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(d) * * *

(6) * * *

(i) To refinance existing indebtedness pursuant to 38 U.S.C. (a)(5), (8), (9)(B)(i) or (ii);

* * * * *

8. In § 36.4336, paragraph (a)(2)(i) is revised to read as follows:

§ 36.4336 Eligibility of loans; reasonable value requirements.

(a) * * *

(2)(i) Except as to refinancing loans pursuant to 38 U.S.C. 1810(a)(8) or (9)(B)(i), the loan including any scheduled deferred interest added to principal, does not exceed the reasonable value of the property or projected reasonable value of a new home which is security for a graduated payment mortgage loan, as appropriate, as determined by the Administrator, and

* * * * *

(38 U.S.C. 210(c), 1810, 1819)

[FR Doc. 85-1803 Filed 1-23-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-2760-6]

Approval and Promulgation of Implementation Plans Maine; Table of EPA Approved Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is publishing a table which summarizes approval actions already taken to incorporate Maine air pollution regulations into the State Implementation Plan (SIP). The intended effect of this action is to make it easier to identify those Maine air pollution regulations, or portions thereof, which have been approved by EPA and made part of the federally-approved SIP.

EFFECTIVE DATE: This action will be effective March 25, 1985 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Margaret McDonough (617) 223-4869).

SUPPLEMENTARY INFORMATION: Since the State of Maine initially submitted its State Implementation Plan (SIP) to EPA in 1972, there have been numerous revisions to the plan. These revisions included changes to almost every regulation. The table which is being codified today at 40 CFR 52.1030 identifies those Maine regulations which are part of the federally-approved SIP. The table also provides the date on which EPA took final action to revise each regulation. Where only part of a regulation is federally approved, it is indicated in the comments section of the table. We are publishing this table in today's **Federal Register**, and making it part of the Code of Federal Regulations to assist the public in identifying those Maine regulations or portions thereof, which are federally approved. We intend to revise this table each time we approve a revision to the Maine SIP. The table published today has been developed primarily for informational purposes. It does not have any independent regulatory effect. The actual federally-approved Maine SIP is incorporated by reference at 40 CFR 52.1020. To the extent that this table codified at 40 CFR 52.1030 conflicts with 40 CFR 52.1020, 40 CFR 52.1020 governs.

EPA is publishing this table without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective (60 days from today).

Final Action

EPA is publishing a table of federally-approved Maine Air Pollution regulations at 40 CFR 52.1030.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

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

List of Subjects in 40 CFR Part 52

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

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

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

Dated: January 15, 1985.

Lee M. Thomas,

Acting Administrator.

PART 52—[AMENDED]

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

Subpart U—Maine

1. Subpart U is amended by adding § 53.1031 as follows:

§ 52.1031 EPA-Approved Maine regulations.

The following table identifies the State regulations which have been submitted to and approved by EPA as revisions to the Maine State Implementation Plan. This table is for informational purposes only and does not have any independent regulatory effect. To determine regulatory requirements for a specific situation consult the plan identified in § 52.1020. To the extent that this table conflicts with §§ 52.1020, 52.1020 governs.

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
Chapter:						
100	Definitions Regulations	5/07/79	1/3/80	45 FR 6784	(c)(10)	PSD Plan Only.
		12/24/79	2/19/80	45 FR 10766	(c)(11)	
		2/06/80				
101	Visible Emissions	10/10/79	2/17/82	47 FR 6829	(c)(17)	
102	Open Burning	1/31/72	5/31/72	37 FR 10842	(b)	
103	Fuel Burning Equipment Particulate Emission Standard	1/31/72	5/31/72	37 FR 10842	(b)	
104	Incinerator Particulate Emission Standard	1/31/72	5/31/72	37 FR 10842	(b)	
105	General Process Source Particulate Emission Standard	1/31/72	5/31/72	37 FR 10842	(b)	
106	Low Sulfur Fuel	1/31/72	5/31/72	37 FR 10842	(b)	
		2/08/78	1/06/82	47 FR 947	(c)(15)	Revised limits for Portland Peninsula only.
107	Sulfur Dioxide Emission Standards for Sulfite Pulp Mills	1/31/72	5/31/72	37 FR 10842	(b)	
108	Emission License Regulation	5/07/79	1/30/80	45 FR 6784	(c)(10)	PSD.
		12/24/79	2/19/80	45 FR 10766	(c)(11)	New Source Review.

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS—Continued

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
109	Emergency Episode Regulation	1/31/72	5/31/72	37 FR 10842	(b)	
110	Ambient Air Quality Standards	5/07/79	1/30/80	45 FR 6784	(c)(10)	
111	Petroleum Liquid Storage Vapor Control	5/07/79	2/19/80	45 FR 10766	(c)(11)	
112	Petroleum Liquids Transfer Recovery		2/19/80	45 FR 10766	(c)(11)	
		5/07/79	3/5/82	47 FR 9462	(c)(16)	Irving Oil, Searsport exempted.
113	Growth Offset Regulation	5/07/79	2/19/80	45 FR 10766	(c)(11)	Part of New Source Review program.
114	Classification of Air Quality Control Regions	5/07/79	1/30/80	45 FR 6874	(c)(10)	

NOTE.—1. The regulations are effective unless stated otherwise in comments section.

[FR Doc. 85-1682 Filed 1-23-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[EPA Action MO 1646; A-7-FRL-2761-7]

Approval and Promulgation of State Implementation Plans; Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving changes made by the State of Missouri to its regulations limiting particulate emissions from fuel burning sources of air pollution. These revisions are editorial in nature and do not change the existing emission limits. These changes have been submitted by the State as revisions to the Missouri State Implementation Plan (SIP). Approval by EPA makes the SIP consistent with the current State regulations.

EFFECTIVE DATE: This action will be effective March 25, 1985 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: A copy of the State's submission is available for review at the following addresses:

Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri

Missouri Department of Natural Resources, 1101 Rear Southwest Blvd., Jefferson City, Missouri

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

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

Written comments should be sent to: Daniel J. Wheeler, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler at (816) 374-3791, (FTS) 758-3791.

SUPPLEMENTARY INFORMATION: On September 24, 1984, the State of Missouri submitted revisions to its regulations limiting particulate emissions from fuel burning sources. These revisions were adopted by the Missouri Air Conservation Commission on July 26, 1984, after notice and public hearing.

Missouri has four different fuel burning regulations, affecting four different geographical areas of the State. Each of these rules contains an equation relating the allowable emission rate to the heat input of the subject source. In three of these rules, the equation has been rewritten from logarithmic form to exponential form without changing the emission limits. The fourth rule was already in exponential form.

Two of the rules contained tables of example emission limits. These tables have been deleted to make these two rules consistent with the other two.

All four of the rules contained a graphic representation of the emission limits for illustrative purposes only. The State has determined that these graphs are no longer needed and has deleted them from all four rules.

In summary, the State has streamlined its fuel burning rules and made them editorially similar without changing the EPA approved emission limits contained in them. Because there is no change in emission limits, there is no change in the control strategy. These changes are being approved so that the federally approved SIP is consistent with the current State regulations.

EPA believes this action is noncontroversial and is approving it without prior proposal. The public is advised that this action is effective 60 days after publication unless we receive written notice within 30 days from the date of publication that someone wishes to submit adverse or critical comments. In such case, this action will be withdrawn and rulemaking will commence again by announcing a proposal of this action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements.

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

Under 5 U.S.C. section 605(b), I certify that this revision will not have significant economic impact on a substantial number of small entities.

Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Office of the Federal Register on July 1, 1982.

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Incorporation by reference, Air pollution control agency, Particulate matters.

Dated: January 15, 1985.

Lee M. Thomas,

Acting Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart AA—Missouri

Section 52.1320 is amended by adding a new paragraph (c)(48) as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * *

(48) Revised rules 10 CSR 10-2.040, 3.060, 4.040 and 5.030 all entitled "Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating" were submitted September 24, 1984, by the Department of Natural Resources.

[FR Doc. 85-1680 Filed 1-23-85; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-9-FRL-2762-4]

Approval and Promulgation of Implementation Plans; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: A notice of proposed rulemaking (NPR) was published on October 25, 1984 (49 FR 39058). That notice proposed the approval of a number of rules which regulate volatile organic compound (VOC) stationary sources in ozone nonattainment areas in California. Today's notice approves these VOC rules, and incorporates them into the California State Implementation Plan (SIP). These revisions have been evaluated, and found to be consistent with the requirements of the Clean Air Act, 40 CFR Part 51 and EPA policy.

EFFECTIVE DATE: This action is effective February 25, 1985.

ADDRESS: A copy of today's revision to the California State Implementation Plan is located at:

Office of the Federal Register, 1100 "L" Street, NW., Room 8401 Washington, D.C. 20460.

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

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Director, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Thomas Rarick, (415) 974-7641.

SUPPLEMENTARY INFORMATION:

Background

On October 25, 1984, EPA published a NPR regarding VOC source categories. The NPR lists the VOC rules, discusses the VOC rule revisions and proposes their approval. Several California Air Pollution Control Districts (APCDs) submitted VOC rules for EPA's approval and incorporation into the Applicable SIP. The rules are necessary to control stationary source VOC emissions in nonattainment areas, and satisfy Part D requirements of the Clean Air Act.

Public Comments

No comments were received on the October 25, 1984 Notice of Proposed Rulemaking.

EPA Actions

EPA takes final action to approve the following VOC rules. The basis of their approvability is that they satisfy the requirements of Section 110 and Part D of the Clean Air Act as well as EPA policy.

April 11, 1983, Submittal

El Dorado County APCD

Rule 213.—Storage of Petroleum Products at Terminals and Large Bulk Loading Facilities.

March 14, 1984, Submittal

Bay Area Air Quality Management District (AQMD)

Regulation 8—Organic Compounds

Rule 31—Coating of Plastic Parts and Products
Rule 32—Wood Furniture and Cabinet Coatings

Kern County APCD

Rule 410.1—Architectural Coatings

San Diego County APDC

Rule 67.0—Architectural Coatings
Rule 67.1—Architectural Coatings Used by Governmental Agencies (deletion)

San Joaquin County APCD

Rule 409.1—Architectural Coatings
Rule 409.4—Surface Coating of Metal Parts and Products

South Coast AQMD

Rule 1108.1—Emulsified Asphalt
Rule 1141.1—Coatings and Ink Manufacturing

Ventura County APCD

Rule 74.2—Architectural Coatings

April 19, 1984, Submittal

Bay Area AQMD

Regulation 8—Organic Compounds

Rule 6—Terminals and Bulk Plants
Rule 7—Gasoline Dispensing Facilities
Rule 29—Aerospace Assembly Coating
Rule 33—Bulk Gas Distribution Facilities and Delivery Vehicles

Monterey Bay Unified APCD

Rule 426—Architectural Coatings

Sacramento County APCD

Rule 441—Organic Solvents
Rule 442—Architectural Coatings
Rule 444—Petroleum Solvent Dry Cleaning
Rule 445—Perchloroethylene Dry Cleaning
Rule 446—Storage of Petroleum Products
Rule 448—Gasoline Transfer into Stationary Storage Containers
Rule 449—Transfer of Gasoline into Vehicle Fuel Tanks
Rule 450—Rotogravure and Flexiographic Printing
Rule 451—Surface Coating of Manufactured Metal Parts and Products
Rule 452—Can Coating
Rule 453—Cutback and Emulsified Asphalt Paving Materials
Rule 454—Degreasing Operations
Rule 455—Pharmaceutical Manufacturing

South Coast AQMD

Rule 1124—Aerospace Coating

July 10, 1984, Submittals

Bay Area AQMD

Regulation 8—Organic Compounds

Rule 11—Metal Containers, Closure and Coil Coating
Rule 34—Landfill Operations
Rule 35—Coatings and Ink Manufacture

El Dorado County APCD

Rule 215—Architectural Coatings
Rule 216—Exemptions (deletion)
Rule 216—Organic Compounds
Rule 217—Identification of Coatings (deletion)

Madera County APCD

Rule 409—Architectural Coatings
Rule 410—Manufactured Metal Parts and Products

South Coast AQMD

Rule 1113—Architectural Coatings

Regulatory Process

The Office of Management and Budget has exempted these rules from the requirements of Section 3 of Executive Order 12291. Under section 307(b)(1) of the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 1985. This action may not be challenged later in proceedings to enforce its requirements.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations.

Authority: Secs. 110, 129, 171–178 and 301 (a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501 to 7508 and 7601 (a)).

Dated: January 17, 1985.

Lee M. Thomas,

Acting Administrator.

PART 52—[AMENDED]

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

Subpart F—California

1. Section 52.220 paragraph (c) is amended by adding new subparagraphs (138)(ii)(C), (153)(iii)(B), (iv)(B) and (v)–(viii), (154)(ii)(B), (iii)(B), (vi) and (vii) and (155)(i)–(iv) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(138) * * *

(ii) * * *

(C) New Rule 213.

* * * * *

(153) * * *

(iii) * * *

(B) Amended Rules 67.0 and 67.1 (deletion).

(iv) * * *

(B) Amended Rules 409.1 and 409.4.

(v) Bay Area AQMD.

(A) New Regulation 8, Rules 31 and 32.

(vi) Kern County APCD.

(A) Amended Rule 410.1.

(vii) South Coast AQMD.

(A) New or amended Rules 1108.1 and 1141.1.

(viii) Ventura County APCD.

(A) Amended Rule 74.2

* * * * *

(154) * * *

(ii) * * *

(B) Amended Rule 426.

(iii) * * *

(B) Amended Rules 441, 442, 444–446 and 448–455.

* * * * *

(vi) Bay Area AQMD.

(A) New or amended Regulation 8, Rules 6, 7, 29 and 33.

(vii) South Coast AQMD.

(A) Amended Rule 1124.

* * * * *

(155) Revised regulations for the following APCD's submitted July 10, 1984, by the Governor's designee.

(i) Bay Area AQMD.

(A) New or amended Regulation 8, Rules 11, 34 and 35.

(ii) El Dorado County APCD.

(A) New or amended Rules 215, 216 (deletion), 216 and 217 (deletion).

(iii) Madera County APCD.

(A) New or amended Rules 409 and 410.

(iv) South Coast AQMD.

(A) Amended Rule 1113.

* * * * *

[FR Doc. 85–1788 Filed 1–23–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 65

[A–4–FRL–2759–5]

Approval of a Delayed Compliance Order Issued Jointly by the Alabama Department of Environmental Management and the Jefferson County Board of Health

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order Issued Jointly by the Alabama Department of Environmental Management and the Jefferson County Board of Health to National Can Company. The Order requires National Can Company to bring air emissions from its lithographic press lines, roll coating lines, and end sealing lines in Jefferson County, Tarrant, Alabama, into compliance with Volatile Organic Compound air pollution control regulations contained in the federally approved Alabama State Implementation Plan (SIP). Because of the Administrator's approval, National Can Company's 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.

EFFECTIVE DATE: This rule takes effect on January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Ben Moore, Air Management Branch, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 881–4253.

ADDRESSEES: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air, Pesticides, and Toxics Management Division, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION: On October 9, 1984, the Regional Administrator of EPA's Region IV Office published in the **Federal Register**, 49 FR 39586, a notice proposing approval of a Delayed Compliance Order issued jointly by the Alabama Department of Environmental Management (ADEM) and the Jefferson County Board of Health (JCBH) to National Can Company. The notice asked for public comments by November 8, 1984, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice. However, a correction of a regulation previously stated needs to be made. Under ADEM's regulations subparagraph 6.11.1(c)(9) should be subparagraph 6.11.1(c)(4).

Therefore, the Delayed Compliance Order issued to National Can Company, is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places National Can Company, Penson Can Coating facility in Jefferson County, Tarrant, Alabama, on a schedule to bring its Volatile Organic Compounds (VOC) air emission points into compliance as expeditiously as practicable with Subparagraph 8.11.1(c)(1) and 8.11.1(c)(4) of the Jefferson County Board of Health's air pollution control rules and regulations, and subparagraphs 6.11.1(c)(1) and 6.11.1(c)(4) of the Alabama Department of Environmental Management's air pollution control regulations, part of the federally approved Alabama State Implementation Plan. The Order also imposes final compliance by December 31, 1985, and VOC emission limitations on the following:

Litho Lines, 69 lbs/day
Coater Lines, 2000 lbs/day
End Sealing Lines, 170 lbs/day
Annual Actual VOC Emissions, 846 T/yr

If the conditions of the Order are met, it will permit National Can Company to delay compliance with the SIP regulations covered by the Order no later than December 31, 1985. The facility is uanble to comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon

publication of this notice because of the immediate need to place National Can Company on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the Alabama State Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

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

Dated: January 17, 1985.

Lee M. Thomas,

Acting 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 amending § 65.141 by revising the fifth heading of the table and adding an entry to read as follows:

§ 65.141 EPA approval of State-Local Delayed Compliance Orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
National Can Co	Tarrant, Alabama	DCO-IV-8406	Jefferson Co. Subparagraphs 8.11.1(c)(1) and 8.11.1(c)(4) AL Dept. of Environmental Mgmt. Subparagraphs 6.11.1(c)(1) and 6.11.1(c)(4).	Oct. 9,1984	Dec. 31,1985.

[FR Doc. 85-1784 Filed 1-23-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[2754-6(a)]

Approval of a Delayed Compliance Order Issued by the Florida Department of Environmental Regulation and Hillsborough County Environmental Protection Commission to the Continental Can Company, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Florida Department of Environmental Regulation and Hillsborough County Environmental Protection Commission to the Continental Can Company, Inc. (Continental). The Order requires Continental to bring air emissions from its end seam compounding operations and two (2) "sheet" coating units located in Tampa, Florida, into compliance with the volatile organic compound air pollution control regulations contained in the federally approved Florida State Implementation Plan (SIP). Because of the Administrator's approval, Continental's 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.

EFFECTIVE DATE: This rule takes effect on January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William Voshell, Environmental Scientist, Southern Compliance Unit, Air Compliance Section, Air Management Branch, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 881-3433.

ADDRESSES: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air, Pesticides, and Toxics Management Division, Air Management Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION: On October 9, 1984, the Regional Administrator of EPA's Region IV Office published in the **Federal Register**, 49 FR 39584, a notice proposing approval of a Delayed Compliance Order issued by the Florida Department of Environmental Regulation and Hillsborough County Environmental Protection Commission to Continental. The notice asked for public comments by November 8, 1984, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice. Therefore, the Delayed Compliance Order issued to Continental is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Continental on a schedule to bring its end seam compounding operations and their two (2) "sheet" coating units into compliance as expeditiously as practicable with Rules 17-2.650(1)(f)1. and 17-2.650(1)(b)1.d.(iii) of the Florida Administrative Code, part of the federally approved Florida State Implementation Plan. The Order also imposes final compliance with the above regulations by September 1, 1985, through the incorporation of low solvent technology development or the installation of control equipment.

If the conditions of the Order are met, it will permit Continental to delay compliance with the SIP regulations covered by the Order no later than September 1, 1985. The facility is currently unable to comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place Continental Can Company, Inc., on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the Florida State Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

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

Dated: January 15, 1985.

Lee M. Thomas,

Acting 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. Section 65.141 is amended by inserting the following in the table:

§ 65.141 EPA approval of state delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
Continental Can Co., Inc.	Tampa, FL	DCO-IV-8405	Rule 17-2.650(1)(f)1. and Rule 17-2.650(1)(b)1.d.(iii).	Oct. 9, 1984	Sept. 1, 1985.

[FR Doc. 85-1681 Filed 1-23-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-5-FRL-2762-5]

Designation of Areas of Air Quality Planning Purposes; Attainment Status Designations; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is today approving a change to the designation status of Calhoun, Genesee, and Saginaw Counties in the State of Michigan, from nonattainment to attainment for the primary total suspended particulate (TSP) National Ambient Air Quality Standard (NAAQS). This revision to the Michigan State Implementation Plan (SIP) is based on eight quarters of the most recent representative monitor data which indicates attainment of the primary TSP NAAQS and evidence of an implemented control strategy that USEPA has approved. Designation of the current secondary TSP nonattainment status for the areas of Calhoun, Genesee, and Saginaw remain unchanged. The State supplied the TSP monitor data and supports this redesignation approval. Under the Clean Air Act (Act), designations can be changed if sufficient data are available to warrant such change.

DATE: This action is effective February 25, 1985.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available at the following addresses (It is recommended that you telephone the contact person listed below, before visiting the Region V Office):

United States Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48910.

FOR FURTHER INFORMATION CONTACT: Toni Lesser (312) 886-6037.

SUPPLEMENTARY INFORMATION: On July 20, 1983, The Michigan Department of Natural Resources (MDNR) submitted a request to change the total suspended particulate (TSP) Clean Air Act, Section 107, attainment status designation in portions of seven counties. USEPA provided comments on these redesignation requests in a letter dated September 28, 1983. On December 9, 1983, MDNR provided additional information for three of the counties, Calhoun, Genesee and Saginaw. MDNR provided a summary of TSP monitor data collected within the nonattainment areas since 1980, maps of the nonattainment areas and a basis for each redesignation request in their July 20, 1983, submittal.

On July 30, 1984 (49 FR 30337), USEPA proposed approval of the Michigan Department of Natural Resources' (MDNR) request to change the designation status of Calhoun, Genesee, and Saginaw Counties from nonattainment to attainment for the primary TSP NAAQS. During the 30-day comment period, no comments were received. That notice contains a detailed discussion of USEPA's review of each of the redesignation requests. In this rulemaking action, USEPA is redesignating the following areas:

Calhoun County

A small area surrounding the American Colloid and Hayes-Albion facilities in the town of Albion is currently designated as nonattainment for the primary TSP NAAQS. MDNR requested that this area be redesignated to nonattainment for the secondary TSP NAAQS.

MDNR's requested redesignation of Calhoun County is approvable, based on more than eight quarters of the most recent, representative monitor data which shows attainment of the primary TSP NAAQS and evidence of an implemented control strategy that EPA has fully approved.

Genesee County

A small portion of Flint surrounding a Buick Division facility is currently designated as nonattainment for the primary and secondary TSP NAAQS. MDNR requests that this area by redesignated to nonattainment for only the secondary TSP NAAQS.

MDNR's requested redesignation of Genesee County is approvable based on more than eight quarters of the most recent, representative monitor data which show attainment of the primary TSP NAAQS and the permanence of the Buick Division foundry shutdown.

Saginaw County

A small area surrounding the Chevrolet Division Nodular Iron and Grey Iron Foundries is currently designated as nonattainment for the primary and secondary TSP NAAQS. MDNR requests that this area be redesignated to nonattainment for only the secondary TSP NAAQS.

MDNR's requested redesignation of Saginaw County is approvable based on more than eight quarters of the most recent, representative monitor which show attainment of the primary TSP NAAQS and evidence of an implemented control strategy that EPA has fully approved.

USEPA is today approving changes in the designation status of Calhoun, Genesee, and Saginaw Counties in the State of Michigan. This final rulemaking action changes the primary TSP NAAQS attainment status designation from nonattainment to attainment for the areas described above in the Counties of Calhoun, Genesee, and Saginaw. However, the current Section 107 designations of nonattainment for the secondary TSP NAAQS in these areas remain applicable. USEPA's approval for changing the primary TSP NAAQS attainment status for nonattainment to attainment for these areas is based on all available information, including eight quarters of the most recent, representative data showing air quality improvement, and on the implemented control strategy.

Under section 107(d), the Administrator has promulgated the NAAQS attainment status of each area of every State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrants.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit March 25, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air Pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7404))

Dated: January 17, 1985.

Lee M. Thomas,
Acting Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES—MICHIGAN

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

§ 81.323 [Amended]

1. In Section 81.323 the following entries under the TSP table are revised as follows:

MICHIGAN—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 82 (Michigan portion)				X
AQCR 122—Except subareas defined				X
1. Genesee County:				
Starting on Industrial Ave., north to Pierson Rd., east to Dort Highway, south to Hitchcock St., south to Olive Ave., (extended), south to Robert T. Longway Boulevard, west and southwest to Industrial Ave.		X		
2. Lapeer County T7N-R12E that portion of section 17 which lies south M-21 and east of Fairground Rd.	X			
3. Midland County: R2E, T14N, section 14-16, 21-23, 26-28 and 33-35.		X		
4. Muskegon County: R16W, T9N, sections 5 and 6 R16W T10N, sections 21, 22 and 27-34.		X		
5. Saginaw County:				
a. Northeast section: Starting on Tittabawassee Rd., east to I-75, south to Wadsworth Ave. west to I-657, west and north to Tittabawassee Rd.		X		
b. Southwest section: T12N-R4E, the eastern half of section 34 (that which is east of Maple St.) and section 35.		X		
AQCR 125—Except subareas defined				X
1. Calhoun County: R5W, T2S, section 34		X		

[FR Doc. 85-1786 Filed 1-23-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[A-7-FRL-2760-5]

Hazardous Waste Management Program; Extension of Application Deadline for Final Authorization; Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Phase I Interim Authorization for Iowa.

SUMMARY: EPA previously granted an extension of interim authorization to January 26, 1985 for the State of Iowa. This State recently requested a further extension of interim authorization beyond the January 26, 1985 deadline. This extension would allow for continuation of its interim authorization under the Resource Conservation and Recovery Act (RCRA), as amended. EPA is granting the requested extension to avoid the reversion, on January 26, 1985, of Iowa's interim authorization. This notice extends Iowa's Phase I interim authorization until January 31, 1986, or until the date the State receives final authorization, whichever is earlier.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Sanderson, Air and Waste Compliance Branch, Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106, 816-374-5082.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization" is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121-271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 261, 262, 263, and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264 and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase II A covers general permitting procedures and technical standards for containers and tanks, and in certain instances (see Iowa section below for discussion), for surface impoundments and waste piles as well. Phase II B covers incinerator facilities, and Phase II C addresses landfills and land treatment facilities.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C 6226(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1-271.23.

40 CFR 271.122(c)(4) requires States which have received any, but not all, phases/components of interim authorization to have amended their original submissions by July 26, 1983 to include all components of Phase II. (See 47 FR 32377, July 26, 1982.) Further, 40 CFR 271.137(a) provides that interim authorization automatically terminated (reverted) on July 26, 1983 unless the State had submitted an application for all phases/components of interim authorization by that date. (See 47 FR 32377, July 26, 1982.) Where the authorization (approval) of the State program reverts, EPA is to administer and enforce the Federal program in the State.

However, 40 CFR 271.137(a) also allowed the Regional Administrator to extend the July 26, 1983 deadline for good cause so that the State program would not revert to EPA. A Regional Administrator could not, however, extend the deadline past January 26, 1985, as 40 CFR 271.122(b) provides that interim authorization of a State's hazardous waste program ends 24 months from the effective date of the last component of Phase II. The last component of the Phase II regulations was published on July 26, 1982. It became effective on January 26, 1983; thus, interim authorization was to end on January 26, 1985. (See 47 FR 32378, July 26, 1982.)

The Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, Nov. 8, 1984), amended section 3006(c) to allow interim authorization to extend to January 31, 1986. Therefore, the Regional Administrator has authority to

extend a State's interim authorization to January 31, 1986 in appropriate cases.

Iowa

Iowa received Phase I interim authorization on January 30, 1981. The State chose to apply for final authorization in lieu of additional increments of interim authorization. EPA granted Iowa's request for an extension of interim authorization until January 26, 1985 because the State had made a good faith effort to pursue regulatory and statutory amendments necessary to secure final authorization. This effort constituted "good cause" for extending the State's deadline for submission for their application for final authorization. (See 48 FR 35096, August 3, 1983.) The State submitted its official application in July 1984; however significant technical issues regarding resource availability, permitting, groundwater monitoring, compliance and enforcement, and the final authorization Memorandum of Agreement remain. Iowa expects that questions regarding resources will be resolved by early February 1985 and shortly thereafter, following reconsideration of outstanding issues, a decision regarding the State's application for final authorization will be forthcoming.

Decision

In consideration of the above schedule and the State's continued good faith efforts to adopt the hazardous waste program necessary to obtain final authorization, the immediate reversion of this State program because of its failure to meet the January 26, 1985 deadline is not in the best interest of Iowa, this Agency, the regulated community, or the citizens of Iowa. I have found good cause to extend the deadline for the final determination on the final authorization application for Iowa until January 31, 1986. After that, responsibity for implementing RCRA reverts to Federal control if Iowa has not received final authorization for Phase I and II.

Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this extension will not have a significant economic impact on a substantial number of small entities. The extension effectively suspends the applicability of certain Federal regulations in favor of this State's program, thereby eliminating duplicative requirements for handlers of hazardous waste in Iowa. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974.

Dated: January 15, 1985.

William Rice,

Acting Regional Administrator.

[FR Doc. 85-1583 Filed 1-23-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[A-7-FRL-2760-3]

Hazardous Waste Management Program; Extension of Application Deadline for Final Authorization; Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Phase I Interim Authorization for Kansas.

SUMMARY: EPA previously granted an extension of interim authorization to January 26, 1985 for the State of Kansas. This State recently requested a further extension of interim authorization beyond the January 26, 1985 deadline. This extension would allow for continuation of Kansas' interim authorization under the Resource Conservation and Recovery Act (RCRA), as amended. EPA is granting the requested extension to avoid the reversion, on January 26, 1985, of its interim authorization. This notice extends Kansas' Phase I interim authorization until January 31, 1986, or until the date the State receives final authorization, whichever is earlier.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Sanderson, Air and Waste Compliance Branch, Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106, 816-374-5082.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization" is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121-271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 261, 262, 263, and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264 and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase II A covers general permitting procedures and technical standards for containers and tanks, and, in certain instances (see Kansas section below for discussion), for surface impoundments and waste piles as well. Phase II B covers incinerator facilities, and Phase II C addresses landfills and land treatment facilities.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1-271.23.

40 CFR 271.122(c)(4) requires States which have received any, but not all, phases/components of interim authorization to have amended their original submissions by July 26, 1983 to include all components of Phase II. (See 47 FR 32377, July 26, 1982.) Further, 40 CFR 271.137(a) provides that interim authorization automatically terminated (reverted) on July 26, 1983 unless the State had submitted an application for all phases/components of interim authorization by that date. (See 47 FR 32377, July 26, 1982). Where the authorization (approval) of the State

program reverts, EPA is to administer and enforce the Federal program in the State.

However, 40 CFR 271.137(a) also allowed the Regional Administrator to extend the July 26, 1983 deadline for good cause so that the State program would not revert to EPA. A Regional Administrator could not, however, extend the deadline past January 26, 1985, as 40 CFR 271.122(b) provides that interim authorization of a State's hazardous waste program ends 24 months from the effective date of the last component of Phase II. The last component of the Phase II regulations was published on July 26, 1982. It became effective on January 26, 1983; thus, interim authorization was to end on January 26, 1985. (See 47 FR 32378, July 26, 1982.)

The Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, Nov. 8, 1984), amended section 3006(c) to allow interim authorization to extend to January 31, 1986. Therefore, the Regional Administrator has authority to extend a State's interim authorization to January 31, 1986 in appropriate cases.

Kansas

Kansas received Phase I interim authorization on September 17, 1981. The State chose to apply for final authorization in lieu of additional increments of interim authorization. EPA granted Kansas' request for an extension of interim authorization until January 26, 1985 because the State had made a good faith effort to pursue regulatory and statutory amendments necessary to secure final authorization. This effort constituted "good cause" for extending the State's deadline for submission of its application for final authorization. (See 48 FR 35097, August 3, 1983.) The State submitted its application in July 1984; however, on reviewing the State's application in light of public comments received, we believe additional clarification is needed on the State's authority in the area of imposing criminal fines per day and providing citizens the right to intervene in all civil actions. Kansas now intends to submit the necessary clarification by July 1985. Thus, a decision on the State's application for final authorization would be issued by January 31, 1986.

Decision

In consideration of the above schedule and the State's continued good faith efforts to adopt a hazardous waste program necessary to obtain final authorization, the reversion of Phase I authority to EPA is not in the best interest of Kansas, this Agency, the regulated community, or the citizens of Kansas. I have found good cause to extend the deadline for the final determination on the final authorization application for Kansas until January 31, 1986. After that, responsibility for implementing RCRA will revert to Federal control if Kansas has not received final authorization.

Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this extension will not have a significant economic impact on a substantial number of small entities. The extension effectively suspends the applicability of certain Federal regulations in favor of the State's program, thereby eliminating duplicative requirements for handlers of hazardous waste in Kansas. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974.

Dated: January 15, 1985.

William Rice,

Acting Regional Administrator.

[FR Doc. 85–1796 Filed 1–23–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW–1–FRL–2762–3]

Massachusetts; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of application of Commonwealth of Massachusetts for final authorization.

SUMMARY: Massachusetts has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Massachusetts' application and has reached a final determination that Massachusetts' hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its hazardous waste program.

EFFECTIVE DATE: Final Authorization for Massachusetts, for purposes of judicial review, shall be effective at 1:00 p.m. Eastern Time February 7, 1985.

FOR FURTHER INFORMATION CONTACT: Gary B. Gosbee, State Waste Programs Branch, U.S. EPA, Room 409, J.F. Kennedy Federal Building, Boston, Massachusetts 02203 (617) 223–1922.

SUPPLEMENTARY INFORMATION: Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type is known as "interim authorization". It is a temporary authorization and is not addressed here.

The second type of authorization is a "final" authorization that is granted by EPA if the Agency finds the State program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR Part 271.

On July 2, 1984, Massachusetts submitted a complete application to obtain final authorization to administer the RCRA program. Following detailed review of the complete application and the development of a Capability Assessment evaluating past State program performance and present resource capacity for future program implementation, EPA published a tentative decision announcing its intent to grant Massachusetts final authorization on October 17, 1984. Further background on the tentative determination to grant authorization appears at Vol. 49, No. 202, **Federal Register**, page 40610–40611, October 17, 1984.

The only outstanding issues at the time of publication of the tentative determination were the necessity for any existing emergency regulations to become permanent and effective and the formal submission of the Attorney General's statement once these

regulations became effective. The emergency regulations became permanent and effective on November 8, 1984, and the Attorney General's statement was formally submitted on December 14, 1984.

The tentative determination notice also announced the availability of the application for public comment and a public hearing was held on November 16, 1984. The public hearing was attended by one industry representative who submitted a letter which supported granting Massachusetts final authorization.

Decision

After review of the public comment and the submissions the State has made since the tentative decision, I conclude that the Massachusetts application for final authorization meets all statutory and regulatory requirements established by RCRA. Accordingly, Massachusetts is granted authorization to operate its hazardous waste program. Upon the effective date of this authorization and subject to the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984), Massachusetts has responsibility for permitting hazardous waste treatment, storage and disposal facilities within its borders and for carryiong out other aspects of the approved Massachussetts program. Massachussetts also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

The State is not being authorized for any requirements implementing the Hazardous and Solid Waste Amendments of 1984 (HSWA). Region I and Massachussetts are currently reviewing the Memorandum of Agreement (MOA) to revise it to address the requirements of the HSWA. As a result of the HSWA, major portions of RCRA apply directly in all States, thereby now creating a dual State/Federal regulatory program in authorized States. Further, the HSWA authorizes EPA to issue full or partial permits in Massachussetts in order to implement the HSWA until the State receives interim or final authorization for those areas. Thus, the current MOA, based on EPA's pre-HSWA authority, is inconsistent with the HSWA and will be revised to reflect the new RCRA requirements. (Because of the strict statutory time clock for processing final authorization applications, the State and EPA did not have ample time to revise the MOA before EPA's final approval of the State's application.)

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain federal regulations in favor of the state program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance with Executive Order 12291

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

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: January 2, 1985.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 85-1783 Filed 1-23-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-7-FRL-2763-1]

Nebraska Decision on Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination of Application of Nebraska for Final Authorization.

SUMMARY: Nebraska has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Nebraska's application and has reached a final determination that Nebraska's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program.

DATES: This authorization shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time 14 days after the date of publication in the **Federal Register.** This approval shall become effective February 7, 1985.

FOR FURTHER INFORMATION CONTACT: Chet McLaughlin, Chief, State Programs Section, U.S. Environmental Protection Agency, 324 East Eleventh Street, Kansas City, Missouri 64106, (816) 374-6534.

SUPPLEMENTARY INFORMATION: Section 3006 of RCRA allows the Environmental Protection Agency to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (section 3006(b) of RCRA, 42 U.S.C. 6226(b)).

On June 11, 1984, Nebraska submitted an official application to obtain final authorization to administer the RCRA program. On November 6, 1984, EPA published a tentative decision announcing its intent to grant Nebraska final authorization. Further background on the tentative decision to grant authorization appears at 49 FR 44312, November 6, 1984.

The notice of tentative determination listed several items of clarification to the application which EPA requested of the State. These are repeated with a summary of the response status as follows:

1. Submission of an enforcement agreement, with attendant procedures to demonstrate that the State program is equivalent to the Federal.

Status: An enforcement agreement between the State and EPA was signed October 17, 1984.

2. Amend the Nebraska Hazardous Waste Regulations to: (a) Make the definition of "existing portion" in Nebraska Regulation Title 128 Chapter 16, Subchapter 028 equivalent to the Federal definition as found at 40 CFR 260.10. (b) Delete the exception for disposal facilities from Nebraska regulation Title 128 Chapter 1 Subchapter 006 to make it equivalent to the Federal regulation found at 40 CFR 270.50(c).

Status: (a) The definition of existing portion in the regulations was amended by the Nebraska Environmental Control Council at its regular meeting December 7, 1984 as requested by EPA. (b) The

Department has submitted additional argument and the Attorney General has concurred, that the Nebraska regulation is more stringent than the Federal regulation. We concur that in not allowing a disposal facility to be permitted for a period of less than five years the effect on the regulated community of both systems is consistent.

3. The Attorney General's Statement must be amended or a new statement made to include regulations lawfully adopted July 20, 1984 and the regulatory changes noted above.

Status: The Attorney General has made a new statement which satisfies this requirement.

4. The Attorney General must either in the amended Statement or by Statement at the public hearing: (a) Confirm EPA's interpretation that the term "inspection" in Nebraska Statute 1527(2) amended by LB 1078 is broad enough to allow EPA to copy confidential records. (b) Address the issues of "burden of proof and degree of knowledge" found at 40 CFR 271.6(b)(2) to verify the equivalence of Nebraska Statutes.

Status: The newAttorney General's Statement confirms EPA's interpretation in (a) and verifies that the Nebraska Statutes on burden of proof are equivalent to the Federal.

A Letter of Intent was executed in recognition of the need for demonstration of recent improvement in the State program and set forth a series of actions whose accomplishments would be accepted as evidence of the State's capability. The State has responded to the Letter of Intent and has satisfactorily accomplished the requested actions.

Along with the tentative determination EPA announced the availability of the application for public comment and the date of a public hearing on the application. The public hearing was held, as scheduled, on December 13, 1984.

Public comments were made at the hearing and in writing to the Regional Office. Comments were in favor of granting final authorization. No comments were made in opposition to final authorization.

Some comments also addressed program deficiencies which were identified in the notice of tentative determination. These persons were concerned that these deficiencies if not corrected or allowed to recur would have an adverse effect on the Nebraska program.

The response to public comments acknowledged the support for authorization and addressed the concerns over past program deficiencies. These concerns were answered by a detailed summary of the State response to the Letter of Intent and the application clarifications. The response also noted that EPA will continue to monitor State performance under final authorization.

The Nebraska program does not include jurisdiction over Indian Lands. This authority will remain with EPA.

Final authorization is granted to Nebraska to operate its hazardous waste management program in lieu of the federal program subject to the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984). Nebraska now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program. Nebraska also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Prior to the Hazardous and Solid Waste Amendments (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. EPA's regulations no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit.

Now, however, under section 3006(g) of RCRA, 42 U.S.C. 6226(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Nebraska. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. EPA will administer and enforce the portions of the HSWA in Nebraska until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time the State will assist EPA's implementation of the HSWA under a Cooperative Agreement.

HSWA-related requirements that are more stringent than the State's program apply in Nebraska. Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the authorized State program and today's approval defines the applicable requirements in Nebraska. (Nebraska is not being authorized now for any requirement implementing the HSWA.)

EPA will be publishing a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States.

Region VII and Nebraska are currently reviewing the Memorandum of Agreement (MOA) to revise it to address the requirements of the HSWA. The current MOA provides that Nebraska shall administer the RCRA program in lieu of EPA and that EPA shall not issue permits in the State. Thus, it is inconsistent with the HSWA and will be revised to reflect EPA's and Nebraska's respective responsibilities under the new Federal/State regulatory scheme. (Because of the strict statutory time clock for processing final authorization applications, the State and EPA did not have ample time to revise the MOA before EPA's final approval of the State's application.)

Compliance with Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Nebraska's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act

as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 7, 1985.

Morris Kay,
Regional Administrator.

[FR Doc. 85-1790 Filed 1-23-85; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-3-FRL-2763-2]

Hazardous Waste Management Program; Request for Extension of Interim Authorization Period and Application Deadline for Final Authorization

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Interim Authorization Period.

SUMMARY: The States of Pennsylvania and West Virginia recently requested a further extension beyond the January 26, 1985 deadline, previously granted, for continuation of their interim authorization under the Resource Conservation and Recovery Act (RCRA), as amended (see 49 FR 7234, February 28, 1984 and 49 FR 30072, July 26, 1984). EPA is granting the requested extension. The extension avoids termination, on January 26, 1985, of interim authorization which EPA previously granted to these States. Therefore, the existing interim authorized programs in Pennsylvania and West Virginia, are now extended until January 31, 1986, or the date these States receive final authorization, whichever is earlier. In addition, EPA expects in the near future to publish a final decision concerning the final authorization under RCRA to the State of Maryland and the District of Columbia. However, the effective date of this decision may extend beyond the original January 26, 1985, deadline. Therefore, the existing interim authorized program in Maryland is now extended until February 28, 1985 and the existing interim authorized program in the District of Columbia is now extended until March 31, 1985, or the date these States receive final authorization, whichever is earlier.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Allen, Chief, Waste Management Branch, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, telephone: (215) 597-0980.

SUPPLEMENTARY INFORMATION:

Background

40 CFR 271.122(c)(4) requires States which have received any, but not all, Phases/Components of interim authorization to amend their original submissions by July 26, 1983 to include all Components of Phase II. (See 47 FR 32377, July 26, 1982.) Further, 40 CFR 271.137(a) provides that on July 26, 1983 interim authorization terminates except where the State has submitted by that date an application for all Phases/Components of interim authorization. (See 47 FR 32178, July 26, 1982.) Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the Federal program in that State.

However, 40 CFR 271.137(a) also allowed the Regional Administrator to extend the July 26, 1983 deadline for good cause so that the State program would not revert to EPA. A Regional Administrator could not, however, extent the deadline past January 26, 1985, as 40 CFR 271.122(b) provides that interim authorization of a State's hazardous waste program ends 24 months from the effective date of the last component of Phase II. The last component of Phase II regulations was published on July 26, 1982. It became effective on January 26, 1983; thus, interim authorization was to end on January 26, 1985. (See 47 FR 32365, July 26, 1982.)

The Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, Nov. 8, 1984), amended Section 3006(c) to allow interim authorization to extend to January 31, 1986. Therefore, the Regional Administrator has authority to extend a State's interim authorization to January 31, 1986 in appropriate cases.

Pennsylvania

Pennsylvania received Phase I interim authorization on May 21, 1981. The portion of the program covered by the Phase II components is being applied for as part of the State's application for final authorization. The State submitted a draft application for final authorization on January 31, 1984. Three sets of regulations, in various stages of promulgation, are needed before the State is eligible to apply for final authorization. The first of these are the financial responsibility regulations scheduled to be promulgated as final rules in January, 1985. The second and third regulatory packages are conforming regulatory amendments. The second and third sets of regulations are scheduled to be promulgated as final rule in February 1985 and June 1985, respectively. The State now intends to submit its official application for final authorization in July 1985, and to receive final authorization by December 1985.

West Virginia

West Virginia received Phase I and II, Components A and B, interim authorization on March 28, 1984. The portion of the program covered by Phase II Component C is being applied for as part of the State's application for final authorization. The State submitted a draft application for final authorization on March 30, 1984. Statutory and regulatory deficiencies identified during the review of the draft application must be addressed by the upcoming legislative session which convenes in February 1985. The State now intends to submit its official application for final authorization in March 1985 and to receive final authorization by September 1985.

Maryland

On July 8, 1981, the State of Maryland was granted interim authorization for Phase I, to operate its hazardous waste program in lieu of the Federal program. The State also received interim authorization for Phase II Component A on November 23, 1983 and, on July 9, 1984, received interim authorization for Phase II Components B and C. The Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984), amended section 3006(c) to allow interim authorization to extend to January 31, 1986, rather than to January 26, 1985, as had been provided for prior to the amendments. On October 26, 1984, a Notice was published in which the Regional Administrator made the tentative decision to grant the final authorization to the State of Maryland to operate its program in lieu of the Federal program (49 FR 43072). Therefore, interim authorization of Maryland's program is now extended to the effective date of the Regional Administrator's determination granting final authorization, or until February 28, 1984, whichever is earlier.

District of Columbia

On November 22, 1983, the District of Columbia was granted interim authorization for Phases I and II, Components A and B, to operate its hazardous waste program in lieu of the Federal program (48 FR 52720). The Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984), amended section 3006(c) to allow interim authorization to extend to January 31, 1986, rather than to January 26, 1985, as had been provided for prior to the amendments.

On November 26, 1984, a notice was published in which the Regional Administrator made the tentative decision to grant final authorization to operate its program in lieu of the Federal program (49 FR 46443). Therefore, interim authorization of the District's program is now extended to the effective date of the Regional Administrator's determination granting final authorization, or until March 31, 1985, whichever is earlier.

Decision

In consideration of the above schedules, the above mentioned States' continued efforts to obtain final authorization, and the Hazardous and Solid Waste Amendments of 1984 which allow interim authorization to extend to January 31, 1986, I have found good cause to grant extensions to the interim authorization period. Therefore, the interim authorized programs of Pennsylvania and West Virginia are now extended until January 31, 1986, or the effective dates of final authorization, whichever is earlier. In addition, the existing authorized program in Maryland is now extended until February 28, 1985 and the existing interim authorized program in the District of Columbia is now extended until March 31, 1985, or the date these States receive final authorization, whichever is earlier.

Compliance with Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this extension will not have a significant economic impact on a substantial number of small entities. The extension effectively suspends the applicability of certain Federal regulations in favor of these States' programs, thereby eliminating duplicative requirements for handlers of hazardous waste in Pennsylvania and West Virginia. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian Lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: January 16, 1985.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 85-1792 Filed 1-23-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-6-FRL-2762-8]

Louisiana; Decision on Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on Louisiana's application for Final Authorization.

SUMMARY: Louisiana has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Louisiana's application and has reached a final determination that Louisiana's Hazardous Waste Program satisfies all of the requirements necessary for Final Authorization. Thus EPA is granting Final Authorization to the State to operate its program in lieu of the Federal program in Louisiana.

EFFECTIVE DATE: Final Authorization for Louisiana, for purposes of judicial review, shall be effective February 7, 1985.

FOR FURTHER INFORMATION CONTACT: H.J. Parr, State Programs Section (6AW-HP), Hazardous Materials Branch, U.S. Environmental Protection Agency, Region VI, 1201 Elm St., Dallas, Texas 75270 (214) 767-2645.

SUPPLEMENTARY INFORMATION: Section 3006 of RCRA allows the EPA to authorize State hazardous waste management programs to operate in the state in lieu of the Federal program. To qualify for Final Authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other authorized state programs and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6226(b)).

On August 27, 1984, Louisiana submitted a complete application to obtain Final Authorization to administer a RCRA program. On November 7, 1984, EPA published a tentative decision announcing its intent to grant Louisiana Final Authorization.

Further background on the tentative decision appears at 49 FR 44506, November 7, 1984.

Along with the tentative determination, EPA announced the availability of the State's application for public review and comment and the date of a public hearing on the application and EPA's tentative determination. The public hearing was held on December 6, 1984, at 7:00 p.m in Baton Rouge, Louisiana.

The State of Louisiana received Interim Authorization for Phase I on December 19, 1980. Louisiana received Phase II, Components A, B and C Interim Authorization on January 24, 1984. Upon receiving Final Authorization, there will be no change in the status of permits or permitting authority on the effective date of this Final Determination.

Louisiana is not authorized by the Federal government to operate the RCRA program on Indian Lands and this authority will remain with EPA.

Responsiveness Summary

In addition to the Federal Register notice of tentative determination cited above, EPA publicized the notice of determination, the availability of the State's application for review and comment, and the public hearing by providing for publication of the notice in enough newspapers of general circulation to ensure State wide coverage and by mailing notices to persons on the State and EPA mailing lists. Approximately one (1) week prior to the hearing EPA mailed a follow-up notice to the major news media outlets in the State.

EPA received comments from one (1) person on the Tentative Decision to grant Final Authorization to Louisiana. The comment is summarized and responded to below.

1. *Comment:* The Commenter asks that the State not be authorized because of a concern with contaminated drinking water and the inability to get the State to take action on this concern. The commenter also states a concern with the lack of action by the state in addressing sugar cane burning and odors in the area where the commenter lives.

Response: EPA appreciates and solicits comments concerning the administration of a State's program either as relating to an individual facility or as to its effectiveness

throughout the State. EPA considers these comments both in reaching the decision to grant authorization and in the continuing process of overviewing the authorized State's implementation of its program. Specific complaints regarding an individual facility are investigated and responses provided directly to the complainant. EPA feels that the authorization process is not the proper forum for responding to complaints regarding individual facilities unless the complaints reflect on the State's implementation of the authorized program.

In response to the commenter's specific concerns, EPA feels that there does not appear to be a direct relationship between the problems enumerated by the commenter and the State's Hazardous Waste Management Program. EPA, though, has begun an investigation by the appropriate offices and will contact the commenter for specific information. EPA will see that whatever appropriate action needed is taken.

Decision

After reviewing the public comment, re-evaluating the State's submittal in light of that comment, and considering the performance of the State under Interim Authorization, it is my conclusion that Louisiana's application for Final Authorization meets all of the regulatory and statutory requirements established by RCRA.

Accordingly, Louisiana is granted Final Authorization to operate its hazardous waste management program. Subject to the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984), Louisiana now has responsibility for permitting treatment, storage and disposal facilities within its borders and for carrying out all other aspects of the RCRA program. Louisiana also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Prior to the Hazardous and Solid Waste Amendments (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. EPA's regulations no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit.

Now, however, under section 3006(g) of RCRA, 42 U.S.C. 6226(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Louisiana. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. EPA will administer and enforce the portions of the HSWA in Louisiana until Louisiana receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State will assist EPA's implementation of the HSWA under a Cooperative Agreement.

HSWA related requirements that are more stringent than the State's program apply in Louisiana. Any State requirement that is more stringent than an HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the authorized State program and today's approval defines the applicable requirements in Louisiana. (Louisiana is not being authorized now for any requirement implementing the HSWA.)

EPA will be publishing a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice should be referred to for further information.

Region VI and Louisiana are currently reviewing the Memorandum of Agreement (MOA) to revise it to address the requirements of the HSWA. The current MOA provides that Louisiana shall administer the RCRA program in lieu of EPA and that EPA shall not issue permits in the State. Thus, it is inconsistent with the HSWA and will be revised to reflect EPA's and Louisiana's respective responsibilities under the new Federal/State regulatory scheme. (Because of the strict statutory time clock for processing final authorization applications, the State and EPA did not have ample time to revise the MOA before EPA's final approval of the State's application.)

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Louisiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burden on small entities. This Final Determination therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority

This Final Determination is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b) and EPA delegation 8-7.

Dated: January 10, 1985.

Dick Whittington,

Regional Administrator.

[FR Doc. 85-1791 Filed 1-23-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 150

Public Safety Awards to Public Safety Officers

AGENCY: Federal Emergency Management Agency and Justice.

ACTION: Final rule.

SUMMARY: This rule amends a recently published final rule in order to extend the cut-off date for submission of nominations for the period October 29, 1972 through December 31, 1983 from November 15, 1984 to February 28, 1985. This change is made to allow the public additional time in which to submit nominations for public safety officer awards. Also, the date by which the Joint Public Safety Awards Board is to complete its actions for the period October 29, 1972 through December 31,

1983 is changed from December 14, 1984 to March 29, 1985. Finally, a correction has been made in a reference to a section due to a typographical error contained within the existing regulations.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Richard S. Buck, Office of General Counsel, Federal Emergency Management Agency, (202) 287–0385.

SUPPLEMENTARY INFORMATION: When the Public Safety Awards to Public Safety Officers regulation was published in the **Federal Register** (49 FR 39844, October 11, 1984), the public was to submit nominations of firefighters, law enforcement officers and civil defense officers for the President's Award and Distinguished Public Safety Service Award for acts of merit performed between October 29, 1972 and December 31, 1983 by a cut-off date of November 15, 1984. This allowed the public only 35 days in which to submit nominations. The amendment now gives the public additional time in which to submit nominations. Also, the date by which the Joint Public Safety Awards Board must complete its consideration of these nominations is changed to March 29, 1985 as a result of the change in the cut-off date for submission of nominations.

This rule is not a major rule within the meaning of the term in section 1.(b), Executive Order 12291, nor, since it involves awards to a limited number of individuals, is it a rule which has a significant economic impact on a substantial number of small entities.

List of Subjects in 44 CFR Part 150

Civil defense, Decorations, Medals and awards, Firefighters, Law enforcement officers.

By virtue of the authority contained in 15 U.S.C. 2214, Part 150 of Title 44, Code of Federal Regulations is amended as follows:

§ 150.3 [Amended]

1. Section 150.3(c) is amended by removing from the last sentence the date "November 15, 1984" and inserting in its place the date "February 28, 1985".

§ 150.5 [Amended]

2. Section 150.5(d) is amended by removing from the last sentence the date "December 14, 1984" and inserting in its place the date "March 29, 1985".

3. Section 150.10 is revised to read as follows:

§ 150.10 Date of submission of nominations.

Nominations may only be submitted for acts, services, or contributions occurring within two years preceding the November 15 cut-off date described in § 150.3(c), above. However, nominations submitted prior to the February 28, 1985 cut-off date may be made for acts, services or contributions occurring on or after October 29, 1972 (two years before the effective date of the Act).

Dated: January 14, 1985.

William French Smith,

Attorney General.

Dated: January 17, 1985.

Louis O. Giuffrida,

Director, Federal Emergency Management Agency.

[FR Doc. 85–1797 Filed 1–23–85; 8:45 am]

BILLING CODE 6718–01–M

Proposed Rules

Federal Register
Vol. 50, No. 16
Thursday, January 24, 1985

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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21664; File No. S7-36-84]

Exemption of Certain Direct Participation Program Interests From Sections 7(c) and 11(d)(1)

AGENCY: Securities and Exchange Commission.

ACTION: Extension of time for comment.

SUMMARY: The Securities and Exchange Commission announced today that it has extended until February 21, 1985 the date by which comments on Securities Exchange Act Release No. 34-21495 (November 16, 1984) [49 FR 46556 (November 27, 1984)] must be submitted. The Commission has received a request that the comment period be extended from the Real Estate Investment Committee of the North American Securities Administrators Association, Inc. ("NASAA") and the Pennsylvania Securities Commission. Due to the intervening holidays and their effect on committee members' schedules, NASAA believes that it would be difficult to prepare a complete and thorough comment letter within the previously announced period. The release originally had a comment period ending on January 22, 1985.

DATE: Comments must be received on or before February 21, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 (Reference File No. S7-36-84. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Kathryn V. Natale, Office of Chief Counsel, Division of Market Regulation, (202) 272-2848.

SUPPLEMENTARY INFORMATION: In Securities Exchange Act Release No. 34-21495, the Commission published for public comment proposed Rule 3a12-9 which would, pursuant to Section 3(a)(12) of the Exchange Act, deem interests in certain direct participation programs to be exempted securities for purposes of the arranging provisions of sections 7(c) and 11(d)(1) of the Exchange Act. If adopted, the new rule would permit broker-dealers to participate in a public offering of securities of direct participation programs that provides for mandatory payments on an installment basis, provided that certain conditions are met. Currently, Regulation T, promulgated by the Board of Governors of the Federal Reserve System under section 7 of the Exchange Act, and section 11(d)(1) of the Exchange Act are interpreted to prohibit broker-dealers from participating in public offerings of interests in direct participation programs with mandatory installment payment features.

In view of the request presented by the NASAA that the comment period be extended and in an effort to received the benefit of comments from the greatest number of interested persons, the Commission has extended the comment period for Securities Exchange Act Release No. 34-21495 until February 21, 1985.

By the Commission.

John Wheeler,

Secretary.

January 17, 1985.

[FR Doc. 85-1772 Filed 1-23-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-299-84]

Mixed Straddles; Straddle-by-Straddle Identification and Mixed Straddle Account Elections under Section 1092(b)(2)

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 Income Tax Regulations §§ 1.1092(b)-3T and 1.1092(b)-4T relating to mixed straddles. The text of those temporary regulations also servies as the text for a notice of proposed rulemaking for final income tax regulations.

DATES: Written comments and request for a public hearing must be delivered or mailed before March 25, 1985. The regulations under § 1.1092(b)-3T (relating to straddle-by-straddle identification) are proposed to be effective for straddles established on or after January 1, 1984. The regulations under § 1.1092(b)-4T (relating to mixed straddle accounts) are proposed to be effective for positions held on or after January 1, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC: LR: T (LR-299-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Neil W. Zyskind of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register**, amends 26 CFR by adding new §§ 1.1092(b)-3T and 1.1092(b)-4T. The final regulations would amend 26 CFR by adding new §§ 1.1092(b)-3 and 1.1092(b)-4 to Part 1 (Income Tax; Taxable years beginning after December 31, 1953). The regulations are to be issued under the authority contained in sections 1092(b)(1), 1092(b)(2), and 7805 of the Internal Revenue Code of 1954 (98 Stat. 627, 68A Stat. 917; 26 U.S.C. 1092(b)(1), 1092(b)(2), 7805). For the text of the temporary regulations, see FR Doc. 85-1817 (T.D. 8008) published in the Rules and Regulations portion of this issue of the **Federal Register.**

Special Analyses

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 rulemaking which solicits public comment, 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 subjct to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting the temporary regulations referred to in this document as final 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 will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Comments are invited concerning other forms of independent verification that taxpayers may use to identify their section 1092(b)(2) identified mixed straddles.

The collection of information requirements contained in this notice of proposed rulemaking has 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 Office of 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 Neil W. Zyskind 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, both on matters of substance and style.

List of Subjects in 26 CFR 1.001–1—1.1102–3

Income taxes, Gain and loss, Basis, Nontaxable exchanges, Straddles.

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 85–1818 Filed 1–18–85; 3:36 pm]

BILLING CODE 4830-01-M

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26 CFR Part 1

[LR–297–84]

Application of Loss Deferral and Wash Sale Rules and Treatment of Holding Periods and Losses With Respect to Straddle Positions

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 Income Tax Regulations §§ 1.1092(b)–1T, 1.1092(b)–2T, and 1.1092(b)–5T relating to the application of the loss deferral and wash sale rules and treatment of holding periods and losses with respect to straddle positions. The text of those temporary regulations also serves as the text for a notice of proposed rulemaking for final income tax regulations.

DATES: Written comments and requests for a public hearing must be delivered or mailed before March 25, 1985.

The regulations under § 1.1092(b)–1T are proposed to be effective for loss positions disposed of on or after January 24, 1985. Generally, the regulations under § 1.1092(b)–2T are proposed to be effective for positions established after June 23, 1981, in taxable years ending after such date. However, the regulations under § 1.1092(b)–2T(b)(2) are proposed to be effective for positions of mixed straddles established on or after January 1, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–297–84), Washington, D.C. 20224.

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

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portions of this issue of the **Federal Register** amends 26 CFR by adding new §§ 1.1092(b)–1T, 1.1092(b)–2T, and 1.1092(b)–5T. The final regulations would amend 26 CFR by adding new §§ 1.1092(b)–1, 1.1092(b)–2 and 1.1092(b)–5 to Part 1 (Income Tax; Taxable years beginning after December 31, 1953). The regulations are to be issued under the authority contained in sections 1092 (b) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 95 Stat. 324; 26 U.S.C. 1092 (b), 7805). For the text of the temporary regulations, see FR Doc. 85–1820 (T.D. 8007) published in the Rules and Regulations portion of this issue of the **Federal Register.**

Special Analyses

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 rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procudure 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 the temporary regulations referred to in this document as final regulations, consideration will be given 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 will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking has 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 Office of the 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 Neil W. Zyskind 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, both on matters of substance and style.

List of Subjects in 26 CFR 1.1001-1—1-1102-3

Income taxes, Gain and loss, Basis, Nontaxable exchanges, Straddles.

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 85-1819 Filed 1-18-85; 3:28 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

28 CFR Part 33

Criminal Justice Block Grants

AGENCY: Bureau of Justice Assistance, Justice.

ACTION: Proposed rule.

SUMMARY: The Bureau of Justice Assistance is publishing for public comment proposed regulations to implement a criminal justice block grant program. The proposed regulations describe procedures and requirements for applying for and administering block grant funds.

DATE: Comments are due on or before March 25, 1985.

ADDRESSES: Send comments to Eugene H. Dzikiewicz, Acting Deputy Director, Bureau of Justice Assistance, 633 Indiana Avenue, NW., Washington, DC. 20531 (202/724-5974).

FOR FURTHER INFORMATION CONTACT: Lynn C. Dixon, Bureau of Justice Assistance, 633 Indiana Avenue, NW., Wshington, DC. 20531 (202/272-6838). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Justice Assistance Act of 1984, Title II, Chapter VI, of Pub. L. 98-473, 98 Stat. 1837 (1984), establishes the Bureau of Justice Assistance and authorizes it to provide block grants to the states to assist states and local governments in carrying out programs which offer a high probability of improving the functioning of the criminal justice system, with special emphasis on violent crime and serious offenders. The Bureau is publishing for public comment proposed regulations to implement the new block grant program.

The proposed regulations provide significant discretion to the states to determine priorities and to carry out their administrative responsibilities. They assure minimum Federal instrusiveness and red tape, while preserving standards of accountability for public funds.

The regulations describe a process by which the Bureau of Justice Assistance will award block grants to the states upon approval of a simplified, two-year application. The states, in turn, make subgrants to state and local agencies for the conduct of specific programs.

States and localities may use block grant funds for programs that fall within one or more of the 18 eligible purposes listed in the Justice Assistance Act, and that meet the statutory program criteria of offering a high probability of improving the functioning of the criminal justice system, with emphasis on violent crime and serious offenders. The proposed regulations enumerate specific programs which have been determined by the Bureau to meet these criteria. Approval will be given for implementation of any of these programs, if the applicant agrees to include all critical elements in the program design. *Program Briefs* will be available from the Bureau describing these programs in greater detail. The *Briefs* are intended to aid states and localities in implementing these activities.

In order to grant flexibility to states and local units of government, the regulations also describe a process under which units of government can propose programs other than those already specified in the regulations. Under this process applicants must demonstrate that the programs they propose fall within one of the 18 eligible purposes and meet the statutory program criteria. Subject to approval by the Bureau, the programs proposed by the applicant may be variations of the programs specified in the regulations or completely different activities for which the applicant can show evidence of success.

In addition, states can propose to expend up to 10 per centum of their funds for programs of the type which the Director establishes as Discretionary Programs under Section 503 (a) of the Justice Assistance Act or innovative programs that are "* * * deemed by the Director as likely to prove successful * * *" (See Section 403(13).)

This proposed rule does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (1) An effect on the economy of $100 million or more; (b) a major increase in any costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Finally, because this regulation will not have significant economic impact on a substantial number of small entities, no analyses of the impact of these rules on such entities is required by the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 33

Grant Programs—Law, Courts, Crime, Law Enforcement, Reporting and Record Keeping Requirements.

For the reasons set forth in the preamble, it is proposed to amend Title 28 Code of Federal Regulations by adding Part 33 to read as follows:

PART 33—CRIMINAL JUSTICE BLOCK GRANTS

Subpart A—General Provisions

Sec.

33.1 General.
33.2 Statutory authority.
33.3 Submission date.
33.4 OMB approval of information collection requirements.

Subpart B—Eligible Applicants

33.10 General.
33.11 State government.
33.12 Units of local government.
33.13 Establishment of State Office.

Subpart C—Allocation of Funds

33.20 Fund availability.
33.21 Funds for administrative uses.
33.22 Match.
33.23 Title to personal property.
33.24 Limitations on fund use.

Subpart D—Purposes of Block Grant Funds

33.30 General.
33.31 Purposes of block grants.
33.32 Eligible purposes and programs.
33.33 Eligible programs.

Subpart E—Application Content

33.40 General.
33.41 Application content.

Subpart F—Submission and Review of Applications

33.50 General.
33.51 Review of state applications.

Subpart G—Additional Requirements

33.60 General.
33.61 Audit.
33.62 Civil rights.
33.63 General conditions and assurances.

Subpart H—Performance Reports

33.70 Annual performance report.

Subpart I—Suspension of Funding

33.60 Suspension of funding.

Subpart J—Program and Project Evaluation

33.90 General.
33.91 Establish rules and regulations for evaluations.
33.92 Compare effectiveness of programs.

Authority: Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et. seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473) (the Justice Assistance Act of 1984).

Subpart A—General Provisions

§ 33.1 General.

This Part defines eligibility criteria and sets forth requirements for application and administration of block grants by state and local governments.

§ 33.2 Statutory authority.

The statutory authority for the proposed regulations is the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et. seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473) (hereinafter referred to as the Justice Assistance Act of 1984 or the Act).

§ 33.3 Submission date.

The submission date for state applications will be ----------.

§ 33.4 OMB approval of information collection requirements

The information collection requirements in this Part 33 have been approved by the Office of Management and Budget under Control No. 1121–0113.

Subpart B—Eligible Applicants

§ 33.10 General

This subpart describes who may apply for block grants under the Justice Assistance Act of 1984. All states have been notified of the Act by the Office of Justice Programs, and each state must advise the Bureau of Justice Assistance, by April 1, 1985, if it chooses to participate in the Program.

§ 33.11 State government.

All states are eligible to apply for and receive block grants. State, as defined in the statute, means any state of the United States and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands are eligible to receive discretionary grant awards as are the states, units of local government, and private non-profit organizations.

§ 33.12 Units of local government.

If it is determined, during any fiscal year, that a portion of the funds allocated to a state will not be required, or that a state will be unable to qualify and receive funds, or that a state chooses not to participate in the program, then the Bureau of Justice Assistance shall award the funds allocated to the State directly to the state's units of local government. This includes urban, rural, and suburban units of local governments or combinations thereof, with the Bureau of Justice Assistance giving priority to those jurisdictions with the greatest need.

§ 33.13 Establishment of State Office.

(a) If a state chooses to participate in the Program, a State Office shall be designated by the Chief Executive for the purposes of:

(1) Preparing an application to obtain funds; and

(2) Administering funds received from the Bureau of Justice Assistance, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing and fund disbursements.

(b) An office or agency performing other functions within the state's Executive Branch may be designated as the State Office.

Subpart C—Allocation of Funds

§ 33.20 Fund availability.

(a) *Allocation to States.* The Justice Assistance Act provides that each participating state receive a base amount of $250,000 with the remaining allocated to each state on the basis of the state's relative share of total U.S. population. If a state does not elect to participate in the Act, all funds may be awarded by the Bureau directly to local units of government and combinations of units of local government within the state.

(b) *Allocation of Funds Within the State.* Funds are allocated to a state and a portion of those funds (Variable Pass-Through Formula) are further distributed within the state for use of local government or combinations of such units. Local units of government, in the aggregate, must receive a share of block grant funds totaling not less than their share of state criminal justice expenditures. Fiscal Year 1979 data compiled by the Bureau of Justice Statistics will be used to determine the pass-through funds. If more recent data are available which significantly change the ratio, a state should request approval of that data and provide the accompanying justification to the Bureau of Justice Assistance.

(c) *Allocation Based on Greatest Need.* The funds (Variable Pass-Through Formula) shall be distributed by the state among urban, rural, and suburban units of local government. Priority must be given to those jurisdictions with the greatest need.

(d) *Grant Period.* Federal financial aid and assistance to projects under Title I may be for a period not to exceed four years (in the aggregate), including any period occurring before the effective date of the Justice Assistance Act (October 12, 1984).

§ 33.21 Funds for administrative uses.

No funds may be used for administrative purposes.

§ 33.22 Match.

(a) Funds from the Act may be used to pay up to 50 percent of the cost of a program or project. The remaining non-Federal share will be provided in cash. Match for the block grant program will be provided for on a project by project basis. However, states may request the Bureau to approve exceptions such as match on a program by program basis, state-wide basis, unit-of-government basis, or a combination of the above. Requests will be contained in the application.

(b) Funds distributed to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) for any program or project described in the Act shall be 100 percentum of such cost. States requesting this waiver are required to obtain and submit to the Bureau of Justice Assistance documentation of Indian tribe eligibility.

§ 33.23 Title to personal property.

Notwithstanding any other provision of law, title to all expendable and nonexpendable personal property purchased with funds made available under the Title, including property with funds made available under this Title as in effect before the effective date of the Justice Assistance Act of 1984, shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State Office that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State Office, which shall seek to have the property used for criminal justice purposes elsewhere in the state prior to using it or

disposing of it in any other manner. If a State Office does not exist, certification will be made directly to the Bureau of Justice Assistance.

§ 33.24. Limitations on fund use.

In order to insure the most efficient and effective use of grant funds, the Justice Assistance Act places restrictions on the award of block monies of routine equipment, personnel costs, construction, supplanting of state and local funds, and land acquisition.

(a) *Routine Purchases of Equipment and Hardware.* The purchase of equipment and hardware with funds under this part is prohibited unless the purchase or acquisition is an incidental and necessary element of a program.

(b) *General Salaries and Personnel Costs.* Payment of personnel costs with grant funds is prohibited unless the costs are an incidental and necessary part of a program. Projects which have as their primary purpose the payment of usual salaries paid to employees generally, or to specific classes of employees within a jurisdiction, are prohibited. Notwithstanding the above, grant funds may be used to compensate personnel for time engaged in conducting or undergoing training programs or the compensation of personnel engaged in research, development, demonstration, or short-term programs.

(c) *Construction.* Construction projects are prohibited. Construction means the erection, acquisition or expansion of new or existing buildings or other physical facilities and includes renovation, repairs, or remodeling.

(d) *Land Acquisition.* No funds shall be used for the purpose of land acquisition.

(e) *Non-Supplantation.* Block grants funds shall not be used to supplant state or local funds. Pursuant to the Act, applicants shall certify that block grant monies will be used to increase the amounts of such funds that would, in the absence of Federal aid, be made available for criminal justice activities.

Subpart D—Purposes of Block Grant Funds

§ 33.30 General.

The Justice Assistance Act requires that block grant monies be used to support specific programs which offer a high probability of improving the functioning of the criminal justice system with special emphasis on violent crime and serious offenders. The Act further requires that grant funds be expended in statutory-specified purposes. This subpart sets forth the eligible program areas, criteria and uses of block grant support.

§ 33.31 Purposes of block grants.

All programs for which funding is requested must meet the following prorgam criteria:

(a) *High Probability of Improving the Criminal Justice System.* "High probability of improving the criminal justice system" means that a prudent assessment of the concepts and implementation plans included in a proposed program, project, approach, or practice, together with an assessment of the problem to which it is addressed and of data and information bearing on the problem, concept, and implementation plan, provides strong evidence that the proposed activities would result in identifiable improvements in the criminal justice system if implemented as proposed; and,

(b) *Special Emphasis on Violent Crime and Serious Offenders.* "Special emphasis on violent crime and serious offenders" means that a relationship exists between the program and violent crime, the victims of violent crime, serious offenders and their acts, and the prevention of violent crime and serious offenses. Violent crime, for the purpose of this program, includes homicide, robbery, assault, arson, residential burglary, child abuse and molestation, sexual assault, kidnapping, and all felonies involving weapons or narcotics trafficking. Serious offenders are those who commit violent crimes.

§ 33.32 Eligible purposes and programs.

(a) *Eligible Purposes.* To assist states and local units of government in carryingout this program, the Act lists the following purposes for which block grant funds may be used:

(1) Providing community and neighborhood programs that enable citizens and police to undertake initiatives to prevent and control neighborhood crime;

(2) Disrupting illicit commerce in stolen goods and property;

(3) Combating arson;

(4) Effectively investigating and bringing to trial white-collar crime, organized crime, public corruption crimes, and fraud against the Government;

(5) Identifying criminal cases involving persons (including juvenile offenders) with a history of serious criminal conduct in order to expedite the processing of such cases and to improve court systems management and sentencing practices and procedures in such cases;

(6) Developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;

(7) Providing alternatives to pretrial detention, jail, and prison for persons who pose no danger to the community;

(8) Providing programs which identify and meet the needs of drug-dependent offenders;

(9) Providing programs which alleviate prison and jail overcrowding and programs which identify existing state and Federal buildings suitable for prison use;

(10) Providing training, management, and technical assistance to criminal justice personnel and determining appropriate prosecutorial and judicial personnel needs;

(11) Providing prison industry projects designed to place inmates in a realistic working and training environment in which they will be enabled to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;

(12) Providing for operational information systems and workload management systems which improve the effectiveness of criminal justice agencies;

(13) Providing programs of assistance to public agencies and private non-profit organizations for demonstration programs (Section 501(a)(4) of the Act) which:

(i) The Director designates as priorities under the Discretionary Grant Program (Section 503(a) of the Act), under Part E; or,

(ii) Are innovative and have been deemed by the Director as likely to prove successful;

(14) Implementing programs which address critical problems of crime, such as trafficking, which have been certified by the Director as having proved successful, after a process of consultation coordinated by the Assistant Attorney General of the Office of Justice Programs with the Director of the National Institute of Justice, Director of the Bureau of Justice Statistics, and Administrator of the Office of Juvenile Justice and Delinquency Prevention;

(15) Providing programs which address the problem of serious offenses committed by juveniles;

(16) Addressing the problem of crime committed against the elderly;

(17) Providing training, technical assistance, and programs to assist state and local law enforcement authorities in rural areas in combating crime, with particular emphasis on violent crime, juvenile delinquency, and crime prevention; and,

(18) Improving the operational effectiveness of law enforcement by integrating and maximizing the effectiveness of policy field operations and the use of crime analysis techniques.

(b) *Eligible Programs.*

The Bureau of Justice Assistance has identified specific programs that meet these purposes, conform with the program critera and are eligible for block grant support. (See § 33.33 *Eligible Programs*). These specific programs are described fully in *Program Briefs* that are available from the Bureau of Justice Assistance. The list of specific programs will be expanded in the future. This expansion of selected programs will be based on the program criteria and will permit a more complete coverage of each of the statutory purposes. States and localities may use block funds to implement one or more of these programs, if they agree to comply with the critical elements set forth for each certified program in the description that follow, and provide data on the established performance indicators. State and localities selecting these programs may identify the eligible program in their application by name only, without further description.

(c) *Eligible Programs Publication.* The Bureau of Justice Assistance may, from time to time, certify new programs for funding that have been tested, demonstrated and evaluated, and have been found to meet the high probability criteria and address critical crime problems. Such certification will be published in the **Federal Register.**

(d) *Request for Approval of Other Programs.* Programs other than those identified by the Bureau of Justice Assistance may be proposed by the state and/or units of local government and approved for funding by the Bureau. To obtain approval to fund a proposed program, the applicant must provide in its application, a statement of the crime problem and evidence that the program proposed is likely to be successful in dealing with the problem and meets the program criteria outlined in § 33.31. The certification decision will be based on an assessment of the program concept and a determination that there is a high probability of the program improving the criminal justice system, with emphasis on violent crime and serious offenders. The application requirements for program approval are contained in Subpart E—Application Content.

§ 33.33 Eligible Programs

(a) The Act encourages the implementation of programs that have been proven successful. The Bureau of Justice Assistance, after a process of consultation coordinated by the Assistant Attorney General of the Office of Justice Progams with the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Juvenile Justice and Delinquency Prevention, certifies that the following programs have been proven successful:

(1)(i) *Purpose:* Purpose: Providing community and neighborhood programs that enable citizens and police to undertake initiatives to prevent and control neighborhood crime.

(ii) *Eligible Program: Community Crime Prevention.* This program aims to prevent crime and reduce the fear of crime through organized collective citizen action. Community crime prevention programs may be initiated by either law enforcement agencies or existing community groups, but each must have the active support and involvement of the other. Local programs must be designed to meet the needs and problems of specific neighborhoods or communities and particular population groups, including the elderly. They must make extensive use of volunteers. The specific services or activites to be implemented depend on the local situation and crime problem, but usually have, as a core element, neighborhood (block) watch with additional activities optional. Programs to provide training, technical assistance and other support services are also eligible for funding. Program objectives and elements are described in greater detail in the *Program Brief on Community Crime Prevention.*

(A) *Critical Elements:*

(*1*) Pre-program planning to determine needs and problems of community.

(*2*) Targeting of activities and services to meet local situation.

(*3*) Maximum use of volunteers.

(*4*) Cooperation of community organizations and law enforcement.

(B) *Optional Activities:* Projects must implement one or more of the following:

(*1*) Neighborhood Watch

(*2*) Operation ID

(*3*) Security Surveys

(*4*) Citizen Patrols

(*5*) Escort or Special Services for the Elderly

(*6*) Block Homes or Safe-Houses

(*7*) Neighborhood Clean-Ups in High Crime Areas

(*8*) Public Education

(*9*) Training

(*10*) Technical Assistance

(C) *Performance Indicators:*

(*1*) Number of staff assigned project.

(*2*) Total Federal/non-Federal dollars expended.

(*3*) Types of services provided.

(*4*) Units of service delivered (e.g., number of block watches organized).

(*5*) Number of volunteer participating.

(2)(i) *Purpose:* Disrupting illicit commerce in stolen goods and property.

(ii) *Eligible Program: Property Crime (STING) Program.* This program targets the apprehension and prosecution of burglars/thieves as well as those individuals who provide the outlets for receipt of stolen good and property. The majority of the model program have established *storefronts* in which law enforcement officers pose as fences who buy stolen goods. In areas where there is a high concentration of organized crime, programs have employed techniques to infiltrate organizations in order to obtain evidence for prosecution of serious crime. Program objectives and elements are described in greater detail in the *Program Brief on Property Crime (STING) Program.*

(A) *Critical Elements:*

(*I*) Program planning, which consists of:

(*i*) Analysis of the stolen property redistribution system in the jurisdiction.

(*ii*) Selection of the target criminal population and/or property at which the program will be directed.

(*iii*) Establishment of policies and procedures governing roles of participants, and program implementation.

(*2*) Establishment of records maintenance and management system; security management procedures; and stolen property/contraband/evidence management.

(*3*) Implementation of operations, including undercover activities and ongoing intelligence gathering and analysis.

(*4*) Coordination with prosecutorial personal in case development and proper use of undercover techniques; and cooperation with victims to assure return of property.

(B) *Performance Indicators:*

(*1*) Total Federal/non-Federal dollars expended.

(*2*) Number of arrests and type of offense.

(*3*) Number of convictions.

(*4*) Dollars value of property received.

(*5*) Dollar value of property returned to victims.

(*6*) Number of fencing operations disrupted.

(3)(i) *Propose:* Combating arson.

(ii) *Eligible Program: Arson Prevention and Control Program.* This program employs the task force concept as a strategy to prevent and control the malicious or fraudulent burning of property. It attempts to reduce the incidence of arson and increase arrest, prosecution and conviction rates. The program focuses on arson that is

economically motivated. Program objectives and elements are described in greater detail in the *Program Brief on Arson Prevention and Control.*

(A) *Critical Elements:*

(*1*) Program planning to establish:

(*i*) An understanding to the area's specific arson problems.

(*ii*) A selection of program priorities, strategies, and the targeting of the criminal population.

(*iii*) An outline of policies and procedures for program participants and program implementation.

(*iv*) Written agreements indicating participation in the program, acceptance of established criteria and procedures, and commitment of resources.

(*2*) Establishment of a system for collecting and analyzing data to target and identify arson patterns, methods and areas of vulnerability.

(*3*) Establishment of investigative and prosecutorial elements directed at the crime of arson.

(*4*) Involvement of community groups and private industry in support of the program.

(B) *Performance Indicators:*

(*1*) Number of staff assigned to the project.

(*2*) Total Federal/non-Federal dollars expended.

(*3*) Number of confirmed arson incidents reported during reporting period.

(*4*) Number of confirmed arson incidents reported during equivalent pre-reporting period.

(*5*) Number of incidents resulting in a prosecution during program period.

(*6*) Number of incidents resulting in a prosecution during equivalent pre-reporting period.

(*7*) Number of prosecutions resulting in conviction.

(*8*) Amount of property damage/loss caused by incendiary/suspicious fires during program period.

(*9*) Amount of property damage/loss by incendiary/suspicious fires during equivalent pre-reporting period.

(4) *Purpose:* Effectively investigating and bringing to trial white-collar crime, organized crime, public corruption crime, and fraud against the Government. [No eligible program has been certified by the Bureau. Applicant may propose programs for approval in accordance with the provisions of § 33.32(d).]

(5)(i) *Purpose:* Identifying criminal cases involving persons (including juvenile offenders) with a history of serious criminal conduct in order to expedite the processing of such cases and to improve court system management and sentencing practice and procedures in such cases.

(ii) *Eligible Program: Career Criminal Prosecution Program.* This program targets the identification and prosecution of violent and repeat offenders. Model efforts include a full time prosecution unit devoted to increasing the rate of prosecution of such offenders, special screening criteria, and policies that initiate or enchance vertical prosecution. Program objectives and elements are described in greater detail in the *Program Brief on Career Criminal Prosecution.*

(A) *Critical Elements:*

(*1*) Screening and prosecution criteria to identify cases involving violent offenses and repeat offenders.

(*2*) A separate, full-time prosecutorial unit for violent and repeat offenders to enable vertical prosecution of assigned cases.

(*3*) Reduction of caseload to enable thorough case preparation/presentation.

(*4*) A policy requiring limited or no plea negotiations.

(*5*) A policy of opposing pre-trial motions for continuances.

(*6*) A policy to maintain effective communications with victims and witnesses.

(B) *Performance Indicators:*

(*1*) Number of full-time prosecutors assigned to unit.

(*2*) Total Federal/non-Federal dollars expended.

(*3*) Number of cases prosecuted.

(*5*) Number of and percentage of cases resulting in conviction.

(*6*) Number and percentage of individuals incarcerated.

(iii) *Eligible Program: Court Delay Reduction Program.* This program expedites the processing of felony cases in trial courts. It emphasizes reduction of backlogs while maintaining equitable treatment and due process. Model programs result in reduction of case processing time, minimization of court appearances for victims and witnesses, and improvement of the public's perception of the quality of the criminal justice system. This program is available for both metropolitan trial courts and state-level court systems. Program objectives and elements are described in greater detail in the *Program Brief on Court Delay Reduction.*

(A) *Critical Elements:* Both the metropolitan and the state level programs are divided into two phases, planning and implementation.

(*1*) *Planning* (Phase I):

(*i*) Formation of delay reduction advisory committee.

(*ii*) Data collection, analysis, and problem identification.

(*iii*) Adoption of case processing goals for criminal cases.

(*iv*) Development of action plan(s).

(*2*) *Implementation* (Phase II):

(*i*) Education of trial judges and others on objectives, standards and procedures.

(*ii*) Systematic monitoring of all criminal cases filed in participating courts.

(*iii*) System for regular acquisition and assessment of data from each trial court (state level only).

(*iv*) Modification of rules and procedures at all levels of program participaton when program results indicate need for changes.

(B) *Performance Indicators:*

(*1*) Total Federal and non-Federal dollars expended.

(*2*) Number of backlogged cases at beginning of program (days from arrest to trial):

(*i*) Number of cases: 1—90 days.

(*ii*) Number of cases: 91—180 days.

(*iii*) Number of cases: 181—270 days.

(*iv*) Number of cases: 271—360 days.

(*v*) Number of cases: 360 days and more.

(*3*) Number of backlogged cases at end of program (days from arrest to trial):

(*i*) Number of cases: 1—90 days.

(*ii*) Number of cases: 91—180 days.

(*iii*) Number of cases: 18—270 days.

(*iv*) Number of cases: 271—360 days.

(*v*) Number of cases: 360 days or more.

(*4*) Percentage of cases disposed of during the reporting period that met time to disposition standards.

(*5*) Reduction in the average number of continuances from the equivalent preprogram period.

(6)(i) *Purpose:* Developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes.

(ii) *Eligible Program: Victim and Witness Assistance.* This program provides services and assistance to victims and witnesses in order to speed their recovery from the financial loss, physical suffering and emotional trauma of victimization, and to assure proper and sensitive treatment of innocent victims in the criminal justice process. Victim and witness assistance programs usually encompass a wide range of support services. The specific services to be provided, and the specific target group should reflect local needs and priorities. Program objectives and elements are described in greater detail in the *Program Brief on Victim and Witness Assistance.*

(A) *Critical Elements:*

(*1*) Analysis of the community's victim/witness needs and problems.

(2) Targeting of existing and planned activities and services to respond to this community situation.

(3) Formulation of agreements for cooperation between criminal justice system agencies and public and private victim/witness service providers.

(B) *Optional Activities:* Projects must implement a minimum of three (3) or more of the following:

(1) 24 hour crisis intervention and support or emergency services.

(2) Counseling.

(3) Assistance with compensation claims, creditors, community referrals, and restitution.

(4) Police, prosecutor or court-related services.

(5) Safety (including shelter), supportive counseling, social services support and criminal justice advocacy.

(6) Training and education for individuals having direct contact with the victims, i.e., police, medical personnel, prosecutors, judges, etc.

(C) *Performance Indicators:*

(1) Number of staff assigned to project.

(2) Total Federal/non-Federal dollars expended.

(3) Types of services provided.

(4) Number of victims/witnesses served (by type of service).

(5) Number of criminal justice personnel and others trained.

(7)(i) *Purpose:* Providing alternatives to pretrial detention, jail, and prison for persons who pose no danger to the community.

(ii) *Eligible Program: Jail Overcrowding/Alternatives to Pretrial Detention.* This program aims to control jail population through improved intake screening which assures that persons who should be in jail are detained, and that alternatives are available for those requiring less than maximum supervision. Particular care must be taken that persons charged with violent crimes be detained and that the impact on victims and witnesses be a factor in screening decisions. The program calls for the development of a jail population management plan as part of a planning phase, followed by implementation of specific activities and services. Among the activities and services that may be funded are central intake and screening, pretrial services, diversion to detoxification centers, citation release, community corrections, sentencing alternatives, and jail management information systems. Program objectives and elements are described in greater detail in the *Program Brief on Jail Overcrowding/Alternatives to Pretrial Detention.*

(A) *Critical Elements:*

(1) Implementation of program by state.

(2) Formation of broad-based jail policy committee.

(3) Program planning that includes data collection, analysis, problem identification, and development of jail population management plan, including the removal of juveniles from adult jails and lockups.

(4) Implementation of plan.

(B) *Optional Activities:* Based on their plans, projects must implement one or more of the following activities or components:

(1) Central Intake and Classification

(2) Comprehensive Pre-trial Services

(3) Diversion of Public Inebriates to Detoxification Centers

(4) Diversion of Juveniles to Secure and Non-secure Alternatives

(5) Citation Release

(6) Community Correction Centers

(7) Sentencing Alternatives (including Restitution and Work Release)

(8) Jail Management Information System

(C) *Performance Indicators:*

(1) Number of staff assigned to project.

(2) Total Federal/non-Federal dollars expended.

(3) Pretrial jail population—before and after.

(4) Types of services and alternatives implemented.

(5) Numbers of arrestees served/diverted by type of alternative.

(6) Convicted clients completing alternative punishment successfully.

(7) Re-arrest rate of released defendants.

(8) Estimated jail days saved.

(8)(i) *Purpose:* Providing programs which identify and meet the needs of drug-dependent offenders.

(ii) *Eligible Program: Treatment Alternatives to Street Crime Program (TASC).* This program intervenes in the criminal justice process by early identification of substance-abusing offenders, referral to community treatment resources, and monitoring of treatment. Model programs provide the following services: screening arrestees, providing diagnostic/referral services for treatment, and monitoring progress of clients. Persons charged with or convicted of violent crimes including murder, rape, arson, armed robbery, sexual assault, burglary, child molestation, and manslaughter are excluded. Program objectives and elements are described in greater detail in the *Program Brief on Treatment Alternatives to Street Crime.*

(A) *Critical Elements:*

(1) Broad-based support by criminal justice agencies.

(2) Establishment of TASC advisory board.

(3) Establishment of administrative management unit with full-time director.

(4) Development of specific program eligibility criteria.

(5) Establishment of a process for screening potential clients and court liaison.

(6) Development of methods for assessing most appropriate treatment approaches.

(7) Documentation of the availability of community treatment programs and their willingness to accept TASC clients.

(8) Establishment of monitoring/tracking system.

(B) *Performance Indicators:*

(1) Number of staff assigned to project.

(2) Total Federal/non-Federal dollars expended.

(3) Number of persons screened.

(4) Number of clients accepted.

(5) Number of clients completing program.

(6) Number of client re-arrests while in the program.

(9) *Purposes:* Providing programs which alleviate prison and jail overcrowding and programs which identify existing state and Federal buildings suitable for prison use. [No eligible program has been certified by the Bureau. Applicants may propose programs for approval in accordance with the provisions of Section 33.32(d).]

(10)(i) *Purpose:* Provide training, management, and technical assistance to criminal justice personnel and determining appropriate prosecutorial and judicial personnel needs.

(ii) *Eligible Program: Training and Technical Assistance.* This program provides support for programs selected for eligibility. All training must be other than basic entry-level or recruit training. The purpose of the technical assistance shall be to share technology critical to successful implementation and management of eligible programs.

(A) *Critical Elements:*

(1) Identification of training and technical assistance needs.

(2) Systematic identification of most suitable provider.

(3) Program staff commitment to participate with and follow through on advice of provider.

(4) All training and technical assistance in support of eligible programs.

(B) *Performance Indicators:*

(1) Total Federal/non-Federal dollars expended.

(2) Numbers of persons trained and types of training.

(3) Number of instance of technical assistance provided and types.

(11) *Purposes:* Providing prison industry projects designed to place inmates in a realistic working and training environment in which they will be enabled to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution. (No eligible program has been certified by the Bureau. Applicants may propose programs for approval in accordance with the provisions of § 33.32(d).)

(12)(i) *Purposes:* Providing for operational information systems and workload management systems which improve the effectiveness of criminal justice agencies.

(ii) *Eligible Program: Prosecution Management Support System.* This program uses automated data processing systems to support priority prosecution, improved conviction rates, speedy trial management, and improved efficiency/effectiveness of the prosecutor's office. Model programs result in information systems which support prosecution activities such as identification of violent and career criminals, case and subpoena preparation and witness notification. Systems are used to monitor management decisions and prosecutor actions and to reduce case processing time and case preparation time. Program objectives and elements are described in greater detail in the *Program Brief on Prosecution Management Support System.*

(A) *Critical Elements:*

(1) Pre-program needs assessment.

(2) Implementation plan for fulfilling information needs and improving management and research capabilities.

(3) Process for monitoring management decisions and prosecutor actions.

(B) *Performance Indicators:*

(1) Number of staff assigned to project.

(2) Total Federal/non-Federal dollars expended.

(3) Case processing time, pre and post reporting period.

(4) Conviction rates, pre and post reporting period.

(13) *Purpose:* Providing programs of the same types as programs described in section 501(a)(4):

(i) Which the Director establishes under Section 503(a) of the Justice Assistance Act as discretionary programs for financial assistance; and

(ii) Which are innovative and have been deemed by the Director as likely to prove successful.

(14) *Purpose:* Implement programs which address critical problems of crime, such as drug trafficking, which have been certified by the Director, after a process of consultation coordinated by the Assistant Attorney General, Office of Justice Programs, with the Director of the National Institute of Justice, Director of the Bureau of Justice Statistics, and Administrator of the Office of Juvenile Justice and Delinquency Prevention, as having proved successful.

(15)(i) *Purpose:* Providing programs which address the problem of serious offenses committed by juveniles.

(ii) *Eligible Program: Restitution by Juvenile Offenders:* This program promotes the use of restitution by juvenile offenders to make juveniles accountable to the victim and the community and to increase community confidence in the juvenile justice system. Juvenile restitution has been an effective alternative to incarceration in jurisdictions that have used it, reducing recidivism and providing benefits to victims. Assistance in the design and development of Juvenile Restitution Programs funded under this Program is available through the Restitution Education, Training and Technical Assistance (RESTTA) Program funded by the Office of Juvenile Justice and Delinquency prevention; details are described in a special program brief.

(A) *Critical Elements:*

(1) Legal authority to order restitution as a disposition for delinquent offenses.

(2) Commitment of the court and juvenile justice personnel.

(3) Pre-program planning to establish written policies and procedures, including:

(*i*) The stage of the system at which restitution will be initiated;

(*ii*) Specification of the target population; and

(*iii*) Establishment of procedures for determining the appropriate restitution to be rendered by the juvenile offender, enforcing restitution orders.

(4) Program management and administration should describe:

(*i*) Agency roles and responsibilities; and

(*ii*) Case management and tracking system for performance indicators.

(5) Community involvement in the program.

(B) *Performance Indicators:*

(1) Personnel:

(*i*) Number employed full and part-time in restitution; and

(*ii*) Average restitution caseload per restitution/probation officer.

(2) Program participation:

(*i*) Number of juveniles by offense type;

(*ii*) Type and amount of restitution ordered; and

(*iii*) Number of victims (by type and amount of loss/injury) receiving restitution.

(3) Number/percent juveniles successfully completing their restitution orders.

(4) Total amount of restitution collected/completed.

(5) Number obtaining restitution-related employment/job services.

(6) Total Federal/non-Federal dollars expended annually.

(7) Operational costs per case.

(8) Number of participants rearrested during the program.

(9) Number of participants incarcerated as a result of a rearrest or program failure.

(10) Number retaining restitution-related employment following completion.

(11) Victim satisfaction with the program.

(16)(i) *Purpose:* Addressing the problem of crime committed against the elderly.

(ii) Many of the programs identified under other purposes indirectly address the problem of crime against the elderly. Victim and witness assistance programs and community crime prevention programs in particular provide services that reflect the particular needs of the elderly.

(17)(i) *Purpose:* Provide training, technical assistance, and programs to assist state and local law enforcement authorities in rural areas in combating crime, with particular emphasis on violent crime, juvenile delinquency, and crime prevention.

(ii) Many of the programs identified under other purposes are equally applicable to rural and urban areas.

(18)(i) *Purpose:* Improve the operational effectiveness of law enforcement by integrating and maximizing the effectiveness of police field operations and the use of crime analysis techniques.

(ii) *Eligible Program: Integrated Criminal Apprehension Program (ICAP).* This program integrates and directs law enforcement activities relative to the prevention, detection and investigation of serious and violent crime. Components of model programs have included systematic data collection and analysis, crime analysis, structured planning and service delivery. The program emphasizes better use of existing resources and better management of the patrol operation and investigative process. It results in a process which increases arrests for serious crimes. Program objectives and

elements are described in greater detail in the *Program Brief on Integrated Criminal Apprehension.*

(A) *Critical Elements:*

(*1*) Commitment of law enforcement agency top management to concept of manpower deployment based on crime analysis.

(*2*) Modification of agency data gathering methods to enhance planning and crime analysis.

(*3*) Establishment of crime analysis and planning function.

(*4*) Implementation of strategies, tactics and processes, based on analysis that contribute to better management of criminal investigation and patrol.

(B) *Performance Indicators:*

(*1*) Number of staff assigned to project.

(*2*) Total Federal/non-Federal dollars expended.

(*3*) Types of strategies implemented e.g., directed patrol, crime analysis.

(*4*) Types of crimes targeted.

(*5*) Clearance rates (by arrest) for targeted crimes during pre-reporting and reporting periods.

(*6*) Conviction rates for targeted crimes during pre-reporting and reporting periods.

Subpart E—Application Content

§ 33.40 General.

This subpart sets forth the required programmatic content of block grant applications.

§ 33.41 Application content.

(a) *Purpose of the Application.* States are required to submit for approval a state application which meets the requirements of the Act. Applications by the state must set forth programs covering a two-year period which meet the objectives of the Act. Applications must be amended annually if new programs are to be added to the application, or if the programs contained in the approved application are not implemented. After the review and comment period for these regulations, the Bureau of Justice Assistance will provide and *Application Kit* and *Program Briefs* to each interested state.

(b) *Non-Participating State.* If a State chooses not to participate in the program or is determined to be ineligible for grant funds, units of local government may submit an application meeting all requirements of § 33.41 to the Bureau of Justice Assistance. The unit of local government is responsible for all activities which would normally be the responsiblity of the State Office.

(c) *Program Designation.* The application must include a designation as to which objective (purpose) specified in § 33.32 each program/project is intended to achieve and identify the State Agency or unit of local government that will implement each program/project.

(d) *Confidential Information.* Applications which request funds for the STING Program should not state the location of the project. The application should only include the program designation, the funds involved, and the number of projects. The state agency or unit of local government implementing the project will be made known to the Bureau of Justice Assistance upon request or upon completion of the project.

(e) *Bureau Approval of Programs.* No grant may be made by a state to an eligible recipient unless the criminal justice programs and projects meet the purposes of Section 403(a) of the Act and receive certification by the Bureau of Justice Assistance.

(1) The regulations enumerate specific programs which have been determined to have a high probability of improving the criminal justice system. Approval will be given for implementation of any of these progams if the applicant agrees to all critical elements in the program design. An applicant need only identify the program, which purpose each program is intended to achieve, identify the state agency or unit of local government (including the recipient agencies' address) which will implement each program, list the Federal funds for each program, and identify the matching funds.

(2) Applications which request program approval and funds under the Act (those programs not included in § 33.33) must include, in addition to the above information, a discription of the program (including its critical elements and performance indicators) and evidence that the program meets the criteria of offering a high probability of improving the functioning of the criminal justice system, with special emphasis on violent crime and serious offenders. Evidence may include the results of any evaluations of previous tests or demonstrations of the program concept.

(3) States can propose to expend up to 10 per centum of their funds for programs of the type which the Director, Bureau of Justice Assistance, establishes as Discretionary Programs under Section 503(a) of the Act; or innovative programs that are deemed by the Director as likely to prove successful.

(i) To propose a program established as a Discretionary Program, a state must only provide the information required under § 33.41(e)(1) above. The Discretionary Programs will be made available at a later date.

(ii) A state must request approval/certification by the Director, Bureau of Justice Assistance, to fund a program which is innovative and likely to prove successful. In addition to the information required under paragraph (e)(1) of this section the state must provide a description of the program, a summary of the program elements, rationale as to why the program is likely to prove successful, and the performance indicators.

(f) *Identification of Matching Funds.* The application must clearly identify the matching funds.

(g) *Audit Requirement.* The application must indicate the dates covered by the Agency's last audit and the anticipated dates of the next audit. If an agency does not meet the requirements of OMB Circular A–102, the application must fully detail the planned activities (including dates) for compliance with the Circular. If the applicant is not in compliance with the Circular by the end of Fiscal Year 1985, funds will be suspended and no additional awards will be made until compliance is achieved. An Agency must demonstrate compliance and future plans to maintain compliance. The applicant is reminded that the A-102 Circular extends to all subgrantees. Subgrantees must certify compliance with the audit requirements to the State Office.

(h) *Civil Rights Contact.* The application must identify the Civil Rights contact person who will serve as the liaison in Civil Rights matters with the Office of Justice Programs. The application should include the individual's title, address and phone number.

(i) *Application Assurances.* The following assurances must be included in the application and executed by the Chief Executive or other officer designated by the Chief Executive under procedures which set up the State Office.

(1) An assurance that, following the first fiscal year covered by an application and each fiscal year thereafter, the applicant will submit to the Bureau of Justice Assistance, where the applicant is a state or jurisdiction in a non-participating state, a performance report concerning the activities carried out, and an assessment of their impact;

(2) A certification that Federal funds made available under this Title will not be used to supplant state of local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for criminal justice activities;

(3) An assurance that funds accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records as the Bureau of Justice Assistance shall prescribe will be provided to assure fiscal control, proper management, and efficient disbursement of funds received under this title;

(4) An assurance that the applicant shall maintain such data and information and submit such reports, in such form, at such times, and containing such information as the Bureau of Justice Assistance may require;

(5) A certification that the programs meet all the requirements, that all the information contained in the application is correct, that there has been appropriate coordination with affected agencies, and that the applicant will comply with all provisions of the Justice Assistance Act of 1984 and all other applicable Federal laws;

(6) If the applicant is a state, an assurance that not more than 10 percentum of the aggregate amount of funds received by a State under this part for a fiscal year will be distributed for programs and projects designated as intended to achieve the purpose specified in Section 403(a)(13) of the Act;

(7) An assurance that the state will take into account the needs and requests of units of general local government in the state and encourage local initiative in the development of programs which meet the purposes of the Act;

(8) An assurance that the state application decribed in this section, and any amendment to such application; has been submitted for review to the state legislature or its designated body; and,

(9) An assurance that the state application and any amendment thereto was made public before submission to the Bureau and, to the extent provided under state law or established procedure, an opportunity to comment thereon was provided to citizens and to neighborhood and community groups.

Subpart F—Submission and Review of Applications

§ 33.50 General.

This subpart describes the process and criteria for Bureau of Justice Assistance review and approval of state applications and amendments.

§ 33.51 Review of State applications.

State applications must be submitted in the form and at the time prescribed by the Bureau of Justice Assistance.

(a) *Review Criteria.* The Act provides the basis for review and approval or disapproval of state applications and amendments in whole or in part. These are:

(1) Compliance with the statutory requirements of the Justice Assistance Act and, if applicable, the regulations of the Bureau of Justice Assistance.

(2) Compliance with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR Part 30. States must submit block grant applications to the state "Single Point of Contact", if there is a "Single Point of Contact", and if this program has been selected for coverage by the state process at the same time applications are submitted to the Federal agency. State processes have 60 days starting from the application submission date to comment on applications. Applicants should contact their state "Single Point of Contact" as soon as possible to alert them of the prospective application and receive instructions regarding the process.

(b) *Sixty Day Rule.* The Bureau of Justice Assistance shall approve or disapprove applications or amendments within sixty (60) days of official receipt. The application or amendment shall be considered approved unless the Bureau of Justice Assistance informs the applicant in writing of specific reasons for disapproval prior to the expiration of the 60-day period. Applications that are incomplete, as determined by the Bureau of Justice Assistance, shall not be considered officially received for purposes of the 60-day rule.

(c) *Written Notification and Reasons for Disapproval.* The Bureau of Justice Assistance shall notify the applicant in writing of the specific reasons for the disapproval of the application or amendment, in whole or in part.

(d) *Affirmative Finding.* The Bureau of Justice Assistance, prior to approval of the application or amendments, must make an affirmative finding in writing that the program or project has been reviewed in accordance with Section 405 of the Act and is likely to contribute effectively to the achievement of the objectives of the Act.

Subpart G—Additional Requirements

§ 33.60 General.

This subpart sets forth additional requirements under the Justice Assistance Act. Applicants for block grants must assure compliance with each of these requirements.

§ 33.61 Audit.

The state must assure that it adheres to the audit requirements enumerated in the "Financial and Administrative Guide for Grants," Guidelines Manual 7100.1, Chapter 8, contains a comprehensive statement of audit policies and requirements relative to grantees and subgrantees. This requirement extends to the State's subgrantees, in that, a local unit of government must certify to the State Office that compliance with A-102 has been achieved or will be achieved within the current Fiscal Year.

§ 33.62 Civil rights.

(a) The Act provides that "no person in any state shall on the grounds of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this title." Recipients of funds under the Act are also subject to the provisions of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G.

(b) To carry out the state's Federal civil rights responsibilities, the state must submit the following assurances and information:

(1) Assure that it will comply, and that subgrantees and contractors will comply with all applicable nondiscrimination requirements;

(2) Assure that in the event a Federal or state court or Federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs;

(3) Assure that it will require that every applicant required to formulate an Equal Employment Opportunity Program (EEOP) in accordance with 28 CFR 42.301 et. seq., submit a certification to the state that it has a current EEOP on file which meets the requirements therein;

(4) Assure that it will provide an EEOP if required to maintain one, where the application is for $500,000 or more and provide the EEOP of any subgrantee of $500,000 or more; and

(5) The name of a civil rights contact person who has lead responsibilities in insuring that all applicable civil rights requirements are met and who shall act

as liaison in civil rights matters with OCRC.

§ 33.63 General conditions and assurances.

(a) *Compliance with Statutes.* The applicant state must assure and certify that the state and its subgrantees and contactors will comply with applicable provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the provisions of the "Financial and Administrative Guide for Grants," M 7100.1.

(b) *Compliance with other Federal Laws, Orders, Circulars.* The applicant state must further assure and certify that the state and its subgrantees and contractors will adhere to regulations of the Department and other applicable Federal laws, orders and circulars. These general Federal laws and regulations are described in greater detail in the "Financial and Administrative Guide for Grants," M 7100.1.

Subpart H—Performance Reports

§ 33.70 Annual performance report.

(a) The state shall submit annually to the Bureau of Justice Assistance a performance report covering the activities carried out under the grant award. States shall submit their reports to th Bureau of Justice Assistance by no later than December 31 for the activities undertaken and results achieved during the prior Federal fiscal year.

(b) For each subgrant, the performance report will include:

(1) a summary description;

(2) the data gathered based on the approved indicators;

(3) program evaluation results, if available; and,

(4) an assessment of the impact of the activities carried out.

(c) In addition, the State Office is required to notify the Bureau of Justice Assistance immediately upon the award of a subgrant. The information required is as follows: Program purpose, program title, grantee name and address, subgrantee name and address, funding level (Federal and match) and the grant period.

Subpart I—Suspension of Funding

§ 33.80 Suspension of funding.

(a) The Bureau of Justice Assistance shall suspend funding in whole or in part for a sate that implements programs or projects which fail to conform to the requirements or statutory objectives of the Act.

(b) The Bureau of Justice Assistance shall suspend funding for an approved application if the applicant fails to submit an annual performance report as required by Section 33.70.

(c) The Bureau of Justice Assistance shall suspend funding of an approved application if the applicant fails to comply with the requirements of OMB Circular A–102.

Subpart J—Program and Project Evaluation

§ 33.90 General.

This Subpart sets forth the evaluation responsibilities of the Bureau of Justice Assistance as required by Section 801 of the Act.

§ 33.91 Establish rules and regulations for evaluation.

The Bureau of Justice Assistance will, after a process of consultation coordinated by the Assistant Attorney General, Office of Justice Programs, with the National Institute of Justice, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, state and local governments, and the appropriate public and private agencies, establish such rules and regulations as are necessary to assure the continuing evaluation of selected programs or projects conducted pursuant to parts D and E of the Act in order to determine:

(a) whether such programs or projects have achieved the performance goals stated in the original application are of proven effectiveness, have a record of proven success, or offer a high probability of improving the criminal justice system;

(b) whether such programs or projects have contributed or are likely to contribute to the improvement of the criminal justice system and the reduction and prevention of crime;

(c) their cost in relation to their effectiveness in achieving stated goals;

(d) their impact on communities and participants; and,

(e) their implication for related programs.

§ 33.92 Compare effectiveness of programs.

In conducting the evaluations described in this subpart, the Bureau of Justice Assistance will, when practical, compare the effectiveness of programs conducted by similar applicants and different applicants.

Lois Haight Herrington,

Assistant Attorney General.

[FR Doc. 85–1745 Filed 1–23–85; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

29 CFR Part 2520

Proposed Exemption and Alternative Method of Annual Reporting for Plans Investing in Certain Entities

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Proposed rulemaking.

SUMMARY: This document contains a notice of a proposed regulation under the Employee Retirement Income Security Act of 1974 (ERISA or the Act). The proposal would provide a limited exemption from the reporting and disclosure requirements of ERISA and an alternative method of annual reporting of investments in certain entities whose assets would be deemed to be plan assets under a proposed regulation published in the **Federal Register** on January 8, 1985 (50 FR 961). If adopted, the regulation would affect the reporting of financial information by plans which invest in certain entities.

DATES: Written comments regarding the proposal must be received by March 25, 1985. If adopted, the proposal will be effective 90 days from the date of its publication in final form and will apply to plan years ending on or after that date.

ADDRESSES: Written comments (preferably three copies) should be submitted to the Division of Reporting and Disclosure, Office of Pension and Welfare Benefit Programs, Room N–4472, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210. Attention: Plan Assets Direct Filing Alternative. All comments should make clear reference to the section of the proposal to which they apply. All written comments will be available for public inspection at the Public Disclosure Room, Office of Pension and Welfare Benefit Programs, Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: George Holmes, Office of Reporting and Plan Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20210, (202) 523–8515 (not a toll free number) or Douglas Wham, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210, (202) 523–7923 (not a toll free number).

SUPPLEMENTARY INFORMATION:

(A). **Proposed Alternative Method of Compliance**

Under part 1 of Title I of ERISA, employee benefit plans subject to Title I are required to file an annual report with the Secretary. The contents, basic format, and date of filing are prescribed in 29 CFR 2520.103–1 et seq. In proposed regulations defining the term "plan assets" that were published on January 8, 1985 (50 FR 961) when a plan invests in certain entities its assets include an undivided interest in each of the underlying assets of the entity. In such cases, information regarding both the plan's investment in the entity and the underlying assets of the entity would have to be included as part of the plan's annual report. The plan administrator, in those circumstances, would have the responsibility to obtain information regarding the underlying assets of the entity and certain transactions of the entity and to include that information in the plan's annual report. In order to reduce the burden of complying with the annual reporting requirements in this situation, the Department is proposing an alternative method of annual reporting of such investments. Proposed new regulation § 2520.103–12 describes this alternative method.

Under paragraph (a) of proposed section 103–12, the plan administrator need not include in the plan's annual report any information regarding the underlying assets and individual transactions of the entity. Instead, the administrator will report only the value of the plan's investment or units of participation in the entity on the appropriate Return/Report Form (Form 5500 Series), in the manner prescribed in the instructions to the Form. As a condition for using this alternative, however, certain information regarding the entity must be filed directly with the Secretary on behalf of the plan administrator no later than the date on which the plan's annual report is due. Such information, described in greater detail below and in paragraph (b) of the proposed regulation, relates primarily to the financial condition of the entity for its fiscal year ending with or within the plan year for which the plan's annual report is made. Although this information would not be filed with the Return/Report Form filed by the plan administrator, it would constitute, nevertheless, part of the plan's annual report for purposes of the reporting and disclosure requirements of ERISA.

Paragraph (b) of section 103–12 would require the following information regarding the investment entity to be reported directly to the Department: (1) Name, address and EIN of the entity; (2) a list of all plans investing in the entity identified by plan name, plan number, and name and EIN of the plan sponsor as they appear on the annual return/report; (3) statement of assets and liabilities of the entity; (4) statement of income and expenses of the entity; (5) schedules of assets held for investment (including acquisitions and dispositions), leases and obligations in default, and compensation paid by the entity for services[1]; and (6) report of an independent qualified public accountant with respect to the statements and schedules furnished to the Department in accordance with this section. The instructions to the annual reporting forms will contain specific instructions concerning the reporting of this information.

The Department has decided not to require information regarding transactions by the entity with parties in interest of the investing plans or transactions by the entity in excess of three percent of the current value of plan assets. It appears to the Department that to require the reporting of such information would unnecessarily increase costs and administrative burdens to plans because of the difficulties plan administrators and managers of the affected entities would encounter in compiling the information and because of the questionable value of the information to participants and to the Department.

Paragraph (c) of proposed section 103–12 limits the availability of the alternative method to those cases where the entity holds the assets of two or more plans which are not members of a "related group" of employee benefit plans. The proposed regulation establishes two tests for determining whether an employee benefit plan is "related" to another employee benefit plan. First, every group of two or more plans each of which receives 10 percent or more of its aggregate contributions from the same employer or from members of the same controlled group of corporations[2] is a "related group" of plans. Second, a plan that is a jointly-trusted multi-employer plan, or a plan that is maintained by an employee organization, is a member of a related group of employee benefit plans with respect to: (1) Every other jointly trusteed plan that is maintained under a collective bargaining agreement negotiated by the same employee organization (or by an affiliated employee organization), and (2) every other plan that is maintained directly by the same employee organization (or by an affiliated employee organization).

The paragraph also provides that the method is not available for investments in an insurance company pooled separate account or a common or collective trust maintained by a bank, trust company, or similar institution. The Department has previously issued exemptions, in §§ 2520.103–3 and 2520.103–4 of this title, which apply to investments by plans in those entities.

The proposed alternative method of compliance, although similar to the limited exemptions provided for assets held in a common or collective trust or in an insurance company pooled separate account, differs from those exemptions in several important respects. Section 103 of ERISA explicitly provides for direct reporting by banks and insurance companies of financial information regarding these investment pools and for transmission and certification as to the accuracy of such information to the plan administrator. Regulations under that section provide detailed procedures for the furnishing of information by the banks and insurance companies to the plans. The banks and insurance companies are also required to certify to the plan administrators that they have in fact filed the required information with the Secretary.

In the absence of explicit statutory provisions, the Department has decided to let the plan administrator develop with the manager of the entity a suitable procedure whereby the plan administrator can establish to his satisfaction that the Department will receive, on behalf of the plan, all the information required in paragraph (b) of the proposed alternative regarding the assets of the entity. The alternative will not contain any detailed rules relating to the exchange of information between the plan and the entity or the certification as to the accuracy of such information. The alternative will not, of course, affect a plan administrator's responsibility to monitor the conduct of the entity's manager and to obtain whatever financial information concerning the entity is necessary for the administrator to perform his duties under ERISA.

A further difference between the proposed alternative and the exemptions in regulations 103–3 and 103–4 is that the proposal requires the reporting of certain information regarding the investment entity which is not required of banks and insurance

[1] The Department contemplates that the information required in these schedules will be reported in a manner similar to comparable information required by the relevant items in the Return/Report.

[2] The term "controlled group of corporations" is defined, with certain minor modifications, by reference to section 1563(a) of the Code.

companies. Specifically, banks and insurance companies need only file a statement of assets and liabilities. Proposed § 2520.103–12, by contrast, requires the reporting of information concerning assets held for investment, leases and obligations in default, and compensation paid for services, as well as a report of an independent qualified public accountant. The Department believes that requiring this information is justified because, unlike banks and insurance companies, the entities that will be able to utilize this exemption are generally not related and supervised or subject to periodic examination by a State or Federal agency.

Paragraph (d) of the proposed regulation provides that the examination and report of an independent qualified public accountant for the plan, required under current section 103–1, need not extend to any information regarding the entity reported directly to the Department under paragraph (b). Without such a provision, the accountant for each plan investing in the entity, in rendering the opinion required by section 103–1(b)(5) as part of the plan's annual report, might have to make a full examination of the financial statements and records of the entity in the course of its audit for the plan. This would be expensive for the plans and quite burdensome for the entity. The requirement for separate audits by each plan accountant would also be duplicative in light of the condition in the exemption that the entity must file directly with the Department a report of an independent qualified public accountant covering certain statements and schedules and satisfying the standards in regulation 103–1(b)(5).

(B) Proposed Amendment to § 2520.103–1

The Department also proposes to amend current 29 CFR 2520.103–1 by citing proposed regulation 103–12 as additional authority for the omission of certain procedures which independent accountants might ordinarily use in the course of an audit made for the purpose of expressing the opinions required by ERISA. In particular, the proposal will allow the plan's accountant to limit the scope of its opinion by relying on the report of the accountant for the entity, provided, of course, the Department receives a report from the accountant for the entity which satisfies the standards in section 103–1.

Regulatory Flexibility Act

For the purpose of analyzing the effect of the proposed regulation, small entities were defined as employee benefit plans covering fewer than 100 persons. While some larger employers have small plans, in general, most small plans are maintained by small businesses. Therefore, assessing the regulation's impact on small plans is an appropriate substitute for evaluating its effects on small entities.

This regulation will provide administrators of employee benefit plans with a less burdensome and less costly means of complying with the annual reporting requirements under Title I of ERISA where a plan invests in certain entities the underlying assets of which are considered to include plan assets. Based on an informal review of plan investment practices, it was determined that typically only those plans with $7 million or more in assets invest in the types of entities which generally would be considered to be holding plan assets. Based on data derived from the Form 5500 annual return/reports, less than 0.02 percent of plans covering fewer than 100 persons have assets of $7 million or more.

In addition, available data indicates that very few of the entities in which plans invest would be considered small entities. Based on available data, it appears that approximately $1 billion of plan monies are invested in entities which may be considered to be holding plan assets. While the range of total dollars (pension and nonpension) invested per entity varies from $1 million to over $500 million, data suggests that few enities handling plan assets would fall within the lower dollar ranges (i.e., $1 million to $10 million).

For the above reasons, the undersigned hereby certifies under section 605(b) of the Regulatory Flexibility Act that this regulation will not, if adopted, have a significant economic impact on a substantial number of small plans or small entities in which such plans might invest. Therefore, compliance with section 603 and 604 of the Regulatory Flexibility Act is waived.

Executive Order 12291

The Department has determined that this regulation is not a "major rule" as that term is used in Executive Order 12291 because the regulation will not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This conclusion is based on the fact that this regulation, rather than increasing costs and burdens on employee benefit plans or entities in which they might invest, will provide administrators of plans which invest in certain entities (i.e., entities the underlying assets of which are considered to include plan assets) with a less burdensome and costly means of complying with the statutory requirement to file annual reports with the Secretary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting provisions that are included in this regulation have been submitted to the Office of Management and Budget for its review and approval.

Statutory Authority

The regulation is proposed under sections 104, 110, and 505 of the Act (29 U.S.C. 1024, 1030 and 1135).

List of Subjects in 29 CFR Part 2520

Accountants, Actuaries, Disclosure requirements, Employee benefit plans, Employee Retirement Income Security Act, Health insurance, Life insurance, Pensions, Reporting and recordkeeping requirements.

Proposed Regulation

PART 2520—[AMENDED]

For reasons set out in the preamble, the Department proposes to amend Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations by:

1. Adding a new § 2520.103–12 to read as follows:

§2520.103–12 Limited Exemption and alternative method of compliance for annual reporting of investments in certain entities.

(a) This section prescribes an exemption from an alternative method of compliance with the annual reporting requirements of Part 1 of Title I of ERISA for employee benefit plans whose assets are invested in certain entities described in paragraph (c) of this section. A plan utilizing this method of reporting shall include as part of its annual report the current value of its investment or units of participation in the entity in the manner prescribed by the Return/Report Form and the instructions thereto. The plan is not required to include in its annual report any information regarding the underlying assets or individual transactions of the entity, provided the information described in paragraph (b) of this section regarding the entity is reported directly to the Department on

behalf of the plan administrator no later than the date on which the plan's annual report is due. The information described in paragraph (b) of this section, however, shall be considered as part of the annual report for purposes of the requirements of section 104(a)(1)(A) of the Act and §§ 2520.104a–5 and 2520.104a–6.

(b) The following information regarding the entity must be reported for the fiscal year of the entity ending with or within the plan year for which the plan's annual report is made:

(1) Name, Address and EIN of the entity;

(2) A list of all plans investing in the entity identified by plan name, plan number, and name and EIN of the plan sponsor as they appear on the annual return/report;

(3) Annual statement of assets and liabilities of the entity;

(4) Statement of income and expenses of the entity;

(5) Assets held for investment (including acquisitions and dispositions), leases and obligations in default, and compensation paid by the entity for services—in the manner required by the instructions to the Annual Return/Report Form 5500;

(6) Report of an independent qualified public accountant regarding the statements and schedules described in paragraphs (b)(2)–(b)(5) of this section which meets the requirements of § 2520.103–1(b)(5).

(c) This method of reporting is available to any employee benefit plan which has invested in an entity the assets of which are deemed to include plan assets under § 2510.3–101, provided the entity holds the assets of two or more plans which are not members of a "related group" of benefit plan investors as that term is defined in paragraph (e) of this section. The method of reporting is not available for investments in an insurance company pooled separate account or a common or collective trust maintained by a bank, trust company, or similar institution.

(d) The examination and report of an independent qualified public accountant required by § 2520.103–1 for a plan utilizing the method of reporting described in this section need not extend to any information concerning an entity which is reported directly to the Department under paragraph (b) of this section.

(e) A "related group" of employee benefit plans consists of every group of two or more employee benefit plans—

(1) Each of which receives 10 percent or more of its aggregate contributions from the same employer or from members of the same controlled group of corporations (as determined under section 1563(a) of the Internal Revenue Code, without regard to section 1563(a)(4) thereof); or

(2) Each of which is either maintained by, or maintained pursuant to a collective bargaining agreement negotiated by, the same employee organization or affiliated employee organizations. For purposes of this paragraph, an "affiliate" of an employee organization means any person controlling, controlled by, or under common control with such organization.

2. Amending § 2520.103–1 by revising (b)(5)(ii)(B) to read as follows:

§ 2520.103–1 Contents of the annual report.

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(B) Shall designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which have been omitted, and the reasons for their omission. Authority for the omission of certain procedures which independent accountants might ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (b)(5)(iii) of this section is contained in §§ 2520.103–8 and 2520.103–12.

* * * * *

(Secs. 104, 110 and 503, ERISA; 29 U.S.C. 1024, 1030 and 1135)

Signed at Washington, D.C., this 18th day of January 1965.

Robert A.G. Monks,

Administrator, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–1874 Filed 1–23–85; 8:45 am]

BILLING CODE 4510–29–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD–FRL 2763–5]

Stack Height Regulation; Extension of Period for Supplemental Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of deadline for submission of supplemental comments.

SUMMARY: On November 9, 1984 (at FR 44878), EPA proposed revisions to its stack height regulations orginally promulgated on February 8, 1982 (at 47 FR 5864) pusuant to Section 123 of the Clean Air Act. On December 11, 1984 (at 49 FR 48202), EPA announced that the public comment period would be extended from December 10, 1984, to January 9, 1985, and that a public hearing would be held on January 8, 1985. EPA also announced that the hearing record and a supplemental comment period would remain open until January 24, 1985. This notice announces an additional extension of the period until February 25, 1985, for submission of supplemental comments pertaining to matters raised at the public hearing.

DATES: The public comment period for proposed revisions to the stack height regulation closed on January 9, 1985. The hearing record and a supplemental comment period will be held open until February 25, 1985.

ADDRESS: Background material for this action is located in Docket A–83–49, West lower Lobby Gallery, EPA, 401 M Street, SW., Washington, D.C. 20460. The docket may be examined between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for photocopying. All written supplemental comments should be submitted (in triplicate, if possible) to: Central Docket Section, Docket A–83–49, EPA, 401 M Street, SW., Washington, D.C., 20460.

FOR FURTHER INFORMATION CONTACT: Eric O. Ginsburg, Office of Air Quality Planning and Standards, Control Programs Development Division (MD–15), EPA, Research Triangle Park, North Carolina 27711, (919) 541–5540.

SUPPLEMENTARY INFORMATION: On November 9, 1984, in response to a decision by the U.S. Court of Appeals for the D.C. Circuit (719 F.2d 436), EPA proposed revisions to the stack height regulation that was promulgated on February 8, 1982 (47 FR 5864). Further information on the court decision and specific revisions to the regulation are contained in the November 9 notice.

On December 7, 1984, EPA, the Sierra Club Legal Defense Fund, Inc., and Natural Resources Defense Council, Inc., filed a joint motion with the U.S. Court of Appeals for the D.C. Circuit requesting an extension of the court-ordered deadline for promulgation of the revised stack height regulation. This motion was granted by the court on December 18, 1984, establishing a new promulgation deadline of April 4, 1985. As a result of this extension, EPA extended the public comment period an additional 30 days and held a public hearing on January 8, 1985, to receive testimony on the proposed regulation. The public comment period ended on January 9 and the hearing record and

supplemental comment period was scheduled to close on January 24, 1985.

Because the Agency has received over 200 public comments that, together with testimony received at the public hearing, raise a number of complex issues, EPA has received a request from the Natural Resources Defense Council, Inc., for additional time to consider testimony presented at the hearing and to prepare written supplemental comments addressing any issues raised during the hearing or initial comment period. In order to grant this request, EPA would have to extend the court-ordered deadline for promulgation of the final regulation. Consequently, EPA and the Natural Resources Defense Council, Inc., have filed a joint motion with the U.S. Court of Appeals for the D.C. Circuit requesting an extension of the promulgation deadline to May 13, 1985. At the same time, the Agency is announcing that the period for submission of written supplemental comments is being extended to February 25, 1985. In the event that the court denies EPA's request, the Agency will immediately close the hearing record and cancel the supplemental comment period.

List of Subjects in 40 CFR Part 51

Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

Dated: January 18, 1985.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

[FR Doc. 85-1872 Filed 1-23-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 455

[OW-FRL 2761-8]

Pesticide Chemicals Category; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Reopening of the Comment Period.

SUMMARY: EPA proposed effluent limitations guidelines and standards for the pesticide industry on November 30, 1982. On June 13, 1984 EPA published a notice of availability and request for comments which made available for public review technical and economic data and supportive documentation gathered and developed subsequent to the proposal of the regulations. EPA announces today the availability for public review of technical and economic data used to support the June 13, 1983 notice of availability but withheld until this time because the data had been claimed confidential. EPA is today reopening the comment period on the notice of availability to allow comment on this data. The Agency is also soliciting comments and data on the achievability of pretreatment standards for the formulator/packager segment of the industry.

DATES: Comments on the notice of availability must be submitted by February 25, 1985.

ADDRESSES: Send comments to Mr. George M. Jett, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street SW, Washington, D.C., 20460, Attention: EGD Docket Clerk. The supporting information is available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear), (PM-213). The comments will be made available as they are received. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. George Jett (202) 382-7180 for information regarding the technical data, and Mr. Mitchell Dubensky (202) 382-5388 for information regarding the economic data.

SUPPLEMENTARY INFORMATION: On November 30, 1982 EPA proposed effluent limitations guidelines and standards for both the manufacturing and formulating and/or packaging segments of the pesticide industry. (47 FR 53994). EPA gathered additional data and information subsequent to the proposal of these regulations. On June 13, 1984 EPA published a notice of availability and request for comments in order to give the public the opportunity to review the additional data. (49 FR 24492). On August 1, 1984, the Agency extended the comment period on the notice of availability until September 13, 1984.

A. Wastewater Pollutant Data Available for Public Review

The Notice of Availability relied in part on wastewater pollutant data claimed to be confidential by industry. As a result of these confidentiality claims, the Agency did not make that data available for public review and comment. Instead, data claimed to be confidential were placed in the confidential segment of the Administrative Record for the pesticide rulemaking.

During the comment period on the notice of availability, several industry members requested that the Agency publicly release wastewater pollutant data claimed to be confidential. Due to the unavailability of these data for public review, the commenters professed an inability to meaningfully comment on the methodology used to establish the effluent limitations guidelines and standards for the pesticide industry.

In response to these commenters, the Agency reviewed the data at issue. In a few instances, the Agency determined that the wastewater pollutant data was effluent data which was not entitled to confidential treatment pursuant to Section 308 of the Clean Water Act and 40 CFR 2.302(e). In other cases, the Agency requested that the affected industry members withdraw their confidentiality claims for specific wastewater pollutant data. In accordance with the Agency's requests, all members withdrew their confidentiality claims for specific, indentifiable wastewater pollutant data. The Agency is today making available for public review the effluent data and the wastewater pollutant data for which confidentiality claims have been withdrawn. The effluent data, wastewater pollutant data, and the document summarizing the approach used in developing limitations entitled *Statistics and Guidelines Development Methodology* are found in Volume 53 of the public record for the pesticide rulemaking.

The Agency is today also announcing the availability of information used to supplement the public record since publication of the June 13, 1984 notice of availability. This information comprises both technical and economic data for both the manufacturing and formulating and/or packaging segment of the industry. In many cases, this information was claimed to be confidential by industry members and was not, accordingly, available for public review during the comment period on the notice of availability. The Agency subsequently coded this information in order to protect these confidentiality claims and to allow the public an opportunity to comment on the information. The information supplementing the public record is found in Volume 52. The related cost and economic data are found in Supplement A to the public record.

B. Pretreatment Standards for Formulators/Packagers

On November 30, 1982 EPA proposed zero discharge of process wastewater as the pretreatment standard for indirect discharging facilities which formulate and/or package pesticides. These proposed standards were equal to the existing BPT effluent limitations guidelines for direct discharging pesticide formulator/packagers. In the June 13, 1984 notice of availability, the Agency reaffirmed its belief that this zero discharge standard was appropriate for formulator/packagers.

Several commenters criticized the zero discharge standard recommending instead that the Agency allow the indirect discharging formulating/packaging segment of the industry to discharge pollutants and process wastewaters. They recommended that the Agency set pretreatment standards for formulator/packagers equal to the pretreatment standards for the manufacturing segment of the industry as set forth in the June 13, 1984 notice of availability. The commenters did not, however, submit any data concerning the achievability of those standards by formulator/packagers or explaining why indirect dischargers could not meet the standards applicable to direct dischargers in the industry.

The Agency is today specifically considering whether pretreatment standards for formulators/packagers should be promulgated which would allow discharges of process wastewaters and pollutants to POTW's equal to the pretreatment standards set forth for manufacturers in the notice of availability. The Agency solicits comments on the need for these pretreatment standards instead of the proposed zero discharge standards and the achievability of both of these pretreatment standards for formulator/packagers. EPA specifically requests long-term effluent data from formulator/packager plants for the pollutants listed in the June 13, 1984 Federal Register Notice. Such data should be submitted as individual data days not aggregated and averaged. The commenters should also indicate whether the plant formulates agricultural, household, institutional, or commercial pesticides or a combination of these types of pesticides. The commenters should state what treatment, if any, is provided, the cost of treatment, the specific pesticide(s) formulated, and the raw (untreated) waste load.

Solicitation of Comments

EPA invites and encourages public participation on the newly available wastewater pollutant data, the supplementary record materials and the ability of pesticide chemical formulator/packagers to meet the standards established for the pesticide chemicals manufacturers. EPA is requesting comments only on these issues. The Agency is not soliciting comments on the other issues contained in the November 30, 1982 proposal, the February 10, 1983 proposal on analytical test methods or the June 13, 1984 Notice of Availability.

Dated: January 11, 1985.

Henry Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 85-1789 Filed 1-23-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6080]

Proposed Flood Elevation Determinations; North Dakota

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule; revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Mandan, Morton County, North Dakota

Due to recent engineering analysis, this proposed rule would revise the proposed determinations of base (100-year) flood elevations published in 46 FR 31689 on June 17, 1981, and in the *Mandan News*, published on or about May 31, 1981, and June 7, 1981, and hence would supersede those previously published rules for the areas cited below.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the City Engineer's Office, 205 2nd Avenue, NW, Mandan, North Dakota.

Send comments to: the Honorable Sharon Schafer, 205 2nd Avenue, NW, Mandan, North Dakota 58554.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0700.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Mandan, Morton County, North Dakota, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
Missouri River	100 feet upstream from centerline of Northern Pacific Railroad	*1,636
Heart River	500 feet upstream from centerline of North Dakota State Highway 6.	*1,654
Heart River—Without consideration of levees	At intersection of 3rd Street SE and 24th Avenue SE	*1,644

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator.)

Issued: January 10, 1985.

Jeffrey S. Bragg,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 85–1875 Filed 1–23–85; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–6080]

Proposed Flood Elevation Determinations; North Dakota

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule; revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100–year) flood elevations listed below for selected locations in Morton County, North Dakota.

Due to recent engineering analysis, this proposed rule would revise the proposed determinations of base (100-year) flood elevations published in 46 FR 31689 on June 17, 1981, and in the *Mandan News*, published on or about May 31, 1981, and June 7, 1981, and hence would supersede those previously published rules for the areas cited below.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the County Engineer's Office, 205 2nd Avenue, NW, Mandan, North Dakota.

Send comments to: Honorable Mike Schaaf, P.O. Box 368, Mandan, North Dakota 58554.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed for selected locations in Morton County, North Dakota, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

The proposed base (100-year) flood elevations are:

Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
Missouri River	At confluence with Heart River	*1,634
Heart River	300 feet downstream from the center of U.S. Highway 10	*1,666
Heart River—Without consideration of levees	At City of Mandan Extraterritorial Limits	*1,635

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: January 10, 1985.

Jeffrey S. Bragg,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 85–1876 Filed 1–23–85; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

[Docket No. 83–38]

Inquiry and Intent To Review Regulation of Ports and Marine Terminal Operators

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of Proceeding.

SUMMARY: The Federal Maritime Commission has determined to

discontinue this proceeding having reviewed and adopted the Final Report of the Inquiry Officer.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: By Notice published in the Federal Register on September 14, 1983 (48 FR 41199), the Commission initiated this proceeding to accomplish a general review of its regulation of the marine terminal industry. The Commission proposed to review the continued need to require terminal tariffs to be filed and marine terminal agreements to be filed and approved, and the general area of antitrust immunity for marine terminal operators. Comments were solicited from the public, and the Commissioner Robert Setrakian was appointed Inquiry Officer authorized to review written comments and solicit any other comments necessary to further the objectives of the Inquiry.

Numerous comments were submitted from various components of the ocean shipping industry and other interested parties, and hearings were held in certain U.S. port cities. The Inquiry Officer issued an initial report dealing with terminal tariffs and agreements, and has now issued a Final Report covering the area of antitrust immunity. Both reports, which have been reviewed and adopted by the Commission, are available from the Commission's Secretary at the previously stated address. The Commission has now determined that the purposes of the proceeding have been accomplished and that it should be discontinued.

Accordingly, this proceeding is discontinued.

By the Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85–1749 Filed 1–23–85; 8:45 am]

BILLING CODE 6730–01–M

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46 CFR Part 572

[Docket No. 84–37]

Application of the Shipping Act of 1984 to Certain Transshipment Agreements

AGENCY: Federal Maritime Commission.

ACTION: Availability of Finding of no Significant Impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 84–37 and found that its final resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATES: Petitions for review due February 4, 1985.

ADDRESS: Petitions for review (Original and 15 copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Director, Office of Energy and Environmental Impact, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5825.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission Office of Energy and Environmental Impact has determined that the Commission's investigation in Docket No. 84–37 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

Docket No. 84–37 considers a proposed rule applying the Shipping Act of 1984 to certain transshipment agreements. This rule describes the approach the Commission may follow when one party to an agreement provides a service in the domestic offshore commerce of the United States, and another party provides a service in the foreign commerce of the United States.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the Federal Register unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523–5725.

By the Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85–1810 Filed 1–23–85; 8:45 am]

BILLING CODE 6730–01–M

Notices

Federal Register
Vol. 50, No. 16
Thursday, January 24, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Small Business Timber Set-Aside Program; Proposed Changes

AGENCY: Forest Service, USDA.

ACTION: Extension of Public Comment Period.

SUMMARY: On November 21, 1984, the Forest Service published a notice of revised proposed policy to change the operation of the Small Business Timber Set-Aside Program (49 FR 45889). Comments on the revised proposed policy were to be received by January 22, 1985, in order to be considered. The comment period is extended to February 8, 1985.

Dated: January 17, 1985.

R. Max Peterson,

Chief.

[FR Doc. 85-1840 Filed 1-23-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau Economic Analysis
Title: Foreign Investment Research Questionnaire
Form number: Agency—BE-118; OMB—None
Type of request: New collection
Burden: 50 respondents; 25 reporting hours
Needs and uses: This questionnaire will be used to secure information on the activities of state agencies which measure foreign direct investment. The data will be used to refer data users to information sources if state efforts exceed DOC's work; to evaluate DOC's work if state efforts supplement it; and to reduce government work if state and DOC activities are duplicative
Affected public: State and local governments
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395-4814

Agency: International Trade Administration
Title: Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty under Pub. L. 97-446
Form number: Agency—362P; OMB—0625-0118
Type of request: Extension of the expiration date of a currently approved collection
Burden: 250 respondents; 200 reporting hours
Needs and uses: Data will be used to assess possible injury to domestic manufacturers of articles for the handicapped which are imported free of duty. The data will enable the United States to make decisions on trade policy issues
Affected public: Individuals or households, state or local governments, businesses or other for-profit institutions, federal agencies or employees, non-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's obligated: Required to obtain or retain a benefit
OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Foreign-Trade Zone Application
Form number: Agency—N/A; OMB—0625-0139
Type of request: Extension of the expiration date of a currently approved collection
Burden: 50 respondents; 3,800 reporting hours
Needs and uses: The Foreign Trade Zones (FTZ) Act requires that an application be made to the FTZ Board for authority to establish a foreign-trade zone project in a port of entry community. The information is used to grant authority to communities to establish foreign-trade zones or permit current zone projects to expand or otherwise adapt to the changing needs of the business community in their area.
Affected public: State or local governments, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Sheri Fox, 395-3785

Agency: National Oceanic and Atmospheric Administration
Title: Application for Certificate of Inclusion and Application for General Permits to Take Marine Mammals
Form number: Agency—N/A; OMB—0648-0083
Type of request: Revision of a currently approved collection
Burden: 2,466 respondents; 1,029 reporting hours
Needs and uses: Owners and operators of commercial passenger fishing vessels are prohibited by the Marine Mammal Protection Act from protecting the catch and gear of their passengers from depredations of marine mammals. It is proposed to modify the regulations to allow this class of fishermen the same rights as other fishermen and qualify for general permits and certificates of inclusion to take marine mammals.
Affected public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: Annually
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Sheri Fox, 395-3785

Agency: National Oceanic and Atmospheric Administration
Title: Hawaii Recreational Fisheries Economic Valuation Survey
Form number: Agency—N/A; OMB—N/A
Type of request: New collection
Burden: 2,000 respondents; 500 reporting hours
Needs and uses: Collection of this information is necessary to prepare analysis in support of two Fishery Management Plans under preparation by the Western Pacific Fishery Management Council. The data will be used to estimate economic demand and participation for Hawaii's offshore recreational fisheries.

Affected public: Individual's or households
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Sheri Fox, 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: January 18, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–1804 Filed 1–23–85; 8:45 am]

BILLING CODE 3510–CW–M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—Wave 6
Form number: Agency—SIPP–4600 and 4605; OMB—0607–0425
Type of request: Extension of a currently approved collection
Burden: 42,000 respondents; 21,000 reporting hours
Needs and uses: This data is needed to support policy and program planning. The survey will be used to provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for participation in government programs.
Affected public: Individuals or households
Frequency: Nonrecurring
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Survey of Local Assessment Records
Form number: Agency—GP–1 and 1A; OMB—None
Type of request: New collection
Burden: 2,000 respondents; 1,725 reporting hours
Needs and uses: This information is needed to carry out data enumeration for the Taxable Property Values Survey of the 1987 Census of Governments. The survey will be used to provide data on contents and organizations of assessment records and on estimated number of realty parcels
Affected public: State or local governments
Frequency: Single-time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Survey of Property Transfer Records
Form number: Agency—GP–2 and 2A; OMB—None
Type of request: New collection
Burden: 1,400 respondents; 1,300 reporting hours
Needs and uses: This information is needed to carry out data enumeration for the Taxable Property Values Survey of the 1987 Census of Governments. The survey will be used to provide data on contents and organization of real property transfer records and on estimated volume of realty transfers
Affected public: State or local governments
Frequency: Single-time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: January 18, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–1805 Filed 1–23–85; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Order No. 289]

Approval for Expansion of Foreign-Trade Zone No. 31, Granite City, IL, Within the St. Louis Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Tri-City Regional Port District (Port District), Grantee of Foreign-Trade Zone No. 31, has applied to the Board for authority to expand its general-purpose zone to include an additional site in Granite City, Illinois, within the St. Louis Customs port of entry;

Whereas, the application was accepted for filing on September 7, 1984, and notice inviting public comment was given in the **Federal Register** on September 21, 1984 (Docket No. 42–84, 49 FR 37132);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to provide zone services to new tenants whose operations cannot be accommodated within existing zone space; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed September 7, 1984. The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C. this 16th day of January 1985.

William T. Archey,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 85–1763 Filed 1–23–85; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A-351-404]

Certain Welded Carbon Steel Pipes and Tubes From Brazil—Postponement of Final Antidumping Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from respondents 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 certain welded carbon steel pipes and tubes (pipe and tubes) from Brazil have occured at less than fair value until not later than May 15, 1985.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Ken Stanhagen, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1777.

SUPPLEMENTARY INFORMATION: On August 13, 1984, the Department of Commerce published a notice in the **Federal Register** (49 FR 32245) that it was initiating, under section 732(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673a(b)) (the Act), an antidumping investigation to determine whether pipe and tubes from Brazil were being, or likely to be, sold at less than fair value. On December 31, 1984, the Department published an affirmative preliminary determination (49 FR 50751). The notice stated that if this investigation proceeded normally we would make a final determination by March 11, 1985.

On January 14, 1985, counsel for respondents Persico Pizzamiglio S.A (Persico), Fornasa S.A. (Fornasa), and Apolo Productos de Aco S.A. (Apolo) requested that we extend the period for the final determination until May 15, 1985, 135 days after the date of publication of the preliminary determinations, 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 exporters who account for a significant proportion of exports of the merchandise request an extension after an affirmative preliminary determination.

Persico, Fornasa and Apolo are qualified to make such a request since they account for virtually all 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 May 15, 1985.

This notice is published pursuant to section 735(d) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

January 18, 1985.

[FR Doc. 85-1825 Filed 1-23-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-410]

Hydrogenated Castor Oil From Brazil; Initiation of Antidumping Investigation

AGENCY: International Trade Administration Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether hydrogenated castor oil from Brazil is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Administration (ITC) of the action, so that it may determine whether imports of this merchandise are materially injuring, or threating to materially injure, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before February 10, 1985, and we will make our own on or before May 9, 1985.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMAITON CONTACT: William D. Kane, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1766.

SUPPLEMENTARY INFORMATION: On December 27, 1984, we received a petition from counsel for Union Camp Corporation. On January 7, 1985, counsel filed additional information in support of its petition. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1637) (the Act), and that these imports are materially injuring, or are threating to materially injure, a United States industry. The allegations of sales at less than fair value of the merchandise under investigation from Brazil are supported by comparisons of United States price based on sales of Brazilian hydrogenated castor oil by a U.S. broker who is related to the Brazilian producer of the merchandise, and home market prices, based on sales and offers to unrelated purchasers in Brazil.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition filed by counsel for Union Camp Corporation, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping investigation to determine whether hydorgenated castor oil from Brazis is being, or is likely to be, sold at less than fair value in the United States. If our investigation proceeds normally, we will make our preliminary determination by May 9, 1985.

Scope of Investigation

The merchandise covered by this investigation consists of hydrogenated castor oil, as provided for under item number 178.2000 of the *Tariff Schedules of the United States, Annotated.*

Notification to the ITC

Section 732(d) of the Act requries us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonpriviliged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy

Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine within 45 days of the date the petition was received whether there is a reasonable indication that imports of hydrogenated castor oil from Brazil are materially injuring, or are likely to materially injure, a United States industry. If its determination is negative, this investigation will terminate; otherwise it will proceed according to statutory procedures.

Alan F. Homer,

Deputy Assistant Secretary for Import Administration.

January 17, 1985.

[FR Doc. 85-1824 Filed 1-23-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-409]

Hydroxystearic Acid From Brazil; Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether 12-hydroxystearic acid from Brazil is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Administration (ITC) of the action, so that it may determine whether imports of this merchandise are materially injuring, or threatening to materially injure, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before February 10, 1985, and we will make our own on or before May 9, 1985.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMATION CONTACT: William D. Kane, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1766.

SUPPLEMENTARY INFORMATION: On December 27, 1984, we received a petition from counsel for Union Camp Corporation. On January 7, 1985, counsel filed additional information in support of its petition. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry. The allegations of sales at less than fair value of the merchandise under investigation from Brazil are supported by comparisons of United States price based on sales of Brazilian 12-hydroxystearic acid by a U.S. broker who is related to the Brazilian producer of the merchandise, and home market prices, based on sales and offers to unrelated purchasers in Brazil.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition filed by counsel for Union Camp Corporation, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping investigation to determine whether 12-hydrozystearic acid from Brazil is being, or is likely to be, sold at less than fair value in the United States. If our investigation proceeds normally, we will make our preliminary determination by May 9, 1985.

Scope of Investigation

The merchandise covered by this investigation consists of 12-hydroxystearic acid, as provided for under item numbers 490.2650 and 490.2670 of the *Tariff Schedules of the United States, Annotated.*

Notification to the ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine within 45 days of the date of the petition was received whether there is a reasonable indication that imports of 12-hydroxystearic acid from Brazil are materially injuring, or are likely to materially injure, a United States industry. If its determination is negative, this investigation will terminate; otherwise it will proceed according to statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

January 17, 1985.

[FR Doc. 85-1823 Filed 1-23-85; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Coments on these applications must be submitted on or before February 13, 1985.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 85-00001"

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant GeneralCounsel for Trade Development, Office ofGeneralCounsel, 202/ 377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10596-10604 March 11, 1983) (codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal

and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standard for Certification

Proposed export trade, export trade activities, and methods of operations may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. Not reasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937–15940 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the Federal Register identifying the persons submitting the application and summarizing the conduct proposed for certification. The OETCA and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application below. Information submitted by any person in connection with the application(s) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OECTA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities," or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: World-Wide Sires, Inc., 16032—10th Avenue, P.O. Box 149, Hanford, California 93232, Telephone: 209–584–6656.

Application No.: 85–00001.

Date Received: January 7, 1985.

Date Deemed Submitted: January 10, 1985.

Members in Addition to Applicant: Atlantic Breeders Cooperative; Eastern A.I. Cooperative; Kansas Artificial Breeding Service Unit; Louisiana Animal Breeders Cooperative, Inc.; Midwest Breeders Cooperative; Minnesota Valley Breeders Association; Noba, Inc.; Select Sires, Inc.; Sire Power, Inc.; and Tri-State Breeders Cooperative.

Controlling Entity: None.

Summary of the Application

A. Export Trade and Export Markets

The Applicant will act as a distributor for U.S. suppliers of frozen bull semen for export worldwide (except North, Central and South America, Mexico, and the Caribbean Islands).

B. Export Trade Activities and Methods of Operation

The Applicant desires certification to:

1. Enter into exclusive agreements with one or more U.S. member suppliers which may include the following:

(i) The Applicant will purchase frozen bull semen from said member suppliers, and said member suppliers will sell the same to the Applicant, at prices set by each individual member supplier, for resale by the Applicant in the Export Markets, and wherein the Applicant will market and sell said frozen bull semen in the Export Markets directly or through foreign representatives at prices and on such terms as the Applicant shall set.

(ii) Each member supplier is prohibited from exporting independently of the Applicant, either directly or indirectly, and selling, either directly or indirectly, through any other export intermediaries into the Export Markets in which the Applicant exclusively represents the member suppliers, or to any of the Applicant's competitors in export trade.

(iii) The Applicant agrees to sell in the Export Markets only the bull semen that it obtains from member suppliers, and to purchase from member suppliers all bull semen required by the Applicant for sale in the Export Markets; the Applicant also may agree not to represent any competitors of such member suppliers, unless authorized by the member suppliers.

(iv) Such exclusive agreements may have provisions which permit the Applicant or a member supplier to terminate said agreement and withdraw therefrom at the end of a period not exceeding three years after giving notice of intent to terminate and to withdraw. Such exclusive agreements may have provisions which require the Applicant to purchase a minimum amount of frozen bull semen from a member supplier giving notice of termination during the period commencing with the giving the notice ending with the effective date of termination. Such exclusive agreements may also have provisions which require the Applicant and at least a majority of the other member supplier parties to such agreement to consent before a member supplier which gave notice of termination to be readmitted to the group, or before additional member suppliers may be admitted to the group.

(v) All of the above are provided in such exclusive agreements.

2. Enter into exclusive agreements appointing foreign representatives as sales agents, brokers, and distributors in the Export Markets which include the following:

(i) The Applicant may agree to deal any portion of the Export Markets only through such foreign representatives.

(ii) Foreign representatives may agree not to represent the Applicant's competitors in the Export Markets, unless authorized by the Applicant.

3. Peridically advise member suppliers of the Applicant's sales results in each Export Market and orders shipped (including without limitation the amount of semen purchased by the Applicant from each of its member suppliers, the identity of the bull that produced each unit of semen, and the price paid per unit by the Applicant for such semen), and to advise member suppliers of relevant facts concerning the Export Markets in order to assist the member suppliers in planning strategies designed to enhance making sales for the Export Markets.

4. Participate in annual and periodic meetings with its member suppliers to deliver and discuss the information described in paragraph 3 above, and to discuss and resolve issues and matters related to making sales for the Export Markets. The member suppliers may act as a group, including the appointment of a coordinator in dealing with the Applicant and may adopt policies and procedures with the Applicant which are related to making sales for the Export Markets and which may be summarized in written form and provided to member suppliers.

The OETCA is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the Federal Register identifying the persons submitting an application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued.

Dated: January 18, 1985.

Richard Shay,

Acting General Counsel.

[FR Doc. 85-1847 Filed 1-23-85; 8:45 am]

BILLING CODE 3510-DR-M

Short Supply Determinations on Steel Pipe and Tube; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of requests for short supply determinations under Article 8 of the U.S.-EEC Pipe and Tube Arrangement with respect to welded carbon mechanical tubing, drawn over mandrel, with a wall thickness of less than 2mm and a diameter of less than or equal to 22mm for use in the manufacture of gas springs; and line pipe, grade 5L X-60 with a outside diameter of 10.750 inches.

EFFECTIVE DATE: Comments must be submitted no later than January 31, 1985.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., Washington, D.C. 20230, Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: On January 10, 1985, the United States (U.S.) and European Economic Community (EEC) concluded a clarification of the Pipe and Tube Arrangement agreed to on October 21, 1982. The January 10 clarification provides in Article 8 that ". . . the U.S. shall accept exports of pipes and tubes in addition to those permitted under sections 1 and 2 where a shortage of supply is identified, i.e., where the U.S. industry is unable to meet demand in the United States for a particular product." Under the terms of Article 8 the Department ". . . shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received requests for short supply for the following products:

1. Welded carbon mechanical tubing, drawn over mandrel, with a wall thickness of less than 2mm and a diameter of less than or equal to 22mm for use in the manufacture of gas springs.

2. Line pipe grade 5L X-60 with a outside diameter of 10.750 inches.

Any party interested in commenting on these requests should send written comments as soon as possible, and no later than January 31, 1985. Comments should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain these requests and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of their submission and also submit with it a non-confidential submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Dated: January 18, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-1848 Filed 1-23-85; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing an Import Restraint Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

January 18, 1985.

On December 31, 1984, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles (the Arrangement), again requested the Government of Pakistan to enter into consultations concerning exports to the United States of man-made fiber work gloves in Category 631pt., (only TSUSA numbers 704.3215, 704.8525, 704.8550, and 704.9000) produced or manufactured in Pakistan.

In order to forestall serious market disruption during the sixty-day consultation period, the United States Government, under the terms of Article 3.6 of the Arrangement, has decided, effective on January 28, 1985, to control imports in the category which have been exported on and after December 31, 1984 and extending through December 30, 1985, at a level of 238,750 dozen pairs. In the letter published below the Chairman of CITA directs the Commissioner of Customs to control imports in Category 631pt. at the designated level.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register.**

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, 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), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

January 18, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC.

Dear Mr. Commissioner: 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; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 28, 1985, 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 Pakistan and exported during the twelve-month period which began on December 31, 1984 and extends through December 30, 1985 in excess of 238,750 dozen pairs.[2]

Textile products in Category 631pt.[1] which have been exported to the United States prior to December 31, 1984 shall not be subject to this directive.

Textile products in Category 631pt.[1] 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.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-1808 Filed 1-23-85; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Limits for Certain, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore Effective on January 1, 1984; Correction

January 17, 1985.

On December 27, 1984 a notice dated December 21, 1984 was published in the **Federal Register** (49 FR 50232) which announced the import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during 1985. Paragraph 2 of the letter to the Commissioner of Customs which followed that notice should be revised to read as follows:

In carrying out this directive, entries of textile products in the foregoing categories, except Categories 359 and 638/639, which have been exported to the United States on and after January 1, 1984 and extending through December 31, 1984, shall, to the extent of any unfilled balances, be charged against the levels established for such goods during that twelve-month period. In the event the levels established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Categories 359 and 638/639 which were exported before January 1, 1985 shall not be subject to this directive.

Paragraphs 3 and 4 of the letter to the Commissioner of Customs should be deleted.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-1764 filed 1-23-85; 8:45 am]

BILLING CODE 3510-DR-M

Amending the Export Visa Requirement for Certain Man-Made Fiber Luggage, Handbags and Flatgoods Produced or Manufactured in Taiwan

January 18, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 1, 1985. For further information contact Eve Anderson, International Trade Specialist, (202) 377-4212.

Background

On December 17, 1984 a notice dated December 11, 1984 was published in the **Federal Register** (49 FR 48954) announcing that the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA) had agreed, effective on January 1, 1985, to amend the existing export visa requirement to include man-made fiber luggage, handbags and flatgoods in Category 670pt. (All TSUSA numbers in the category except TSUSA 706.3400) for goods exported from Taiwan on and after January 1, 1985. In an effort to improve statistical accuracy for 1985 exports from Taiwan, it has been agreed to further amend the notice of December 11, 1984, effective on February 1, 1985, to require visas for the foregoing products, exported on and after November 5, 1984, the date on which the CCNAA actually began issuing visas for these products. In the letter that follows this notice the Chairman of Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the directive of December 11, 1984 accordingly.

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, 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), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

January 18, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 11, 1984, which extended the export visa requirement to include certain specified man-made fiber textile products in Category 670 pt., produced or manfactured in Taiwan and exported on and after January 1, 1985.

Effective on February 1, 1985, the date of export of the affected merchandise is hereby changed from January 1, 1985 to November 5, 1984.

Textile products in Category 670pt. (only TSUSA numbers 706.4144, 706.4152, 706.4140 and 706.3900) which have been exported to the United States prior to November 5, 1984 shall not be subject to this directive.

Textile products in Category 670 pt. (only TSUSA numbers 706.4144, 706.4152, 706.4140 and 706.3900) 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.

The Committee for the implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-1807 Filed 1-23-85; 8:45 am]

BILLING CODE 3510-DR-M

Announcing an Import Restraint Limit for Certain Man-Made Fiber Textiles Produced or Manufactured in Turkey

January 18, 1985.

On November 9, 1984 a notice was published in the **Federal Register** (49 FR 8989) announcing that, on October 31, 1984, the United States Government, under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), had requested the Government of Turkey to enter into consultations concerning exports to the United States of other man-made fiber yarn, wholly of noncontinuous filament, in Category 604 (part—only TSUSA 310.5049), produced or manufactured in Turkey.

The purpose of this notice is to advise the public that inasmuch as

[1] In Category 631, only T.S.U.S.C. numbers 704.3215, 704.8525, 704.8550, and 704.9000.

[2] The restraint limit has not been adjusted to reflect any imports exported after December 30, 1984.

consultations have been held concerning this category and no agreement has been reached, the United States Government has decided to control imports of man-made fiber yarns in Category 604 (part) produced or manufactured in Turkey and exported during the twleve-month period which began on October 31, 1984 and extends through October 30, 1985 at a level of 470,014 pounds.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of man-made fiber textiles in Category 604 (part) exported during the period which began on Octoer 31, 1984 and extends through October 30, 1985 in excess of the designated restraint limit.

EFFECTIVE DATE: January 25, 1985.

FOR FURTHER INFORMATION CONTACT: Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377–4212).

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, 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), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

January 18, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 25, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 604 pt.[1], produced or manufactured in Turkey and exported during the twelve-month period which began on October 31, 1984, in excess of 470,014 pounds.[2]

Textile products in Category 604 pt.[1] which have been exported to the United States prior to October 31, 1984 shall not be subject to this directive.

Textile products in Category 60 4pt.[1] 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 (48 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), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782).

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 Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Commissioner of Customs, which are necessary for the implementation of such action, 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. 85–1806 Filed 1–23–85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 604, only TSUSA 310.5049.

[2] The level has not been adjusted to reflect any imports exported after October 30, 1984.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the responses to the Recommendations/Requests for Information/Continuing Concerns made at the 1984 Fall Meeting, discuss current issues relevant to women in the Services, and plan the program for the Semi-Annual Meeting scheduled for 21–25 April 1985 in Washington, DC. All meeting sessions will be open to the public.

DATE: February 25, 1985, 1:30 p.m. to 5:00 p.m.; February 26, 9:30 a.m. to 12:00 noon.

ADDRESS: OSD Conference Room 1E801 No. 7, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Marilla J. Brown, Executive Secretary, DACOWITS, OASD (Manpower, Installations and Logistics), The Pentagon, Room 3D769, Washington, D.C. 20301–4000; telephone (202) 697–2122.

SUPPLEMENTARY INFORMATION: Persons desiring to (1) attend the Executive Committee Meeting or (2) make oral presentations or submit written statements for consideration at the Meeting must notify the point of contact listed above no later than February 11, 1985.

Dated: January 18, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–1845 Filed 1–23–85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Bilingual Education; Meeting

AGENCY: National Advisory Council on Bilingual Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: February 11 and 12, 1985—9:00 a.m.–4:30 p.m. the Business Meeting will be held at the: U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, Conference Room, Reporter's Building, Room 421, 400 Maryland Avenue, SW, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Paul Balach, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW, Washington, D.C. 20202, (202) 245–2600.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3242). The Council is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited

English proficient populations. The meeting of the Council is open to the public, and the proposed agenda includes the following:

I. Call to Order
II. Roll Call
III. Approval of Minutes from Previous Meeting
IV. Introduction of Visitors
V. Presentation of Information by Director of OBEMLA or designee
VI. Presentation of information by general public or organizations (limited to 5 minutes per person from any one group.)
VII. Committee Reports
VIII. Old Business
IX. New Business
X. Presentations of information by members of the general public on items for possible future action by the Council
XI. Meetings of Council Committees
XII. Council reconvenes
XIII. Adjournment

Records are kept of all Council proceedings, and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW, Washington, D.C. 20202 Monday through Friday from the hours of 8:00 a.m.–4:30 p.m.

Dated: January 18, 1985.

Jesse M. Soriano,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-1737 Filed 1-23-85; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before February 25, 1985.

ADDRESS: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margeret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provides interested Federal agencies and the public and early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OBM. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 18, 1985.

Linda M. Combs,

Deputy Under Secretary, for Management.

Office of Elementary and Secondary Education

Type of Review Requested: Extension
Title: Title IV, Section 418A of the Higher Education Act of 1965, as amended; High School Equivalency (HEP) and College Assistance Migrant Program (CAMP) application form
Agency Form Number: ED 819 & 819-1
Frequency: Annually
Affected Public: Non-profit Institutions or other public institutions of higher education
Reporting Burden: Responses: 80; Burden Hours: 1,600
Recordkeeping Burden: Recordkeeping: 0; Burden Hours:

Abstract: Institutions of higher education and other public or non-profit private agencies may apply for financial assistance by submitting the completed application form. The information is used by the Department to select among competing applicants.

Office of Special Education and Rehabilitative Services

Type of Review Requested: Existing
Title: Final Report for Rehabilitation Research
Agency Form Number: B20-3P
Frequency: Upon project termination
Affected Public: Individuals or households; State or Local Governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 61; Burden Hours: 1,220
Recordkeeping Burden: Recordkeepers: 61; Burden Hours: 61

Abstract: The National Institute of Handicapped Research has developed a standardized format for the final performance report which will enable grantees and fellows to briefly describe their research activities. This information will be used for evaluation purposes as well as for the dissemination of information to disabled citizens and the rehabilitation community.

Office of Educational Research and Improvement

Type of Review Requested: New
Title: Fast Response Survey System: Survey of School Discipline Policies and Practices
Agency Form Number: ED 2379-21
Frequency: Nonrecurring
Affected Public: State or local Governments; Non-profit Institutions
Reporting Burden: Responses: 900; Burden Hours: 450
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Requested by the National Institute of Education, this survey seeks to obtain nationally representative information on discipline policies and practices in the public school, and on the obstacles to discipline faced by school administrators. The findings of the survey will be used to inform policy makers on how school administrators perceive their disciplinary procedures, i.e., whether they actually help or hinder educational progress and discipline in schools.

National Center for Education Statistics

Type of Review Requested: Extension
Title: Degrees and Other Formal Awards Conferred between July 1, 1984 and June 30, 1985
Agency Form Number: ED (NCES) 2300-2 A.
Frequency: Annually; Biennially
Affected Public: State or Local Governments; Businesses or other For-Profit; Non-profit Institutions
Reporting Burden: Responses: 3,325; Burden Hours: 9,975
Recordkeeping Burden. Recordkeepers: 0; Burden Hours: 0

Abstract: Degree and other formal awards data are needed by the Department of Education, State, planning and budget offices and individual colleges for use in economic and financial planning and policy formulation. The data is also used by the Department of Labor in formulating occupational outlook projections and the National Occupational Information Coordinating Committee in assessing manpower needs.

Office of Postsecondary Education

Type of Review Requested: Reinstatement
Title: Performance Report for Training Program for Special Programs Staff and Leadership Personnel; 1983–84
Agency Form Number: ED 883–1, 1–83 and 883–2, 1–83
Frequency: Annually
Affected Public: Non-profit and public Institutions and Organizations
Reporting Burden: Responses: 10; Burden Hours: 30
Recordkeeping Burden: Recordkeepers: 10; Burden Hours: 2

Abstract: The Department uses the information to evaluate projects for continuation, assess technical assistance needs, determine future funding levels, and assign scores to projects in competition for new grants.

Type of Review Requested: Revision
Title: Fiscal Operations Report and Application to Participate in the National Direct Student Loan, Supplemental Educational Opportunity Grant and College Work-Study Programs
Agency Form Number: ED 646–1
Frequency: Annually
Affected Public: State or Local Governments; Non-profit Institutions
Reporting Burden: Responses: 5,300; Burden Hours: 198,543.3
Recordkeeping Burden: Recordkeepers: 5,300; Burden Hours: 424

Abstract: The application data will be used to compute the amount of funds needed by each institution during the 1986–87 Award Year. The fiscal operations report data will be used to assess program effectiveness and accountability of funds expended during the Award Period 1984–85.

Type of Review Requested: Extension
Title: Performance/Financial Status Report Forms for the Cooperative Education Program
Agency Form Number: ED 411, 411–1
Frequency: Annually
Affected Public: Non-profit and public postsecondary institutions
Reporting Burden: Responses: 195; Burden Hours: 1,024
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The Performance and Financial Reports are needed by the U.S. Department of Education to monitor and close out grants awarded to non-profit and public postsecondary institutions by the Cooperative Education Program.

[FR Doc. 85–1821 Filed 1–23–85; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided.

A meeting of Subcommittee A of the Industry Advisory Board to the International Energy Agency (IEA) will be held on January 30 and 31, 1985, at Exxon Corporation, Room 5241, Exxon Building, 1251 Avenue of the Americas, New York, New York, beginning at 9:30 a.m. on January 30. This meeting is being held in order to permit representatives of some of the members of Subcommittee A to participate in a meeting of a joint Government/Industry Technical Sub-group which has been established by the IEA for the preparation of the fifth IEA Allocation Systems Test (AST–5). The agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following agenda will be followed:

1. Matters arising from previous technical sub-group meeting.

2. Matters arising from the January 17, 1985 meeting of the Standing Group on Emergency Questions.

3. Draft of the AST–5 Test Guide.

4. Future meetings.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of Subcommittee A of the Industry Advisory Board, their counsel, representatives of members of the SEQ, employees of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, employees of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, D.C., January 16, 1985.

Theodore J. Garrish,
General Counsel.

[FR Doc. 85–1912 Filed 1–23–85; 8:45 am]
BILLING CODE 6450–01–M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, Section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective February 1, 1985. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE–034, Washington, D.C. 20585, Telephone: (202) 252–6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine

the price ceilings is described in Section III.

State	Dollars per million Btu's
Alabama	4.36
Arizona	3.95
Arkansas	4.03
California	4.17
Colorado[2]	4.15
Connecticut[1]	4.43
Delaware[1]	4.44
Florida	4.31
Georgia[1]	4.41
Idaho[2]	4.15
Illinois[1]	4.15
Indiana[1]	4.15
Iowa[1]	3.89
Kansas[1]	3.89
Kentucky[1]	4.15
Louisiana[1]	4.05
Maine	4.42
Maryland[1]	4.44
Massachusetts	4.37
Michigan[1]	4.15
Minnesota	3.78
Mississippi[1]	4.41
Missouri[1]	3.89
Montana[2]	4.15
Nebraska[1]	3.89
Nevada[1]	4.30
New Hampshire[1]	4.43
New Jersey[1]	4.44
New Mexico	3.97
New York	4.42
North Carolina[1]	4.41
North Dakota[1]	3.89
Ohio	3.84
Oklahoma[1]	4.05
Oregon[1]	4.30
Pennsylvania[1]	4.44
Rhode Island[1]	4.43
South Carolina[1]	4.41
South Dakota[1]	3.89
Tennessee	4.17
Texas	3.83
Utah[2]	4.15
Vermont[1]	4.43
Virginia[1]	4.41
Washington[1]	4.30
West Virginia[1]	4.15
Wisconsin[1]	4.15
Wyoming[2]	4.15

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM-79-21.
[2] Region based price computed as the weighted averaged price of Regions E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during November 1984 was $32.61 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NPGA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective February 1, 1985, is $7.31 per million BTU's.

Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM-79-21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM-81-28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of September 1984, October 1984, and November 1984.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective February 1, 1985, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, September 1984, October 1984, and November 1984. Reported prices for sales in September 1984 were adjusted by the percent change in the nationwide volume-weighted average price from September 1984 to November 1984. Prices for October 1984 were similarly adjusted by the percent change in the nationwide volume-weighted average price from October 1984 to November 1984. The volume-weighted 3-month average of the adjusted September 1984 and October 1984, and the reported November 1984 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III. C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which has no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of September 1984, October 1984, and November 1984. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price*

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

Report publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending January 15, 1985, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of November 1984. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A	*Region B*
Connecticut	Delaware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	
Region C	*Region D*
Alabama	Illinois
Florida	Indiana
Georgia	Kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	
Region E	*Region F*
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma
Nebraska	Texas
North Dakota	
South Dakota	
Region G	*Region H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Issued in Washington, D.C., January 17, 1985.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 85-1911 Filed 1-23-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 85-01-NG]

Natural Gas Imports; J.R. Simplot Co.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application for Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 8, 1985, of the application of the J.R. Simplot Company (Simplot) to import on a best efforts basis up to 3,000 MMBtu per day of Canadian natural gas at a proposed rate of $2.98 (U.S.) per MMBtu for a term of two years from the date of first delivery. The imported volumes are to be purchased from Tricentrol Oils Limited (Tricentrol) and transported by the Midwestern Gas Transmission Company (Midwestern) and Northern States Power Company (NSP). The underlying purchase agreement is conditioned upon receipt of all necessary regulatory approvals by March 1, 1985.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on February 25, 1985.

FOR FURTHER INFORMATION CONTACT:

R.T. Gehring, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9482.

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: Simplot operates a food processing plant for the production of various potato products in Grand Forks, North Dakota. It currently uses No. 6 fuel oil to supply most of the plant's hydrocarbon energy needs, only a small amount of natural gas being used for space heating.

The applicant seeks authorization to import up to 3,000 MMBtu per day of Canadian natural gas at a price of $2.98 (U.S.) per MMBtu for a term of two years for its own use in food processing. On December 10, 1984, Simplot and Tricentrol entered into an agreement whereby Tricentrol shall make available, on a best efforts basis, over a contract term of two years 3,000 MMBtu of natural gas per day. Under the agreement, the price of $2.98 per MMBtu applies to the first contract year and remains the same for the second contract year, failing mutual agreement to change it. Contractual provisions allow for adjustments in the price to reflect market sensitivity to changing prices of competing energy sources. In addition, although there are no conventional take-or-pay provisions, the the contract does require Simplot to take or pay for volumes nominated monthly by Simplot for delivery.

According to the application, no new facilities will be required to implement the proposed import. The gas will come from fields in Canada in which Tricentrol has a working interest and may or may not be the operator. Simplot states that Tricentrol has approximately 20 Bcf of undedicated reserves available for sale and has pledged up to 1.5 Bcf from this base for this proposed sale. Any gas in excess of that provided by Tricentrol required to meet the contracted maximum demand will be secured from other Canadian producers by Tricentrol. The imported volumes will be delivered at Emerson, Manitoba, to Midwestern, transported by Midwestern through Minnesota into North Dakota, and delivered to NSP at the city gate of Grand Forks. NSP will deliver the gas to Simplot's facility in Grand Forks. Simplot did not indicate in its application whether necessary transportation arrangements have been formalized.

In support of its application, Simplot asserts that use of appropriately priced natural gas is a cost-effective, efficient means of improving the economics of production at this plant, which has had a history of being a marginal operation. Simplot further asserts that the proposed import, transportation and delivery of natural gas can be accomplished at a significant savings over the costs of fuel oil.

Simplot further asserts that the $2.98 purchase price of the gas is competitive with the lowest-priced natural gas available to it and is considerably lower than No. 6 oil which is currently its primary fuel. In addition, the applicant maintains that this proposed import will (1) eliminate its requirement for No. 6 fuel oil for use by other customers, (2) increase revenues for the transporting

pipelines, and (3) reduce its plant operating costs.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties who may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-43, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., February 25, 1985.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Simplot's application is available for inspection and copying in the Natural Gas Division Docket Room GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-1910 Filed 1-23-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP85-220-000, et al.]

Natural Gas Certificate Filings; Williston Basin Interstate Pipeline Co., et al.

Take notice that the following filings have been made with the Commission:

1. Williston Basin Interstate Pipeline Company

[Docket No. CP85-220-000]

January 15, 1985.

Take notice that on January 11, 1985, Williston Basin Interstate Pipeline Company (Williston), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP85-220-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of storage gas inventory owned by Frontier Gas Storage Company (Frontier), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williston proposes to implement the terms of a revised stipulation and agreement of settlement (Settlement) filed with the Commission on January 10, 1985, for Commission approval in Docket Nos. CP82-487-000, *et al.*, and Williston's proposed Rate Schedule X-9, also filed on January 10, 1985. Williston asserts that under its proposed Rate Schedule X-9, Williston would transport, on an interruptible basis, any and all volumes of Frontier's storage gas inventory from Williston's storage fields to any points on Williston's system for redelivery to off-system markets.

Williston proposes to charge Frontier a rate equivalent to that collected under Williston's Rate Schedule T-3, plus 1.5 percent of the volumes tendered for transportation as compensation for the gas and lost and unaccounted for in performing the service. Williston states that the proposed transportation service would be authorized until all of Frontier's gas storage inventory is sold and delivered out of Williston's system. Williston further states that all revenues from such transportation would be credited to Williston's customers under Account No. 191.

Comment date: January 29, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Frontier Gas Storage Company

[Docket No. CP85-221-000]

January 15, 1985.

Take notice that on January 11, 1985, Frontier Gas Storage Company (Frontier), c/o Security Pacific National Bank, 333 South Hope Street, Los Angeles, California 90071, filed in Docket No. CP85-221-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon a certificated sale to Montana-Dakota Utilities Co. (MDU). Frontier also requests, pursuant to section 7(c) of the Natural Gas Act, a blanket certificate of public convenience and necessity authorizing sales of all or any portion of Frontier's storage gas inventory. Frontier's proposals are fully set forth in its application which is on file with the Commission and open to public inspection.

Specifically, Frontier requests authorization for a blanket sales certificate, pursuant to the terms and conditions of a revised stipulation and agreement of settlement (Settlement) filed with the Commission on January 10, 1985, for Commission approval in Docket Nos. CP82-487-000, *et al.* Frontier asserts that the Settlement and Frontier's proposed Rate Schedule LVS-1, also filed on January 10, 1985, would allow Frontier to sell any or all of its storage gas inventory on an "as metered" or "in place" basis. Frontier states that it would identify the buyer

and the rate for each sale in an executed service agreement to be filed with the Commission.

Frontier proposes to flow through to Williston Basin Interstate Pipeline Company (Williston), the interstate successor to MDU, and Williston would credit to its customers, all revenues in excess of the actual costs incurred in selling Frontier's storage gas inventory. Frontier asserts that neither it, nor Williston, nor MDU would be permitted to recover any amounts from their customers if the storage gas inventory is sold at a loss. Frontier also requests that upon sale of the entire storage gas inventory all certificate and rate authorizations heretofore granted to Frontier shall expire.

Comment date: January 29, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Cincinnati Gas & Electric Company

[Docket No. CP85-191-000]

January 17, 1985.

Take notice that on December 20, 1984, Cincinnati Gas & Electric Company (Cincinnati), 139 East 4th Street, Cincinnati, Ohio 45202, filed in Docket No. CP85-191-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations for a certificate of public convenience and necessity for blanket authorization to transport natural gas to the same extent and in the same manner as intrastate pipelines are authorized to engage in such activities pursuant to Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Cincinnati states that it received during the 12-month period ending October 31, 1984, a total of 86,387,354 Mcf of natural gas at or within the boundary of the State of Ohio, the entirety of which was exempt from the authority of the Natural Gas Act by reason of section 1(c) thereof.

Cincinnati further states that the Public Utilities Commission of Ohio ((PUCO) has jurisdiction over Cinc'nnati's rates and tariffs. Cincinnati explains that rates for transportation performed under the blanket authorization would be approved by PUCO for comparable transportation service, as provided in § 284.123(b)(1)(ii) of the Commission's Regulations or a rate based upon the methodology used in designing rates to recover the cost of transportation included in Cincinnati's effective firm rate schedules for city-gate service on file with PUCO, as provided in § 284.123(b)(1)(i)(A) of the Commission's Regulations.

Cincinnati asserts that it would also comply with the requirements of § 284.222(e) of the Regulations applicable to any transportation performed under the herein proposed blanket authorization.

Comment date: February 6, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-187-000]

January 17, 1985.

Take notice that on December 20, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-187-000 a request, as supplemented on January 2, 1985, pursuant to § 157.205(b) of the Regulations under the Natural Gas Act (18 CFR 157.205)(b)) for authorization temporarily to realign certain natural gas volumes under its Seasonal Service I Rate Schedule (SS-1) for Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), all as more fully set forth in the request, as supplemented, which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to realign 8,340 Mcf per day of Peoples' SS-1 entitlement from Operational Zones A and C to Operational Zone D, as follows:

	Mcf
From:	
Zone A—Allied Chemical Corporation, La Platte, Nebraska	(5,340)
Zone C—Farmland Industries, Inc., Iowa	(3,000)
Total	(8,340)

	Transferred entitlement (Mcf)	Proposed authorized level (Mcf)
To Zone D Iowa:		
Amamosa	396	831
Arlington	527	540
Cresco	45	468
Decorah	687	1,276
Dubuque	4,697	6,052
Hopkinton	300	324
Luana	260	434
Manchester	307	682
Maquoketa	313	891
Postville	418	718
Waukon	190	274
Total	8,340	

Northern indicates that the above realignment is at the request of Peoples and is necessary so that Peoples can utilize the SS-1 entitlements currently authorized for Peoples' overall system to meet market requests and to avoid the possible use of expensive propane and peak shaving facilities. The realignment is to be effective through March 26, 1985, it is stated.

Comment date: March 4, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 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 385.211 and 385.214) 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 filing 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the 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. 85-1838 Filed 1-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-150-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.; L. Maurice Baker, et al.

Comments are due on the following filings on or before thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission:

1. L. Maurice Baker

[Docket No. QF85-150-000]

January 16, 1985.

On December 24, 1984, L. Maurice Baker (Applicant), of Suite 1211, Oregon Bank Building, Portland, Oregon 97204, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3.2 megawatt hydroelectric facility (P. 5562) will be located at the confluence of Oak Grove Creek and Shellrock Creek near Estacada, Clackamas County, Oregon.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State of Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. L. Maurice Baker

[Docket No. QF85-151-000]

January 16, 1985.

On December 24, 1984, L. Maurice Baker (Applicant), of Suite 1211, Oregon Bank Building, Portland, Oregon 97204, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 11 megawatts hydroelectric facility (P. 5074) will be located on Mill Creek near Reedsport, Oregon.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State of Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. L. Maurice Baker

[Docket No. QF85-149-000]

January 16, 1985.

On December 24, 1984, L. Maurice Baker (Applicant), of Suite 1211, Oregon Bank Building, Portland, Oregon 97204, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 12 megawatt hydroelectric facility (P. 5264) will be located at the confluence of Oak Grove Fork with Stone Creek near Estacada in Clackamas County, Oregon.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

4. Antrim Mining Co., Inc.

[Docket No. QF85-139-000]

January 16, 1985.

On December 17, 1984, the Antrim Mining Company, located at P.O. Box 38 Blossburg, Pennsylvania 16912, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is an anthracite silt and culm refuse-fired small power production facility that will be located in the vicinity of Lickdale, Pennsylvania. The facility will contain a turbine generator capable of producing approximately 20 MW, exclusive of station use. The burning of anthracite silt and culm refuse will produce steam which will be used by the facility for the generation of electricity.

5. Amoco Oil Company

[Docket No. QF85-134-000]

January 16, 1985.

On October 29, 1984, Amoco Oil Company (Applicant) of Post Office Box 401, Texas City, Texas 77590, 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 Amoco Oil cogeneration facility will be located adjacent to the Amoco refinery in Texas City, Texas. The cogeneration facility will consist of three 75,000 kilowatt combustion turbine generators, three waste heat recovery boilers, and a steam turbine generator. The useful thermal energy output, which will be in the form of process steam, will be utilized by the Amoco refinery in its process operations. The electric power production capacity of the facility will be 275,000 kilowatts (at 70 ° F). Natural gas will be the primary energy source for the facility with distillate as a future alternate fuel.

6. Cogentrix of North Carolina, Inc. (Pfizer, Inc.)

[Docket No. QF85-145-000]

January 17, 1985.

On December 17, 1984, Cogentrix of North Carolina, Inc. (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, 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 Pfizer, Inc., Southport, North Carolina 28461. The electric power production capacity will be 43,000 kilowatts. The primary energy source will be coal. The facility will consist of three 157,500 pounds per hour stoker-fired boilers rated at 1,520 pounds per square inch and 950° F. The facility will also contain a single condensing steam turbine generator with a name plate rating of 55,000

kilowatts designed for throttle steam flow of 472,500 pounds per hour. The turbine will be designed for steam extraction both to supply feedwater heating and to provide process steam for Pfizer Inc. chemical plant. Installation for the facility will begin on or about June 1, 1987.

7. Cogentrix of North Carolina, Inc. (Collins & Aikman Corporation)

[Docket No. QF85-147-000]

January 17, 1985.

On December 17, 1984, Cogentrix of North Carolina, Inc., (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, 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 Collins & Aikman Corporation, 1803 North Main Street, Roxboro, North Carolina 27573. The electric power production capacity will be 53,000 kilowatts. The primary energy source will be coal. The facility will consist of three 157,500 pounds per hour stokerfired boilers rated at 1,520 pounds per square inch and 950 °F. The facility will also contain a single condensing steam turbine generator with a name plate rating of 55,000 kilowatts designed for throttle steam flow of 472,500 pounds per hour. The turbine will be designed for steam extraction both to supply feedwater heating and to provide process steam for Collins & Aikman Corporation Textile plant. Installation for the facility will begin on or June 1, 1987.

8. Cogentrix of North Carolina, Inc. (Monsanto Agricultural Products Co.)

[Docket No. QF85-146-000]

January 17, 1985.

On December 17, 1984, Cogentrix of North Carolina, Inc., (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, 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 Monsanto Agricultural Products, Co., Highway 55, P.O. Box 2307, Fayetteville, North Carolina 28302. The electric power production capacity will be 52,000 kilowatts. The primary energy source will be coal. The facility will consist of three 157,500 pounds per hour stokerfired boilers rated at 1,520 pounds per square inch and 950 °F. The facility will also contain a single condensing steam turbine generator with a name plate rating of 55,000 kilowatts designed for throttle steam flow of 472,500 pounds per hour. The turbine will be designed for steam extraction both to supply feedwater heating and to provide process steam for Monsanto Agricultural Product Company plant. Installation for the facility will begin on or about June 1, 1987.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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. 85-1837 Filed 1-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-19-000]

Procedures for Assessing Hydropower Projects Clustered in River Basins; Request for Comments

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of request for comments.

SUMMARY: The Federal Energy Regulatory Commission requests comments on a procedure proposed by its staff for assessing environmental effects of hydropower projects that are proposed to be clustered in river basins and licensed under the Federal Power Act. The procedures would be applied initially in the Snohomish River, Owens River, and Salmon River basins.

DATES: Comments must be filed by 4:30 p.m. on February 28, 1985.

ADDRESS: Comments must be submitted to the Secretary, Federal Energy Regulatory Commission, Room 3110, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Dean L. Shumway, Director, Division of Environmental Analysis, Office of Hydropower Licensing, Federal Energy Regulatory Commission, 202/376-1768.

SUPPLEMENTARY INFORMATION:

Issued: January 16, 1985.

I. Introduction

The Federal Energy Regulatory Commission (Commission) requests comments on a procedure developed by its staff for assessing the environmental effects of hydropower projects clustered on river basins. The Commission wishes to obtain the benefit of comments from any persons and entities interested in these matters. For this reason, the Commission requests comments on whether the procedure would be appropriate. Although this procedure is designed to be applied to any river basin in the United States, the staff has tentatively identified three river basins where the proposed procedure would be initially applied, namely the Snohomish River, Owens River, and Salmon River basins. This notice also seeks comment on whether this or a similar procedure should be applied first to any other basins, such as any of the 19 other western river basins examined by staff and shown on Figure 1, below. The Commission will also entertain views on whether the procedure should be applied to river basins throughout the United States and on whether and how informal field hearings would assist its decision on what procedure to adopt.

II. Background

The procedures discussed below constitute the staff's response to a Commission Directive issued December 20, 1984. As noted in that Directive,

> [i]n recent filings with the Commission it has been asserted that the impacts of multiple proposed hydroelectric projects in numerous river basins in the Western United States have the potential for causing adverse impacts on the environmental resources of the basins and that studies of these multiple project impacts should be initiated.

Staff reviewed these filings and presented to the Commission at the December 20, 1984, meeting a proposed procedure to enable the Commission to review the potential for environmental harm posed by multiple license applications for projects clustered together in limited geographic areas. If staff review under the proposed procedure indicates there are no adverse environmental impacts from clustering of projects, appropriate environmental documents could be prepared and action could proceed on those individual applications on a case-by-case basis. However, where staff

review indicates that the clustering of projects presents a potential for adverse environmental impacts, but the extent of those impacts is uncertain, staff would initiate the "cluster impact assessment procedure" which is described below. Staff noted that that there is a substantial potential for environmental harm from clustered projects in the Snohomish, Owens, and Salmon River Basins. The Commission's December 20, 1984, Directive instructed staff to refine the "cluster impact assessment procedure" concept and to propose plans to carry out this procedure in these three river basins.

The Commission recognizes that several environmental issues of a legal nature have been raised in various pleadings by parties to license, permit, or exemption proceedings involving projects proposed in several western states. These issues range from Federal trust responsibilities to protect tribal fisheries and water rights to the appropriate discharge of the Commission's responsibilities under the National Environmental Policy Act (NEPA) [1] and the Pacific Northwest Electric Power Planning and Conservation Act.[2] While the Commission will consider these issues closely, it requests that commenters in this docket address only the procedural and technical questions raised by staff's proposal. Similarly, the Commission does not intend that this request for comments elicit views on the "need for power" issue as it bears on Commission hydropower proceedings. The Commission will address such issues elsewhere.

III. Description of Cluster Impact Assessment Procedure

Staff's proposal for assessing hydropower projects clustered in river basins is composed of two parts. First, staff proposes to implement a methodology, termed the Cluster Impact Assessment Procedure (CIAP), to assess cumulative adverse impacts on environmental resources from multiple project development. Second, staff proposes that the CIAP be utilized initially to assess hydropower projects clustered in the Snohomish, Owens and Salmon River Basins. The following sections describe in detail the CIAP proposal and staff's proposal to utilize the CIAP in the above-referenced river basins.

According to staff, the CIAP can be utilized to identify basins where there is a potential for adverse environmental impacts on important resources identified by resource management agencies, interested parties, applicants, and by the Commission's staff, that could be adversely impacted by multiple hydropower development (target resources); to determine the geographic extent of these adverse impacts (cluster size); to determine the interaction between target resources and hydropower projects; to perform an impact assessment of the clustered projects; and finally, to prepare the appropriate National Environmental Policy Act (NEPA) document. The CIAP is illustrated generally in Figure 2 below.

Staff indicates that the study of environmental impacts using the CIAP would provide the Commission with information from which licensing decisions may be reached concerning multiple project development. Because of the uncertainties of development associated with preliminary permits and because of the fish and wildlife responsibilities of the state and Federal resource agencies concerning exemptions, staff proposes to base the determination of need and the delineation of the cluster for cumulative study only on pending license applications. Under the CIAP, once the cluster is identified, pending exemption applications would be included in the study insofar as non-fish and non-wildlife target resources (such as recreation and aesthetics) were involved. Fish and wildlife impacts for pending exemptions would be considered only as factors affecting the resource base, much as with existing projects.

The four major components of the CIAP, namely the Geographic Sort, the Resource Sort, the Multiple Project Assessment, and the NEPA Document, are outlined in detail below.

A. Geographic Sort

The Geographic Sort, illustrated in Figure 5 below, is the first of four phases of the CIAP. This phase, through public participation, would identify the geographic area of concern within the subject river basin by evaluating the locations of the pending license applications in relation to the resources at risk from proposed and existing hydropower projects. Those projects that are located within the study basin but are isolated from the identified cluster would be processed by the Commission on a case-by-case basis. This phase would also provide for the first of several public meetings that would be used to assist in determining the scope of the study. The two major components of the Geographic Sort are the public meeting and the environmental review.

1. Public Meeting

Preparation and issuance of a Federal Register notice for the public meeting would initiate the Geographic Sort. Concurrent with the preparation of the public notice, a contract would be executed with a Department of Energy National Laboratory to provide assistance with the public meeting and the remainder of the CIAP.

A public meeting document, to be used as the basis for discussion, would be prepared and sent to appropriate state and Federal resource agencies and interested parties approximately 2 weeks before the meeting. The document would include a map, showing the approximate location of projects in the study basin, an initial list of proposed target resources, and an agenda for the public meeting.

The public meeting would be conducted by staff, who would discuss the scope of the study, the proposed methodology, and the proposed schedule. The public, interested individuals and entities, Indian Tribes, resource agencies, and, in the Pacific Northwest, the Northwest Power Planning Council, would have the opportunity at the meeting to assist staff in defining the target resources and the geographic area of concern. In addition, staff would hold technical meetings with the resource agencies and would conduct initial field surveys to further define responsibilities, to determine the availability of resoruce information, and to identify information gaps. The receipt of comments on the public meeting would enable staff to initiate the Geographic Sort's environmental review.

2. Environmental Review

The environmental review would document the decision on cluster boundaries and target resources. This documentation would take the form either of a public meeting report, if no projects were identified as being isolated from the cluster, or an Environmental Assessment (EA), if one or more projects are isolated from the cluster and thus subject to exclusion from the remainder of the CIAP. A public meeting document or an EA would be drafted, a staff review of the appropriate document would be completed, and then the document would be completed, to reflect the results of the Geographic Sort (cluster and target resource identification).

According to staff, the Geographic Sort would take 78 days to complete. If

[1] 42 U.S.C. 4321 (1982).

[2] 16 U.S.C. 839b *et seq.* (1982).

any projects are excluded from the CIAP at the end of this period, a memorandum would be prepared, recommending that internal processing of the excluded applications continue on a case-by-case basis.?

B. Resource Sort

The Resource Sort, illustrated in Figure 4 below, would identify those proposed projects that have the potential to adversely affect the target resources in a cumulative manner which should be included in the CIAP. Those projects that do not interact with the target resources, although they are located within the geographic area of concern, would be processed on a case-by-case basis.The three major components of the resource sort are preparing draft maps, conducting workshops, and preparing final maps.

1. Draft Maps

The draft mapping step includes the identification of the location of projects and the delineation of target resource distribution within the cluster. Resource information gathered during the public meeting step and information garnered through literature searches after the completion of the Geographic Sort would be compiled in maps (or other media) depicting the areas of concern for target resources. Staff review of the draft maps would also occur at this time.

Concurrent with the preparation of the draft maps, and in order to initiate the Multiple Project Assessment, draft target resource components (aspects of target resources that define resource distribution) and draft impact criteria (definition of the range of impact levels) would be determined. Although the resource components and impact criteria are used in the Multiple Project Assessment phase of the CIAP, development of these concepts would be accomplished in cooperation with appropriate parties during the Resource Sort.

2. Workshops

The Resource Sort workshop would be used to verify that the information used in developing the draft maps is accurate and that it reflects the current state of knowledge for each target resource to be analyzed. To help the workshop attendees prepare for the sessions, a document containing the draft maps and draft target resource components and impact criteria would be prepared and sent to all interested parties and agencies before the workshop. According to staff, this step is important, since this material is the baseline information from which the rest of the analysis would be developed. The members of the workshop would also concentrate on reaching a consensus on the components of each target resource and on the importance, or weight, that should be assigned to each of the target resource components. Finally, the workshop participants would focus on the criteria for defining impacts, ranging from acceptable levels to unacceptable levels, for each target resource.

3. Final Maps

The results of the workshops would be incorporated into the resource maps for review by the Commission's staff before the final resource maps prepared. Should the exercise of finalizing the resource maps indicate that certain projects do not, to any degree, interact with the target resources, the resource maps and the lack of project interaction would be documented in an EA recommending exclusion of these projects from the remainder of the CIAP, and those projects would e processed on a case-by-case basis. If the resource maps indicate that all projects in the cluster interact with target resources, then an EA would not be prepared at this stage, with documentation of this step resting in the finalized resource maps.

According to staff, the Resource Sort would take 84 days to complete. If any projects are excluded from the CIAP at the end of this period, a memorandum would be prepared, recommending that internal processing of the excluded applications continue on a case-by-case basis.

C. Multiple Project Assessment

The Multiple Project Assessment, illustrated in Figure 5 below, would determine the potential for significant cumulative adverse impacts on target resources from proposed projects included in the CIAP. The principal tasks under the Multiple Project Assessment phase would include an impact assessment of proposed projects and a matrix analysis.

1. Impact Assessment

The impact assessment would consist of a preliminary analysis of project impacts on target resources, a technical session with resource agencies to discuss the analysis, and completion of an impact matrix.

According to staff, project impacts would be assessed with the aid of impact matrices, the resource components (those attributes of a target resource that define the distribution and significance of that resource—such as spawning habitat for fish resources) and impact criteria (criteria developed by staff and resource agencies used to define the level of impact on a resource component—such as percent of habitat lost) of which were initially developed during the Resource Sort. Figure 6, set out below, is an example of the target resource components (such as spawning habitat, cover and food) and impact criteria (i.e., >25% lost, 15–25% lost) that might be appropriate for assessing the levels of impact of hydropower development on resident trout. Levels of impact, to be established with input from resource agencies and others, would be related to the impact criteria, and range from acceptable to unacceptable levels. All resource components, component weights (value denoting the relative importance of a resource component to a target resource), and the criteria used to define a level of impact would be agreed upon or formulated with appropriate technical input before project impacts are analyzed.

Once the target resource components and impact criteria are formulated with the resource agencies, staff would initiate an analysis of each project's impact on the components of each target resource, and would compute a weighted value of impact for each target resource for each project. Figure 7, set out below, shows a example of a completed target resource impact matrix. The last column in Figure 7 reflects the weighted value of impact for all the components of the target resource.

Using the completed target resource impact matrices, a summary impact matrix, such as the example illustrated in Figure 8 set out below, would be developed. The summary impact matrix could then be used to determine the weighted values of impact across all resources (last column in Figure 8). Further, algorithms (procedures for solving mathematical problems) would be developed for the calculation of cumulative levels of impacts for target resource any combination of projects (last row in Figure 8, showing value for all projects).

After assessing the impacts of each project on all the target resources, staff would prepare a technical session document, containing the results of the impact assessment for each target resource and the assumptions and analytical techniques used. The technical session document would then be mailed to resource agencies and interested parties for use in the technical sessions to be held in the vicinity of the cluster area. According to staff, notice of the technical sessions and receipt of the technical session document should ensure full

participation by resource agencies and interested parties and should expedite any required modifications of the impact matrices.

After the technical sessions, staff would make any necessary modifications of the analysis to finalize the individual target resource impact matrices (Figure 7) and the summary impact matrix (Figure 8). Areas of disagreement with the parties with respect to the components, component weights, or criteria used to define impact levels would also be documented during this period. The significance of impact levels would also be documented in an attempt to establish how the results of the matrix analysis should be utilized in determining the appropriate NEPA document.

2. Matrix Analysis

Two types of procedures (optimization and multivariate grouping) have been identified by staff to complete the matrix analysis. Both procedures would rely on the previously developed summary impact matrix (Figure 8) for input data. The optimization and multivariate groupings procedures would both be utilized in the initial CIAP efforts to better ascertain the applicability of each method.

The optimization procedure would assess the relationship fo energy development and project impacts by utilizing an energy value for each project as one variable, and either the individual target resource assessments (one relationship for each target resource) or the weighted-value target resurce assessment (one relationship for the entire analysis) as the second variable. The weighted assessment would only be used where resource weighting factors were successfully developed during the technbical sessions to allow for multiple resource evaluation.

All combinations of projects would be given a value for the cumulative level of impact, based on the summary impact matrix. The impact values and the energy equivalent for all combinations of projects could then be plotted to allow for the determination of the optimum development scenario, defined as the greatest energy development at the least environmental cost. Figure 9, set out below, is an example of the graphic display of the matrix-analysis end product.

The multivariate grouping procedure would provide a menu of projects that had been grouped by similar attributes over the variables assessed for each project. The summary impact matrix would form the basis for this analysis, while other variables, such as energy production, construction criteria, scheduling, and public interest, would complete the data set.

Factor Analysis, a statistical technique, would be used to determine factors that would represent the variables measured for the proposed projects in the study area. Assuming that several factors are significant in describing the variables measured for the proposed projects, an additional multivariate statistical technique, Cluster Analysis, would be used to identify which projects belong in groups that may be distinguished by these factors. For example, in an analysis of 20 proposed projects, a data base with 50 variables might adequately characterize the projects. Factor Analysis may indicate that 3 factors adequately represent the 50 variables, and that these 3 factors can be characterized as a construction factor, an aquatic impact factor, and an aesthetic factor.

A Cluster Analysis would then be used to group projects that are similar in terms of these significant factors. A group of projects that are similar in having minor construction activity, low levels of aquatic impact, and low levels of aesthetic impact may be identified, while another group fo projects having major construction activity, high levels of aquatic impact, and high levels of aesthetic impact may also be identified. According to staff, this information could then be utilized to recommend a scenario of basin developments that would have known effects.

D. NEPA Document Phase

The NEPA Document phase of the CIAP, illustrated in Figure 10 below, would consist of one of two pathways, depending on the results of the Multiple Project Assessment. If there is a potential for significant cumulative adverse impacts on target resources in the cluster area, an Environmental Impact Statement (EIS) would be prepared. In the absence of any potential for significant cumulative adverse impacts on target resources, an EA would be prepared. Thus the NEPA Document phase leads either to the completion of an EIS or an EA.

An EIS would include a description of the existing environment, a determination of impacts to environmental resources, a description of potential mitigation, an assessment of need and alternatives, and recommendations for Commendations for Commission action. All environmental resources, not just target resources, would be addressed in an EIS. According to staff, the Draft EIS would take approximately 96 days to prepare. The Draft EIS would then be noticed in the **Federal Register** and circulated for comment in accordance with normal NEPA procedures, with comments due within 60 days from the issuance date. These comments would be reviewed and the Draft EIS revised as appropriate. A Final EIS would then be noticed in the **Federal Register** and issued, also, in accordance with normal NEPA procedures.

The alternative NEPA document, the EA, would have a format similar to the EIS, but it would only address target resources. A Draft EA would be prepared and circulated to interested entities and groups for comment. Upon review of the comments, staff would prepare a Final EA that would contain either a finding of no significant cumulative adverse impact on the target resources or a determination of significant cumulative adverse impact. A finding of no significant cumulative adverse impact would conclude the analysis with respect to cumulative adverse impacts; a finding of significant cumulative adverse impact would require the preparation of an EIS.

IV. Proposal To Utilize the Cluster Impact Assessment Procedure in the Snohomish, Owens and Salmon River Basins

Staff proposes that the CIAP be utilized initially to assess hydropower projects clustered in the Snohomish River, Owens River and Salmon River basins and has prepared proposed procedures to implement the CIAP in these three basins. However, according to staff, despite the level of interest and the recommendations of many resource agencies and interested parties about the need to conduct cumulative impact studies on multiple project development, at this time there does not exist a previously utilized and recognized methodology for conducting cumulative impact studies. Given this situation, and inasmuch as the CIAP departs from the usual case-by-case analysis of individual project impacts, staff indicates that care has been taken in developing these procedures to ensure that the analysis would be as consistent as possible with the standards used in traditional environmental impact analysis. Despite this, it is expected by staff that where appropriate, changes would be made with respect to specific analytical techniques that would result in further refinement of the CIAP. These modifications may be generic in nature or may reflect situations unique to a particular river basin.

Before the initiation of the CIAP in any st▸te, representatives from the

Commission's Office of Hydropower Licensing and the Office of the General Counsel would meet with affected Indian Tribes, heads of appropriate Federal and state resource agencies and, where appropriate, the staff of the Northwest Power Planning Council. These meetings would be used to explain the CIAP, to solicit full cooperation, and to obtain commitments in personnel and other resources, if needed, to support the studies.

The Northwest Power Planning Council and the Bonneville Power Administration (BPA) are currently conducting studies which the staff believes would assist in the cluster impact assessments in the Pacific Northwest. The studies consist of the ranking of hydroelectric sites and the classification of resources. A high degree of planning and coordination with the Northwest Power Planning Council and BPA during the conduct of studies would be anticipated. In California, for example, the State Water Resources Control Board, the California Department of Fish and Game, and the United States Forest Service have also expressed interest in cooperating in cumulative impact studies.

Procedures for the three basins are detailed below.

A. Snohomish River Basin

1. Situation

The Snohomish River Basin drains an area of 1,780 square miles on the western slope of the Cascade Mountains in northwestern Washington, in portions of Snohomish and King Counties. Two major subbasins divide the main basin roughly in half, with the Skykomish River drainage in the north and east and the Snoqualmie River drainage in the south.

There are more than 2,718 linear miles of streams in the Snohomish River Basin. The Skykomish River flows westerly for 28 miles, from the confluence of its North and South Forks, near the town of Index, to join with the Snoqualmie River. The Snoqualmie River flows northwest for 44 miles, from the confluence of its North, Middle, and South Forks, near the town of North Bend, to its confluence with the Skykomish River. At Snoqualmie Falls, located at River Mile 40, the river drops about 268 feet.

Salmon from the Snohomish River (primarily coho, pink, and chinook) contribute to Pacific Ocean commercial fisheries, and sport fisheries. These salmon also contribute to commercial, Indian, and sport fisheries in the Strait of Juan de Fuca, in upper Puget Sound, and in the Snohomish River Basin. The estimated annual production of adult salmon originating in the basin ranges from 660,000 to 975,000 fish, depending on the pink salmon's alternating cycle of escapement, which occurs almost entirely in odd-numbered years. Over 90 percent of the salmon from the Snohomish River originate from wild stocks rather than hatchery runs. About 24 percent of the basin's drainage is accessible to anadromous fish species. Stream obstacles, such as Snoqualmie Falls, prevent anadromous fish migration in much of the basin.

In a series of filings, the National Marine Fisheries Service, the Tulalip Tribes of Washington, the State of Washington Departments of Fisheries and Game, and the United States Fish and Wildlife Service assert that proposed hydropower projects in the Snohomish River Basin would have adverse environmental impacts of such a magnitude that a comprehensive, basin-wide study should be conducted. A similar position is expressed in filings from the Snoqualmie Indian Tribe and from various interested environmental organizations.

As of December 31, 1984, there were 4 licensed projects, 9 pending license applications, and 1 project for which a notice of intent (NOI) to file a license application and a request for extension of time have been filed in the Snohomish River Basin Four of the pending license applications and the NOI are located within the Skykomish River subbasin, while the remainder are located in the Snoqualmie River subbasin. Three of the four licensed projects are located in the Snoqualmie River drainage. See Figure 11, below.

The major environmental concerns relate to the potential adverse impacts of hydropower development on aquatic resources, especially anadromous fish, in the basin particularly in the less-developed Skykomish River drainage. According to staff, there is a potential for multiple impacts on suspended sediment and other water quality variables in stream areas below the proposed hydropower projects. An increased concentration of suspended sediments could result in the deposition of fine sediments in stream gravels during the salmonid-egg incubation period, blocking oxygen supply to eggs and preventing fry emergence. Increased concentrations of sediments could damage the gill membranes of salmonids and could smother bottom-dwelling food organisms. Since these potential water quality impacts and related fishery impacts would occur during the construction phase of the proposed projects, staff believes the concept of scheduling or phasing of multiple project developments should be evaluated to minimize the severity of these impacts at any one time.

According to staff, the long-term, operational impacts of the proposed projects also warrant further study. These impacts include the potential loss of riparian vegetation along the bypass stream reaches. Riparian vegetation often provides important shelter and cover and serves as a food base for stream biota. Reduced streamflows in the bypass stream reaches could adversely impact both aquatic resources and wintering bald eagle populations in the area.

Although the lower Snoqualmie River drainage in the southwestern part of the basin has important anadromous fishery resources, much of the upper drainage is inaccessible to these fish because of the impassable Snoqualmie Falls.

2. Consultation

The initial public notice under the Geographic Sort phase would request that private citizens, conservation groups, Indian Tribes, resource agencies, and applicants' representatives attend a public meeting, which would initiate the consultation process for the CIAP. All written comments that are timely would be considered during any phase of the study. According to staff, this represents one of the CIAP's major strengths—there are built-in steps for public interaction in each phase.

The technical staffs of the following agencies would be expected to participate in the study:

National Marine Fisheries Service, Washington Department of Game, Washington Department of Fisheries, U.S. Fish and Wildlife Service, Forest Service, Northwest Power Planning Council.

In addition, technical representatives for the Tulalip Tribes of Washington and the Snoqualmie Indian Tribe would be encouraged to participate in the study.

Environmental groups that have indicated an interest in the study, and that would be encouraged to participate, include the Washington Environmental Council, the Mountaineers, the Sierra Club, the Olympic Park Associates, the Washington Wilderness Coalition, the Washington Public Interest Research Group, the Wilderness Society, the Seattle Audubon Society, the Friends of the Earth, the Hood Canal Environmental Council, the Washington State Council of the Federation of Fly Fishers, and the Northwest Steelhead and Salmon Council of Trout Unlimited. Other interested groups include the Mt. Index Riverside Community and the Friends of the Snohomish River Delta.

Applicants would all be encouraged to participate in the study, either individually, through their consultants, or through associations such as the Snohomish Basin Ad Hoc Committee.

During the Geographic Sort, staff interaction would occur before the preparation of any formal document, to ensure that all evidence is considered in determining the target resources and the geographic area of concern. In addition, if projects are excluded form the CIAP, an EA would be prepared and a public notice would be issued as described previously.

The Resource Sort phase includes scheduled workshops in which agency staff would interact with Commission staff to determine the distribution of target resources and to help develop the elements of the impact matrix. Conducting the workshops would ensure that agency viewpoints would be considered during this phase of the study. An EA would also be prepared and a public notice issued, if any projects are recommended for exclusion from further study.

The Multiple Project Assessment phase allows for coordination and consultation at the technical session. At this phase, the agencies would be part of the assessment procedure, and their input would be considered prior to any matrix analysis. These distinct consultation steps would allow the agencies to have input into the study and to ensure that all participants know each other's viewpoints.

During the NEPA Document phase, a Notice of Intent (NOI) would be prepared. The NOI would inform the public that an EIS would be prepared and would continue the consultative process for this phase of the procedure. The previous phases would have determined the scope of the EIS, and a comment period after the preparation of the Draft EIS would allow agencies to comment on the matrix analysis and on the proposed action.

B. Owens River Basin

1. Situation

The Owens River Basin is located in east-central California and in a small portion of Nevada. It includes most of Inyo County and the southern portion of Mono County in California and small parts of Mineral and Esmeralda Counties in Nevada. The basin is bounded on the north by the Mono Lake Basin, on the east by the White Mountains, on the south by the Mojave River Basin, and on the west by the Sierra Nevada Mountain Range. The land area is approximately 5,500 square miles.

The Owens River Basin and the Mono Lake Basin are the source of 80 percent of the water used by the city of Los Angeles. Diversions from the Owens River and its tributaries into the Los Angeles Aqueduct have resulted in the evaporation of Owens Lake, which formerly covered 75 square miles.

On February 24, 1984, the California State Water Resources Control Board (Board) filed a petition to intervene and to consolidate the proceedings in the Owens River Basin. The Board's concern was that cumulative impacts be considered for fish, wildlife, vegetation, recreation, and water quality. These concerns have also been expressed in subsequent filings by Federal and state resource agencies and by environmental organizations. The two major points amplified were the economic importance and the interdependence among the riparian habitat of the river basin, its fish and wildlife resources, and the recreational activities associated with these resources.

As of December 31, 1984, there were nine pending license applications located in the Owens River Basin. All pending hydropower projects are located north of Tinemaha Reservoir. See Figure 12, below.

According to staff, multiple hydropower developments in the Owens River Basin would cause reduced stream flows, which could potentially cause cumulative adverse impacts to riparian vegetation, fish, wildlife, and visual resources. An adverse impact on these resources would adversely impact the Owens Valley recreational industry, with a concurrent loss for the local economy. The Inyo National Forest and the Bureau of Land Management estimated that recreational fishing contributed over $13 million to the Owens Valley economy in 1982.

2. Consultation

The initial public notice under the Geographic Sort phase would request that private citizens, conservation groups, Indian tribes, resource agencies, and applicant's representatives attend a public meeting, which would initiate the consultation process for the CIAP. All written comments that are timely would be considered during any phase of the study.

The technical staffs of the following agencies would be expected to participate in the study:

Inyo National Forest, Bureau of Land Management, California Department of Fish and Game, California State Water Resources Control Board

Environmental groups that have indicated an interest in the study, and which would be encouraged to participate, include Friends of the Earth; the Sierra Club, Toiyabe Chapter; the Save Our Eastern Sierra Streams Organization; the Concerned Citizens of Owens Valley; Friends of the River; the California Save Our Streams Council; Citizens of Inyo County; Citizens of Mono County; and Citizens of Eastern Madera and Fresno Counties.

Applicants would all be encouraged to participate in the study, either individually, through their consultants, or through hydropower associations.

During the Geographic Sort, staff interaction would occur before any formal document is prepared, to ensure that all evidence is considered in determining the target resources and the geographic area of concern. In addition, if projects are excluded from the CIAP, an EA would be prepared and a public notice would be issued as described previously.

The Resource Sort phase includes a scheduled workshop in which agency staff would interact with Commission staff to determine the distribution of target resources and to help develop the elements of the matrix. Conducting the workshops would ensure that agency viewpoints would be considered during this phase of the study. An EA would also be prepared and public notice issued, if any projects are recommended for exclusion from further study.

The Multiple Project Assessment phase allows for coordination and consultation at the technical session. At this phase, the agencies would be part of the assessment procedure and their input would be considered prior to any matrix analysis. These distinct consultation steps would allow the agencies to have input into the study and to ensure that all participants know each other's viewpoints.

During the NERPA Document phase, NOI would be prepared. The NOI would inform the public that an EIS would be prepared and would continue the formal consultative process for this phase of the procedure. The previous phases would have determined the scope of the EIS, and a comment period after the preparation of the Draft EIS would allow agencies to comment on the matrix analysis and on the proposed action.

C. Salmon River Basin

1. Situation

The Salmon River Basin covers a 14,000-square-mile area, ranging in elevation from 725 feet to 10,300 feet. The slope exposure in the more rugged country results in many climatic conditions and vegetational types that

provide habitat for an abundant variety of fish and wildlife. The Nation's largest contiguous area of wilderness is located mainly within the Salmon River drainage. The two predominant uses of the land area are agricultural, on the less rugged terrain, and lumbering, in the mountainous areas. Approximately 80 percent of the basin is in public ownership and is managed by the U.S. Forest Service and the Bureau of Land Management.

The Salmon River Basin is the mainstay for chinook salmon production in Idaho, and it provides more spawning habitat for depressed stocks of spring and summer chinook than any other drainage in the Columbia River system. The tributaries of the Salmon River provide most of the spawning and nursery areas for chinook salmon, steelhead trout, sockeye salmon, and cutthroat trout. Multiple project development is proposed chiefly for tributary streams, and has the potential to adversely impact the spawning habitat and the nursery habitat of these fish species. The stability of soils in the Salmon River Basin is such that the construction of proposed projects would contribute to increased erosion and to the subsequent degradation of fishery habitat.

Terrestrial wildlife species that are important in the Salmon River Basin include mule deer, elk, Hungarian partridge, and quail. The potential impacts of multiple project development on terrestrial wildlife species appear to be related to blocking migration corridors and modifying habitat.

As of December 31, 1984, 13 license applications (3 issued, 10 pending) have been filed for projects principally located in three subbasins in the western portion of the Salmon River drainage (Figure 13 below). Twelve of these projects are clustered in a 3,140-square-mile area in the Lower Salmon River, and South Fork Salmon River subbasins.

The National Marine Fisheries Service and the National Wildlife Federation-Idaho Wildlife Federation have filed petitions on the issue of cumulative effects and have filed motions to consolidate hearings on certain projects proposed in the Salmon River Basin.

2. Consultation

The initial public notice under the Geographic Sort Phase would request the participation of representatives of the Northwest Power Planning Council, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the Forest Service, the Bureau of Land Management, the Idaho Department of Fish and Game, the Nez Perce Tribe of Idaho, the National Wildlife Federation, the Idaho Wildlife Federation, the Oregon Department of Fish and Game, and the Washington Departments of Fisheries and Game at the public meeting.

The public meeting and informal discussions with these representatives would constitute the beginning of consultation and coordination between staff and the attending parties. During the public meeting, staff would explain the CIAP process, including the consultation schedule. All comments that are timely would be considered during any phase of the study.

During the Geographic Sort, staff interaction would occur before any formal document is prepared, to ensure that all evidence is considered in determining the target resources and the geographic area of concern. In addition, if projects are excluded from the CIAP, an EA would be prepared and a public notice issued as described previously.

The Resource Sort phase includes a scheduled workshops in which the staffs of the attending parties would interact with Commission staff in determining the distribution of target resources and in helping to develop the elements of the matrices. The workshops would ensure that all viewpoints would be considered during this phase of the study. An EA would also be prepared and a public notice would be issued if any projects are recommended for exclusion from further study.

V. Request for Comments

The Commission invites all interested persons to submit written comments concerning (1) whether the assessment procedures outlined above are appropriate, (2) whether the three river basins selected are appropriate choices for the initial studies, (3) whether and how a field hearing to allow informal oral presentation of the public's views would be helpful in addition to the opportunity for written comments provided by this document, and (4) whether the assessment procedures outlined above should be applied to clustered hydropower license applications throughout the United States. All comments must be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should refer to Docket No. EL85-19-000. An original and 14 copies should be filed. The Commission will consider all comments filed by 4:30 p.m. on February 28, 1985. All written submissions will be placed in the public file for this docket. That file is available for public inspection during regular business hours in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

By direction of the Commission

Kenneth F. Plumb,

Secretary.

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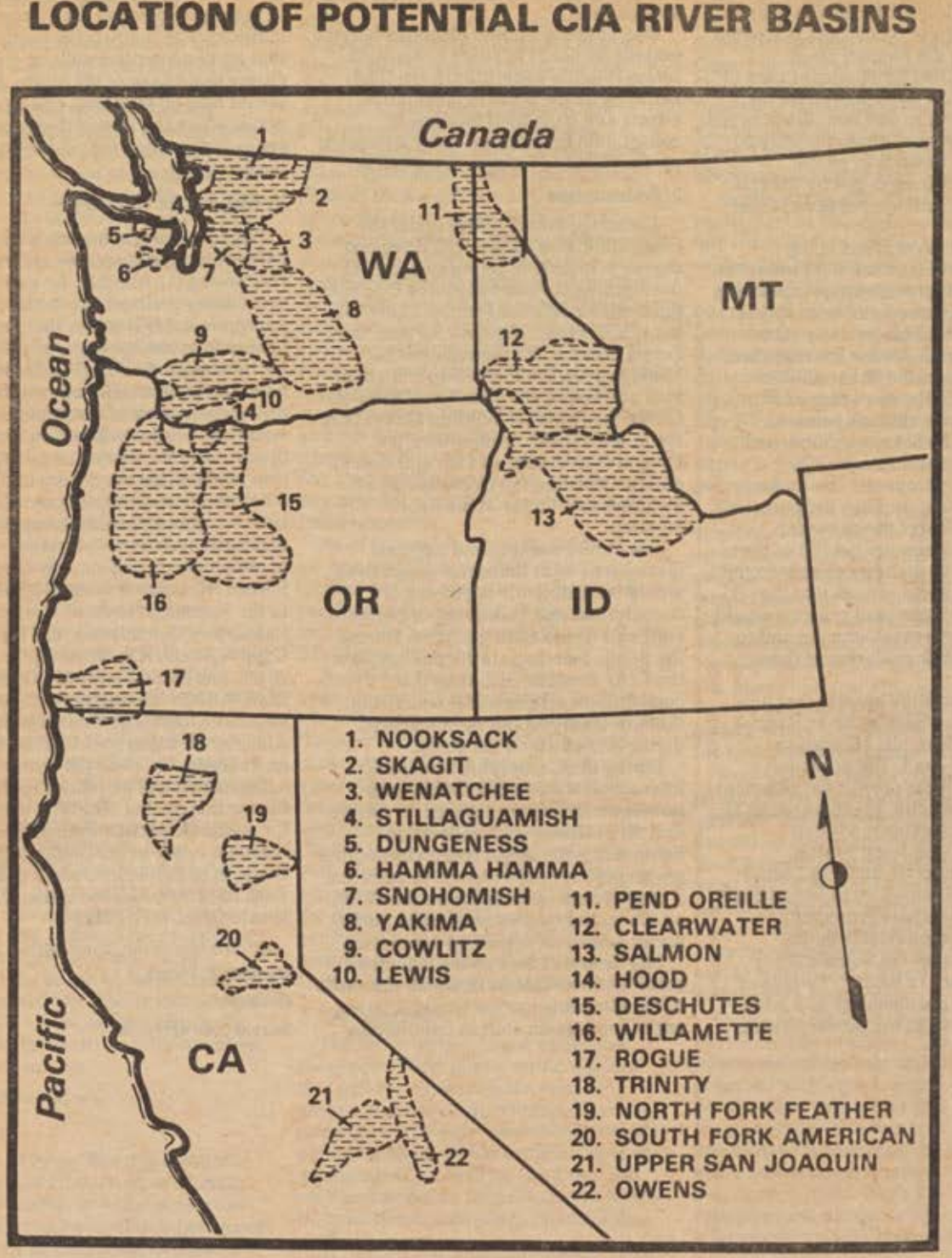

Figure 1. Location of river basins in the Western United States with multiple hydropower project applications.

CLUSTER IMPACT ASSESSMENT PROCEDURE

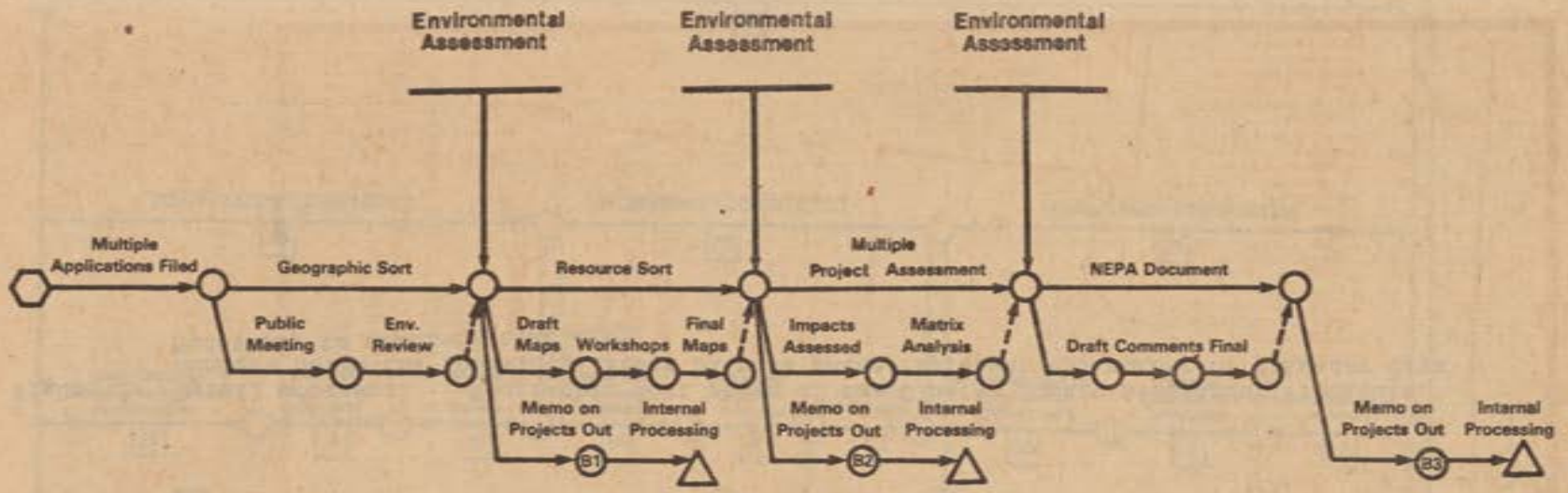

Figure 2. Procedure for processing multiple hydropower project applications filed in river basins where there is a potential for adverse environmental impacts.

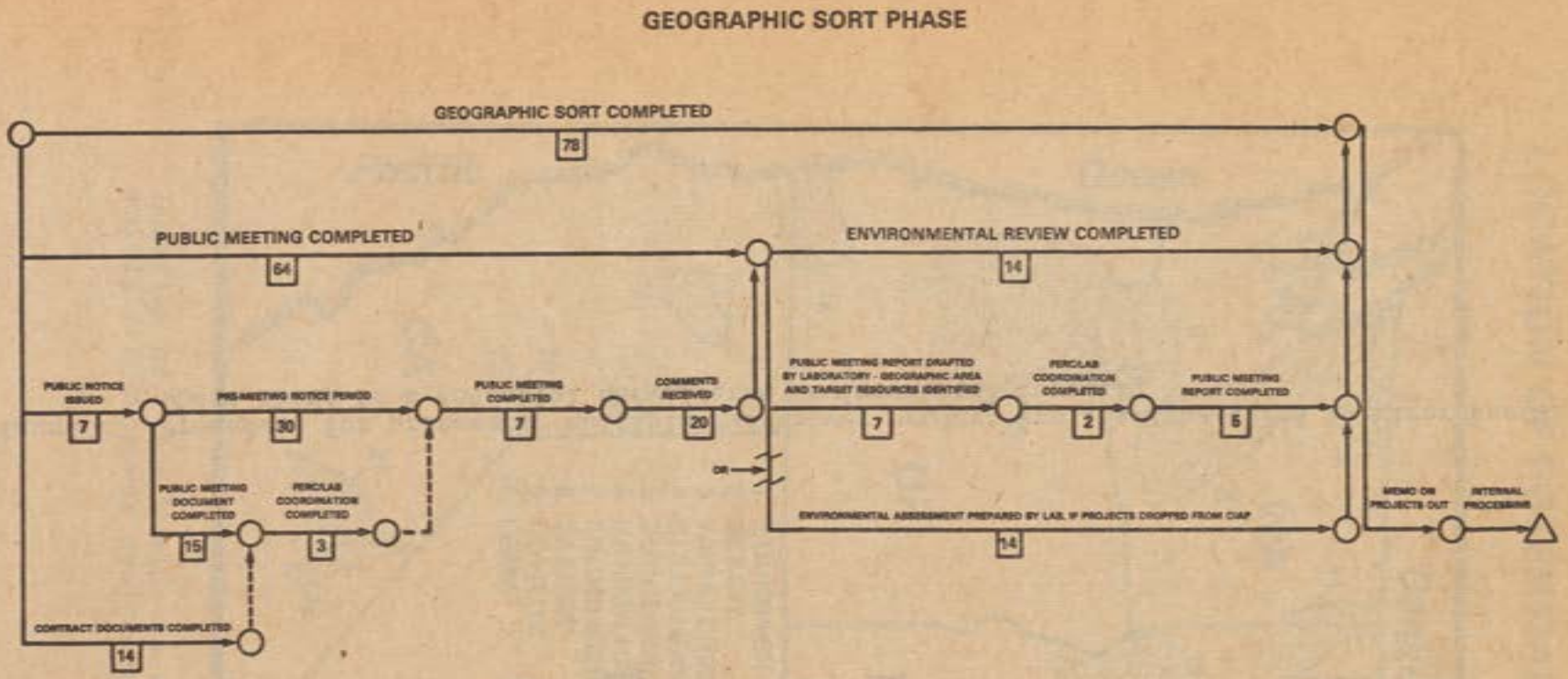

Figure 3. Detail procedure -- Geographic Sort phase of the Cluster Impact Assessment Procedure. Numbers below the individual steps of this phase represent the number of calendar days necessary to complete that step.

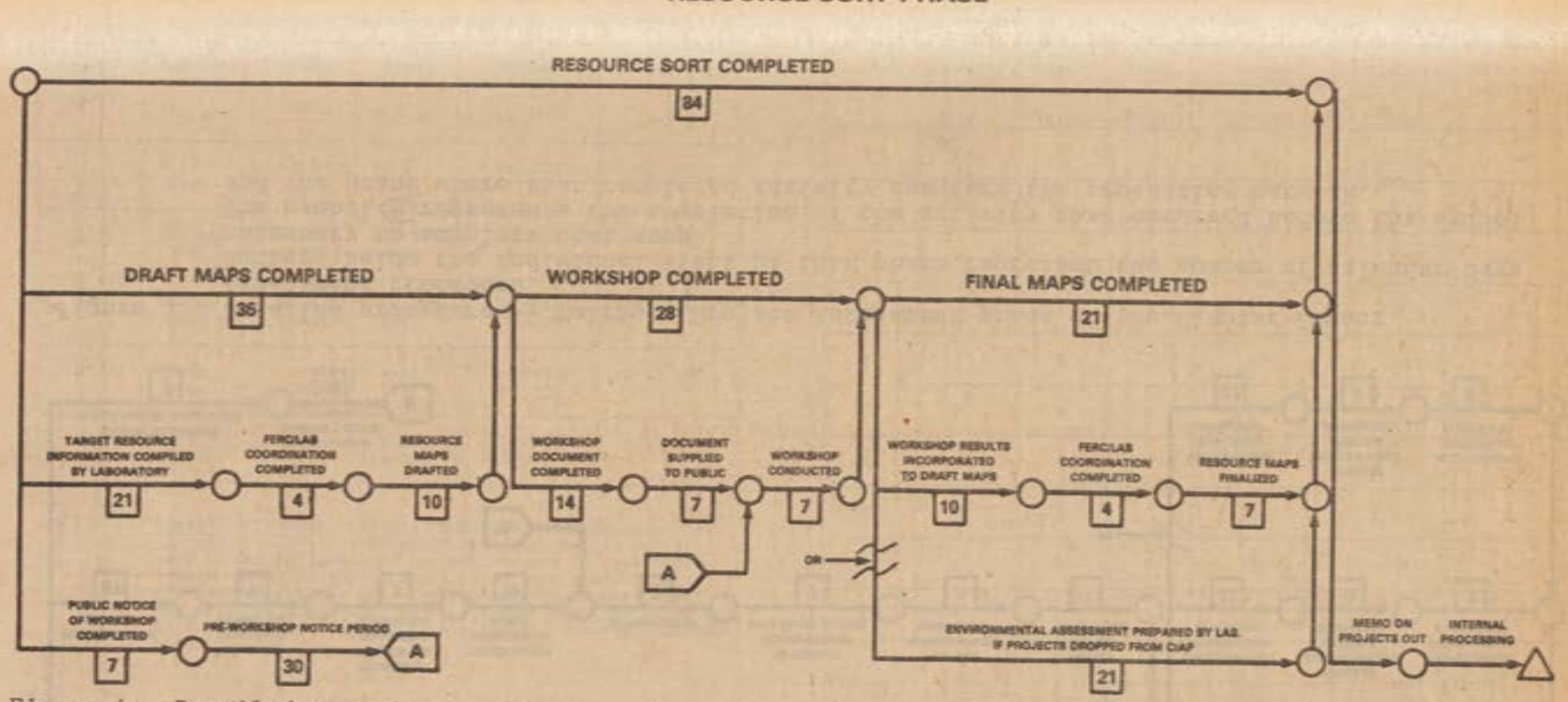

Figure 4. Detailed procedure -- Resource Sort phase of the Cluster Impact Assessment Procedure. Numbers below the individual steps of this phase represent the number of calendar days necessary to complete that step.
The symbol Ⓐ represents the completion of the activity that occured before the symbol, and the point where that completed activity reenters the processing network.

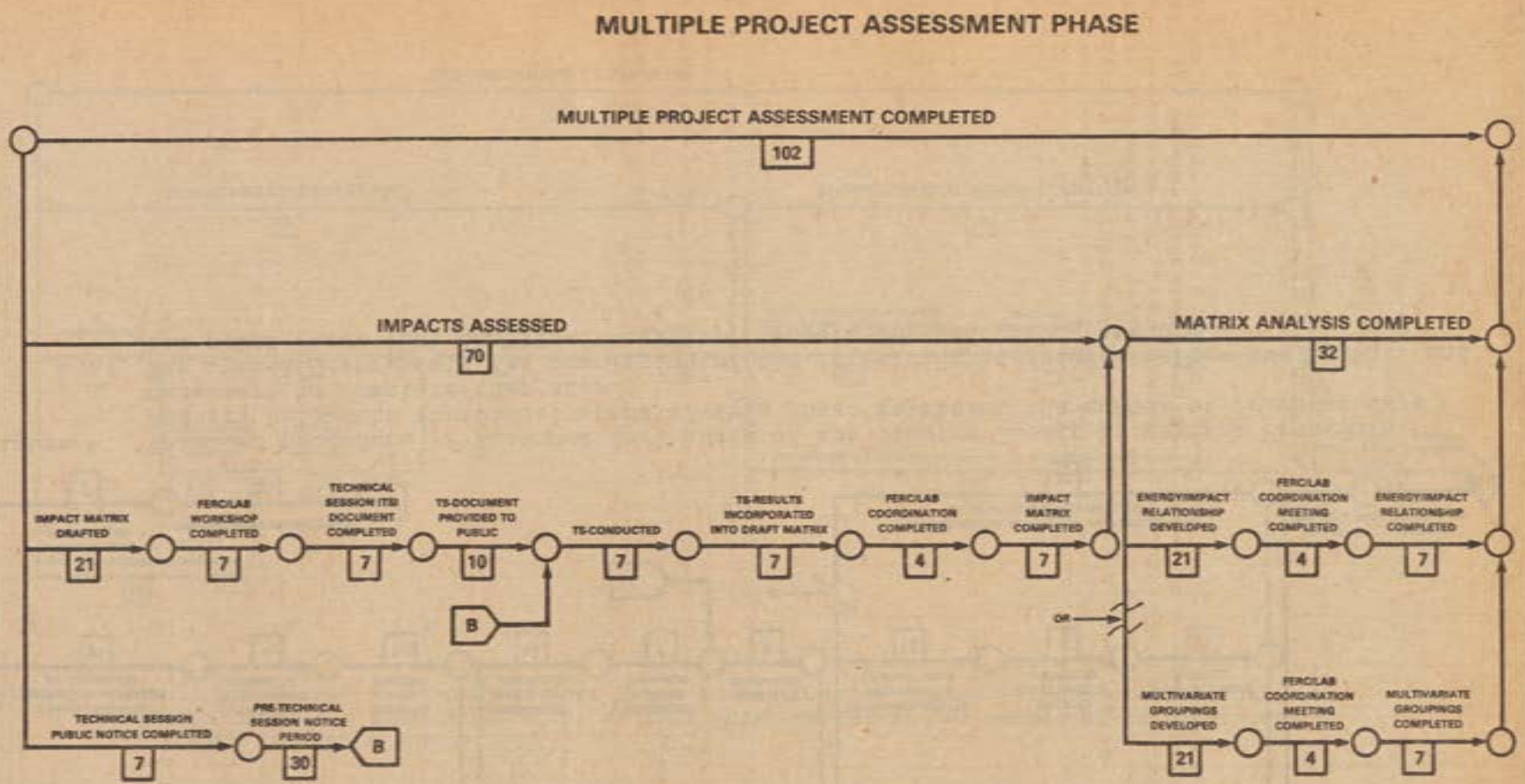

Figure 5. Detailed procedure -- Multiple Project Assessment phase of the Cluster Impact Assessment Procedure.
Numbers below the individual steps of this phase represent the number of calendar days necessary to complete that step.
The symbol (B) represents the completion of the activity that occurred before the symbol, and the point where that completed activity reenters the processing network.

Resident Trout

Level of impact	Components & Component Weights (in parenthesis)				
	Spawning habitat (0.6)	Cover (0.1)	Food (0.02)	Water temperature (0.2)	Turbidity (0.08)
5	≥25% lost	>30% lost	≥25% lost	increase >5°C	>50 JTU
4	15-24% lost	15-30% lost	15-24% lost	increase 4-5°C	40-50 JTU
3	10-14% lost	10-14% lost	10-14% lost	increase 3-3.9°C	30-39 JTU
2	5-9% lost	5-9% lost	5-9% lost	increase 2-2.9°C	25-29 JTU
1	≤4% lost	≤4% lost	≤4% lost	increase <2°C	<25 JTU

Figure 6. Example of target resource components (column headings), component weights, and impact criteria (matrix cells) used to define levels of project impacts on resident trout. Level of impact would range from acceptable (1) to unacceptable (5). Weighting factors designate the relative importance of each target resource component (i.e., spawning habitat) to the target resource (resident trout).

Resident Trout

Project	Components & Component Weights (in parenthesis)					
	Spawning habitat (0.6)	Cover (0.1)	Food (0.02)	Water temperature (0.2)	Turbidity (0.08)	Weighted value
A	4	3	1	2	5	3.8
B	1	2	1	2	3	2.0
C	2	1	2	1	1	1.3
D	4	2	4	1	1	3.1
E	2	2	2	4	1	2.1
F	5	3	1	1	2	3.7
G	1	2	2	2	2	1.4
H	3	3	3	3	1	2.9
I	1	5	3	3	2	1.9
J	4	4	5	5	2	4.0

Figure 7. Example of a target resource impact matrix, for resident trout, showing the level of impact (1 through 5) of projects A through J on resource components as well as the total impact (weighted value) of each project on resident trout. Impact levels are derived from the impact criteria shown in Figure 5.

	Target resources							
Project	Resident trout	Riparian vegetation	Wildlife resources	Sensitive species	Aesthetics	Recreation	Local economy	Weighted value
A	3.8	4.1	4.4	5.0	3.0	3.3.	1.0	4.0
B	2.0	3.8	4.2	3.0	5.0	5.0	1.0	3.1
C	1.3	5.0	5.0	1.2	2.0	2.6	1.0	3.2
D	3.1	3.3	3.2	1.4	2.2	2.4	1.0	2.3
E	2.1	5.0	4.6	5.0	3.6	2.1	1.0	4.2
F	3.7	3.2	3.8	3.5	3.8	3.8	1.0	3
G	1.4	2.1	4.1	1.3	3.6	3.4	1.0	2.8
H	2.9	1.6	3.9	1.2	5.0	3.2	1.0	1.8
I	1.9	2.1	3.2	1.1	4.3	3.7	1.0	3.1
J	4.0	3.4	4.8	2.0	4.4	5.0	1.0	3.4
Cumulative level	3.2	2.8	3.4	1.4	2.9	2.2	1.0	2.5

Figure 8. Example of a summary impact matrix showing the cumulative value of impact from all projects on each target resource and combined target resources.

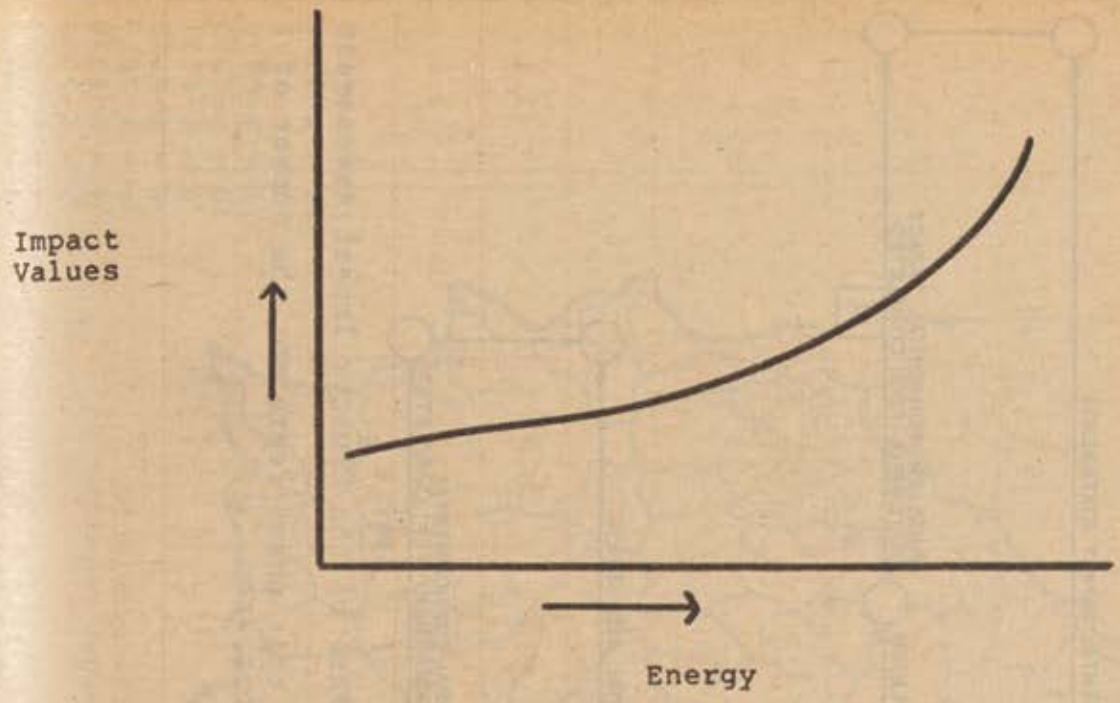

Figure 9. Example of a graphic display showing a hypothetical relationship between energy and cumulative environmental impact for a river basin. Project impacts would be assessed either for each target resource or across all target resources.

NEPA DOCUMENT PHASE

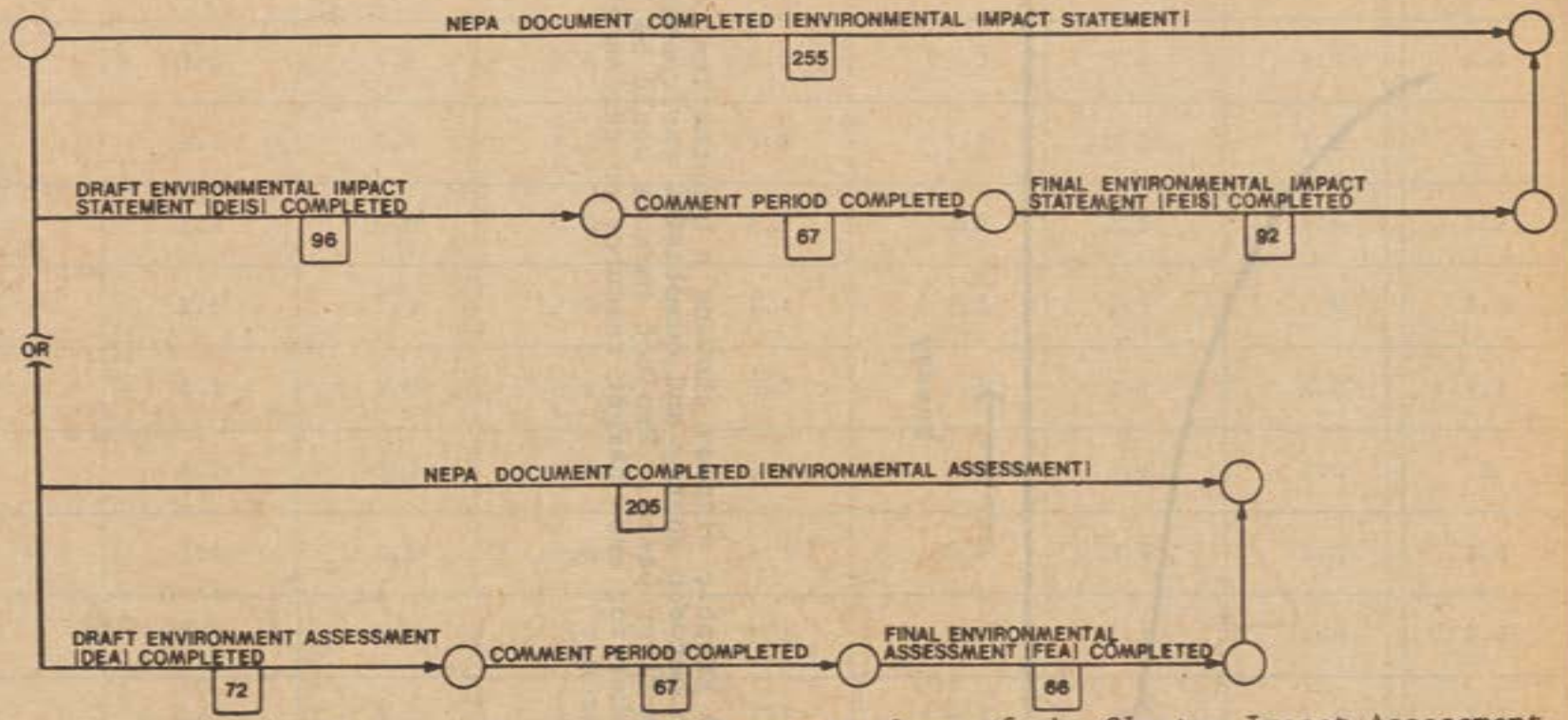

Figure 10. Detailed procedure -- NEPA Document phase of the Cluster Impact Assessment Procedure.
Numbers below the individual steps of this phase represent the number of Calendar days necessary to complete that step.

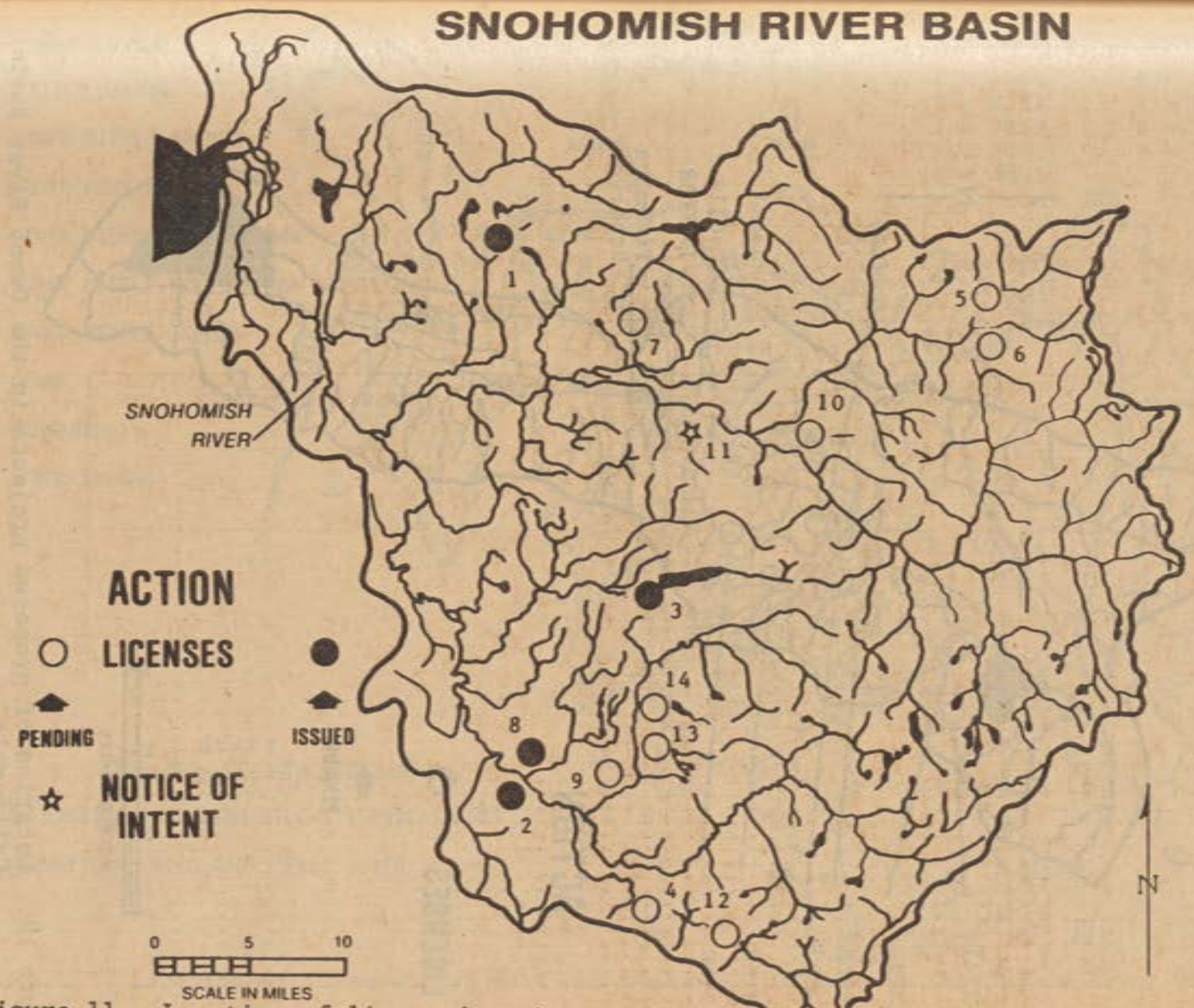

Figure 11. Location of licensed projects and proposed projects in the Snohomish River Basin, Washington.

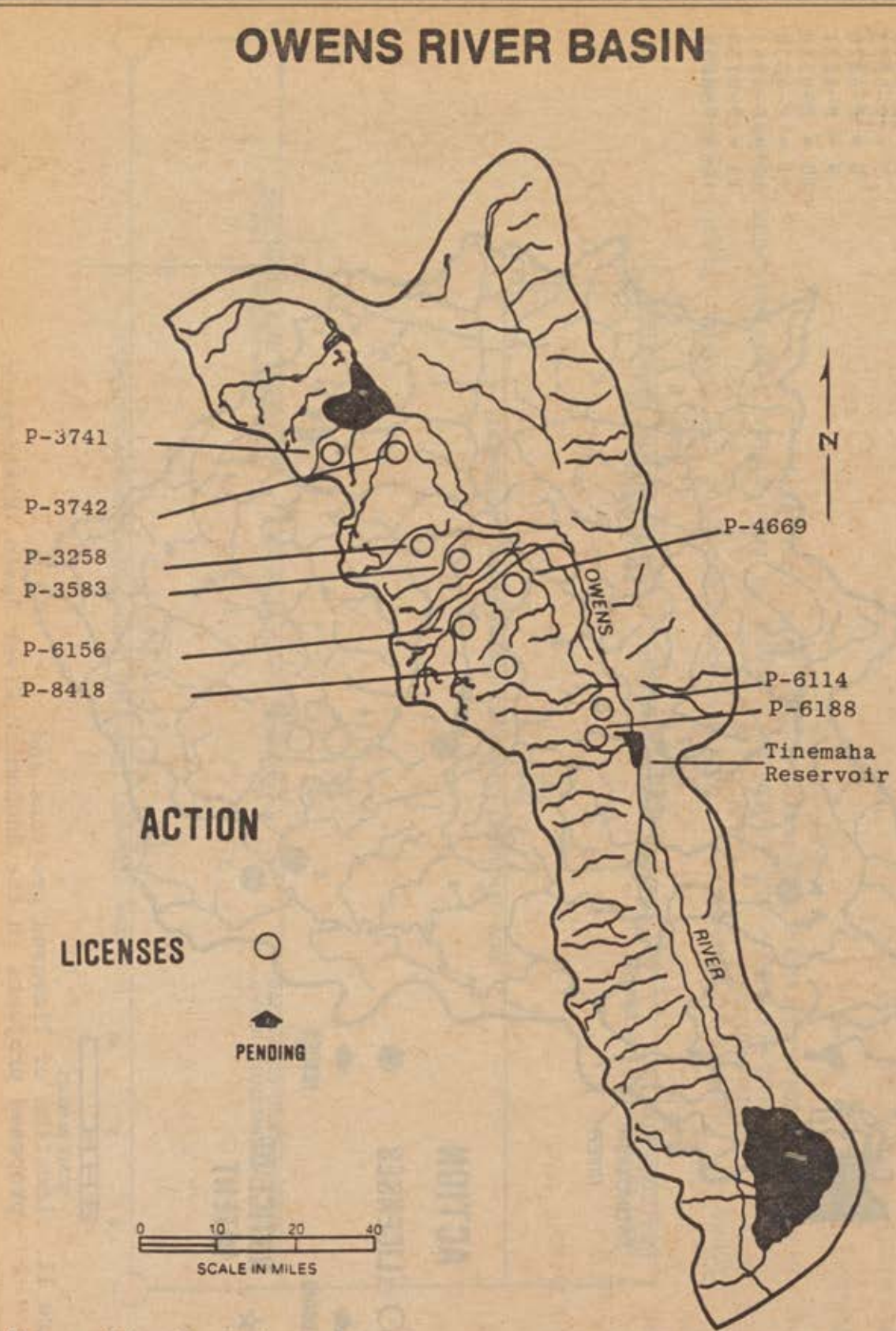

Figure 12. Location of proposed projects in the Owens River Basin, California.

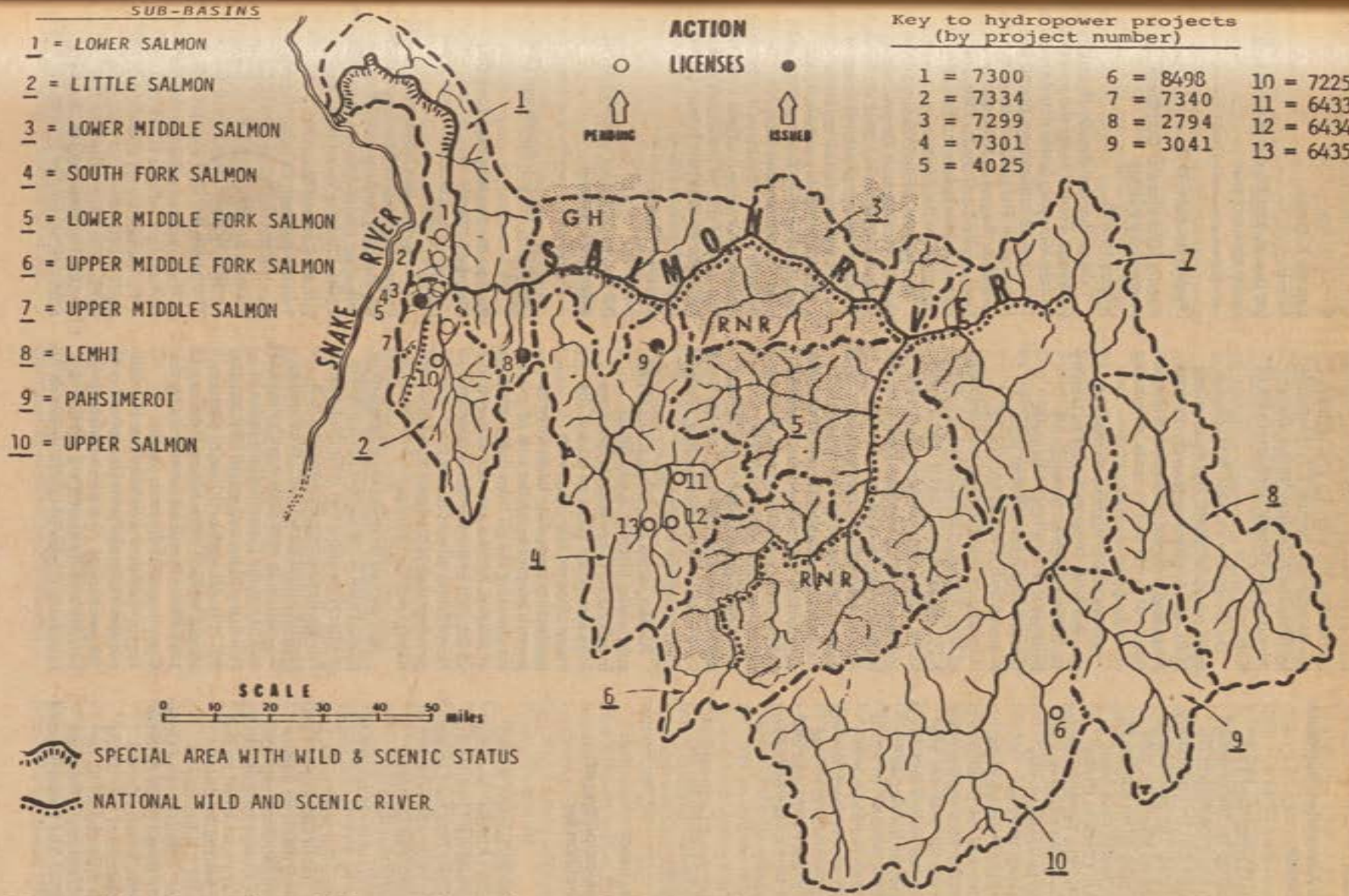

Figure 13. Location of licensed projects and proposed projects in the Salmon River Basin, Idaho.

[FR Doc. 85-1878 Filed 1-23-85; 8:45 am]
BILLING CODE 6717-01-C

[Project No. 7665-001]

Cairo/New York Associates; Surrender of Preliminary Permit

January 17, 1985.

Take notice that Cairo/New York Associates, Permittee for the proposed Woodstock Dam No. 1106 Project No. 7665, has requested that its preliminary permit be terminated. The preliminary permit was issued on March 12, 1984, and would have expired on August 31, 1985. The project would have been located on Catskill Creek in Green County, New York. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on December 24, 1984, and the preliminary permit for Project No. 7665 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-1830 Filed 1-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR85-1-000]

Kuparuk Transportation Co.; of Complaint and Petition for Investigation

January 17, 1985.

Take notice that on January 3, 1985, the State of Alaska (Alaska) tendered for filing a Complaint And Petition For Investigation. Alaska files his Complaint for relief from the rates and practices of Kuparuk Transportation Company (KTC) and requests that the FERC institute an immediate investigation of the tariff charged by KTC for the period October 3, 1984 through January 14, 1985.

Alaska states that in October of 1984, KTC, a new 24-inch diameter pipline owned by four corporations, replaced Kuparuk Pipeline Company (Kuparuk), a 16-inch pipeline system owned by that single entity. By transmittal dated October 2, 1984, KTC submitted an "Adoption Notice" pursuant to an Order of the Oil Pipeline Board (Board), dated September 28, 1984, which rejected Kuparuk's cancellation of its existing tariffs because it did not provide for replacement tariffs to cover the same movements on KTC. The Board directed KTC to file initial tariffs to be effective on the date the start-up and testing of the 24-mile line begins. KTC responded by filing the Adoption Notice, thereby adopting the 69-cent per barrel rate of Kuparuk.

On December 14, 1984, KTC filed a tariff schedule (FERC No. 3 cancelling FERC No. 5) effective January 15, 1985 proposing to reduce the present 69-cent rate to 61 cents and 55 cents, depending upon the point of origin.

Alaska states that the 69-cent rate charged from October 3, 1984 to January 15, 1985 needs to be investigated because KTC is a larger-diameter pipeline and more efficient than Kuparuk and it would only be by coincidence that the rates and practices of Kuparuk could be adopted *in toto* by KTC. Alaska states that it is extremely likely that a rate which was just and reasonable for a 16-inch pipeline would be excessive for a 24-inch pipeline. Alaska states that there are a number of issues which need to be investigated, including the basis of the new rates, the appropriate rate methodology for KTC, the proper construction costs, the rate treatment to be given facilities transferred from Kuparuk to KTC, the depreciation methodology and the need for a fund to cover dismantling, removal and restoration expenses.

Alaska states that it has a direct and substantial interest in any filings involving KTC because its revenues from severance taxes on oil and the value of its royalty interest in production from state lands vary in inverse proportion to the cost of transporting the oil from the North Slope of Alaska. Alaska also states that it has an interest in the full development of North Slope oil and that this development is hindered by high transportation charges.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 15, 1985. 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. 85-1831 Filed 1-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8049-001]

Pacific Hydropower Co.; Surrender of Preliminary Permit

January 18, 1985.

Take notice that Pacific Hydropower Company, Permittee for the proposed Saddle Mountain letter dated October 1, 1984, that its preliminary permit be terminated. The preliminary permit was issued on August 3, 1984, and would have expired on July 31, 1986. The project is located on the Yaak River in Lincoln County, Montana.

The Permittee filed the request on October 1, 1984, and the preliminary permit for Project No. 8044 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-1832 Filed 1-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-28-000 and TA85-1-28-001]

Panhandle Eastern Pipe Line Co.; Change in Tariff

January 17, 1985.

Take notice that on January 14, 1985 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Fiftieth Revised Sheet No. 3-A
Twenty-Seventh Revised Sheet No. 3-B
Twelfth Revised Sheet No. 3-C.1
Twelfth Revised Sheet No. 3-C.2
Twelfth Revised Sheet No. 3-C.3
Thirteenth Revised Sheet No. 43-3

The proposed effective date of these revised tariff sheets is March 1, 1985.

Panhandle states that these revised tariff sheets reflect no change in Panhandle's currently effective commodity rates, which became effective September 1, 1984, and a very

small increase in the demand component of Panhandle's current rates.

Although the revised tariff sheets contained in the instant filing reflect no change in the presently effective commodity rates, the components of the commodity rates as proposed herein do reflect changes from those currently in effect. The changes in the components of the commodity rates include: (1) 35.22¢ per Dt. decrease in the projected purchased gas cost component; (2) a 10.33¢ per Dt. increase in the surcharge to recover the current deferred account balance at November 30, 1984 and related carrying charges; (3) a 18.26¢ per Dt. increase in the surcharge for the current period amortization of the deferred account balance at May 31, 1983, pursuant to Docket No. TA83-2-28-000; and (4) a 6.63¢ per Dt. increase to recognize the termination of the rate adjustment associated with the refunds provided for in Article V, Section 4 of the Stipulation and Agreement in Docket No. RP82-58, which related to the settlement of the tax normalization and related issues outstanding in Docket Nos. RP78-62 (Remand) and RP80-78.

Panhandle has included in this filing projected gas purchase volumes from its suppliers for the six (6) month period commencing March 1, 1985, as detailed in section 18.2, Schedule A. All projected gas costs for purchases from producer suppliers reflected in this PGA filing have been calculated utilizing the "historical cost" procedures consistent with the requirements of the Commission's PGA regulations. Additionally, Panhandle has included in its projected cost of gas, a line-item adjustment which reflects an estimated reduction in the cost of gas associated with its ongoing negotiations with its producer-suppliers, with respect to those suppliers that became deregulated at January 1, 1985. Panhandle is unable at this time to specify by contract what those renegotiated prices will be. However, Panhandle is confident that during the effective period of the rates proposed herein, that is the six-month period beginning March 1, 1985, it will be able to, in the aggregate, achieve a reduction in its purchased gas costs of approximately $61.8 million which reflects these contract price renegotiations. This anticipated gas purchase cost reduction results in a reduction of 35.22¢ in the otherwise applicable commodity rates for this PGA period.

Panhandle further states that the revised tariff sheets filed herewith reflect the following changes to Panhandle's D_1 and D_2 demand rates:

(1) A decrease of $.49 for D_1 and 2.10¢ for D_2, pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism), which reflects the reduction in Northern Border Pipe Line Company's costs by reason of a modification of the depreciation methodology utilized by Northern Border; and

(2) An increase of $.53 for D_1 and 2.12¢ for D_2, to reflect an increase in the Section 18.4 pipeline supplier demand costs.

On November 16, 1984, Northern Border Pipeline Company (Northern Border) filed revised tariff sheets in Docket No. RP85-25-000 to implement a new depreciation method to levelize the transportation charges to Panhandle and other Northern Border shippers, resulting in a reduction in its transportation charges. The Northern Border revised tariff sheets and the change in the method to determine the depreciation used to develop its transportation charges were accepted by Commission Order issued December 14, 1984, in Docket No. RP85-25-000.

On October 16, 1984, Northwest Alaskan Pipeline Company (Northwest Alaskan) filed with the Federal Energy Regulatory Commission revised tariff sheets to reflect the reduction in the cost of Canadian gas imported from Pan Alberta Gas Ltd. pursuant to the terms of an amended gas purchase contract with Panhandle to be effective November 1, 1984. The revised Canadian import gas purchase contract with Northwest Alaskan now contains a two-part demand/commodity rate structure. The Northwest Alaskan revised tariff sheets filed in Docket Nos. RP85-5-000 and RP85-5-001 were accepted without conditions by Commission Order issued December 14, 1984.

In accordance with Section 18.4 of Panhandle's FERC Gas Tariff, Original Volume No. 1, the currently effective Northwest Alaskan demand charge, as approved by Commission Order issued December 14, 1984, has been included with the demand portion of Panhandle's rates. Submitted herewith is Thirteenth Revised Sheet No. 43-3 of section 18.4 of Panhandle's tariff, which relects the inclusion of Northwest Alaskan demand charges. Inasmuch as the Commission has already approved this modification to Northwest Alaskan's charges to Panhandle pursuant to Northwest Alaskan's Rate Schedule X-2 effective November 1, 1984, Panhandle submits that good cause exists for the granting of any waivers necessary to reflect this flow-through of costs from Northwest Alaskan in this filing.

Panhandle has also included in this filing a continuation of the three-year amortization of the deferred account balance at May 31, 1983 as approved in Docket No. TA83-2-28-000. Consistent with the Commission's Order dated August 31, 1983, Opinion No. 223 dated June 1, 1984 and order on rehearing dated July 25, 1984, no carrying charges on the amortized deferred account have been included herein. On September 11, 1984 Panhandle filed for court review of the Commission's Orders dated June 1, 1984 (Opinion No. 223) and July 25, 1984. This filing is being made without prejudice to Panhandle's claims as stated in its request for court review.

In accordance with the Commission's Order dated February 28, 1984 in Docket No. TA84-1-28-002 Panhandle flowed-through during the twelve-month period commencing March 1, 1984, refunds provided for in Article V, Section 4 of the Stipulation and Agreement in Docket No. RP82-58, which related to the Tax Normalization and related issues in Docket No. RP78-62 (Remand) and RP80-78. This refund period will therefore expire on February 28, 1985. Panhandle has reflected in the instant filing the transfer of the estimated negative remaining balance of approximately $4.4 million in Sub-Account 191.1008 to Sub-Account 191.1009, so that the remainder will be flowed back during this PGA period. Likewise, the associated negative carrying charge balance has been transferred to the appropriate current sub-account.

Additionally, the revised tariff sheets filed herewith reflect Projected Incremental Pricing Surcharges in accordance with Section 21 of the General Terms and Conditions of Panhandle's tariff.

In accordance with section 18 of the General Terms and Conditions of its tariff, Panhandle has estimated sales volumes for the six-month period, March 1, 1985 through August 31, 1985. A tabulation of these estimated sales volumes for the six month period beginning March 1, 1985 is submitted herewith in section 18.2.

To the extent required, if any, Panhandle requests that the Commission grant such waivers as may be necessary for the acceptance of the tariff sheets submitted herewith to become effective March 1, 1985.

Supporting computation sheets are enclosed and copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before January 25, 1985. 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. 85-1833 Filed 1-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-29-000 and TA85-2-29-001]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

January 16, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on January 9, 1985, tendered for filing Thirty-Third Revised Sheet No. 12 its FERC Gas Tariff Second Revised Volume No. 1. The proposed effective date is February 13, 1985. The revised tariff sheet reflects a storage "tracking" rate increase in accordance with section 26 of Transco's General Terms and Conditions. Section 26 provides for, among other things, changes in rates for storage service rendered under Transco's Rate Schedule S-2 to reflect changes in charges by Texas Eastern Transmission Corporation (Texas Eastern) under Texas Eastern's Rate Schedule X-28.

As a result of Texas Eastern's filing in Docket No. RP84-108, proposed effective February 13, 1985, as well as intervening tracking rate changes which became effective August 1, 1984 (Docket No. TA84-2-17) and are proposed to be effective February 1, 1985 (Docket No. TA85-1-17), Transco will increase its demand charge and demand charge adjustment in Rate Schedule S-2 in order to flow through to Transco's customers the approximately $4.0 million increase in Texas Eastern's X-28 demand charge.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before *January* 23, 1985. 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. 85-1834 Filed 1-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7992-001]

Worcester/Southbridge Associates; Surrender of Preliminary Permit

January 17, 1985

Take notice that Worcester/Southbridge Associates, Permitte for the proposed Westville Project No. 7992, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 5, 1984, and would have expired on November 30, 1985. The project would have been located on Quinebaug River in Worcester County, Massachusetts. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on December 24, 1984, and the preliminary permit for Project No. 7992 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-1835 Filed 1-23-85; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-730-DR]

Arizona; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA-730-DR), dated January 15, 1985, and related determinations.

DATED: January 15, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice: Notice is hereby given that, in a letter of January 15, 1985 the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Arizona, resulting from severe thunderstorms, strong winds and heavy rainfall beginning on July 12, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the State of Arizona.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. If requested and necessary, you also are authorized to provide Public Assistance in the affected areas when these requirements are known and an acceptable State commitment for these purposes is provided. Consistent with the requirement that Federal assistance for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arizona to have been affected adversely by this declared major disaster:

Yuma and Mohave Counties for Individual Assistance and Public Assistance

Maricopa County as an adjacent county for Individual Assistance

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-1795 Filed 1-23-85; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-419]

Final Action; Approval of Conversion Application; Detroit & Northern Saving, F.A. Hancock, MI

Notice is hereby given that on December 26, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Detroit & Northern Savings, Hancock, Michigan, for permission to convert to the stock from of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Indianapolis, P.O. Box 60, Indianapolis, Indiana 46206.

Dated: January 17, 1985.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-1746 Filed 1-23-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-420]

Final Action; Approval of Conversion Application; First Federal Savings and Loan Association of Kalamazoo, Kalamazoo, MI

Notice is hereby given that on December 31, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Kalamazoo, Kalamazoo, Michigan, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, P.O. Box 60, Indianapolis, Indiana 46206.

Dated: January 17, 1985.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-1747 Filed 1-23-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Controlled Carriers Under the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Listing of Controlled Common Carriers.

SUMMARY: The Federal Maritime Commission is adding Sudan Shipping Line Limited to the list of controlled common carriers subject to the advanced tariff filing and other regulatory requirements of section 9 of the Shipping Act of 1984.

DATE: None.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

SUPPLEMENTARY INFORMATION: Sections 3(8) and 9 of the Shipping Act of 1984 (46 U.S.C. app. 1702 and 1708) provide for the regulation of rates or charges by certain state-owned or so-called "controlled common carriers" in the foreign commerce of the United States. Based on information submitted by Sudan Shipping Line Limited (SSL), the Commission determined that SSL meets the definition of a controlled common carrier as set forth in section 3(8) of the Act. By letter dated November 13, 1984 SSL was so notified and did not contest this determination. The Commission is therefore adding SSL to the list of controlled common carriers published in the Federal Register on July 11, 1984 (48 FR 3173).

The process of identification and classification of controlled common carrriers is continuous. The controlled common carrier list is therefore amended as such carriers enter and leave the United States trades or become exempt from the regulatory requirements of section 9.

The amended list is shown below:

Baltic Shipping Co.—U.S.S.R.
Bangladesh Shipping Corp.—Bangladesh
Black Sea Shipping Company—U.S.S.R.
Black Star Line—Ghana
China Ocean Shipping Co. (COSCO)—People's Republic of China
Compagnie Maritime Zairoise (SMZ)—Zaire
Compagnie Nationale Algerienne de Navigation—Algeria
Companhia de Navegacao Loide Brasileiro—Brazil
Djakarta Lloyd P.T.—Indonesia
Egyptian National Line—Egypt
Empresa Maritime del Estado (Empremar Line)—Chile
Far Eastern Shipping Co. (FESCO)—U.S.S.R.
Flota Bananera Ecuatoriana S.A.—Ecuador
Flota Mercante Gran Centro Americana S.A. (Flomerca)—Guatemala
MISR Shipping Company (MISR)—Egypt
Murmansk Shipping Co. (Arctic Line)—U.S.S.R.
National Galleon Shipping Corporation—Philippines
Neptune Orient Lines (NOL)—Singapore
Pakistan National Shipping Corporation—Pakistan
Peruvian State Line—Peru
Pharaonic Shipping Co. (S.A.E.) (Pharaonic)—Egypt
Polish Ocean Lines—Poland
Shipping Corporation of India—India
South Africa Marine Corp. Ltd.—South Africa
Sudan Shipping Line Limited—Sudan
Transportes Navieros Ecuatorianos (Transnave)—Ecuador

By the Commission January 15, 1985.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-1748 Filed 1-23-85; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 85-1]

Carrier International Corp. v. Waterman Steamship Corp.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Carrier International Corporation against Waterman Steamship Corporation was served January 16, 1985. Complainant alleges that respondent has violated section 16(b)(3) of the Shipping Act, 1916, in connection with transportation rates assessed against a particular shipment of complainant.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are

necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by January 21, 1986, and the final decision of the Commission shall be issued by May 21, 1986.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-1809, Filed 1-23-85 8:45 am]

BILLING CODE 6730-01-M

Intent To Terminate; the Association of West Coast Steamship Companies; Canadian Westfal-Larsen, Ltd. et al.

Agreement No. 202-003302.

Title: The Association of West Coast Steamship Companies.

Parties:

Compania Sud Americana De Vapores
Canadian Westfal-Larsen, Ltd.
Delta Steamship Lines, Inc.
Empresa Lines Maritimas Argentinas
Flota Mercante Grancolombiana, S.A.
Lykes Bros. Steamship Co., Inc.
Transportes Navieros Ecuatorianos

Synopsis: The parties having notified the Commission of their determination to dissolve the Association of West Coast Steamship Companies effective November 12, 1984, the Commission hereby gives notice of its intent to terminate its prior approval of Agreement No. 202-003302, such determination to be effective November 12, 1984, as provided in the parties' notice of dissolution.

Dated: January 18, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-1828 Filed 1-23-85; 8:45 am]

BILLING CODE 6730-01-M

Intent To Terminate; U.S. Gulf/European Breakbulk Commodity Rate Agreement; International Navigation Ltd. et al.

Agreement No. 202-010604.

Title: U.S. Gulf/European Breakbulk Commodity Rate Agreement.

Parties:

Lykes Bros. Steamship Co., Inc.
International Navigation, Ltd.

Synopsis: The Commission has been notified of the effective resignation of International Navigation, Ltd. from Agreement No. 202-010604. Inasmuch as this reduces the active membership of the agreement to a single party, the Commission gives notice that it will terminate Agreement No. 202-010604, effective December 17, 1984, the effective date of International Navigation, Ltd.'s resignation.

Dated: January 18, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-1827 Filed 1-23-85; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 85-2; Agreement No. 207-010633]

Order of Investigation and Hearing; Flota Mercante Grancolombiana, S.A. et al.

Agreement No. 2078-010633 (Agreement), filed with the Commission pursuant to section 5 of the Shipping Act of 1984 (the 1984 Act or the Act) (46 U.S.C. app. 1704)[1] on August 22, 1984, is an agreement between Flota Mercante Grancolombiana, S.A. (Flota) and Andino Chemical Shipping Company (Andino) (Proponents) to own and operate Ligracol, a Colombian company which will provide parcel tanker service from the United States to the East Coast of Colombia.

On October 2, 1984, the Chemical Manufacturers Association (CMA) filed comments regarding the Agreement. CMA argues that "the Shipping Act of 1984 was not intended to extend antitrust immunity to agreements relating to chemical bulk cargo." It therefore urges the Commission to reject Agreement No. 207-010633 "for want or jurisdiction."

Pursuant to section 6(d) of the 1984 Act, the Commission, by letter dated October 5, 1984, propounded sixteen questions to Proponents which were designed to elicit information that would enable the Commission to determine whether (1) it had jurisdiction over the parties to, or the activities contemplated by, the Agreement; and (2) the Agreement as filed was complete and clear on its face. The effective date of the Agreement was postponed for an additional 45 days pursuant to the authority in section 6(c)(2) of the Act. On November 2, 1984, Proponents filed a response to the Commission's questions and to the comments of CMA.

By letter of December 14, 1984, the Commission's Secretary advised the Proponents:

> Although the parties have fully complied with the Commission's request for additional information, the Commission is unable to make a final determination as to its jurisdiction over the agreement on the basis of the information submitted. Therefore, it has determined to institute a limited hearing on the issue of its jurisdiction over the agreement. . . . During the pendency of the hearing, the Commission does not intend to seek to enjoin the operation of the agreement pursuant to section 6(h) of the Shipping Act of 1984, 46 U.S.C. app. 1705.

This Order initiates the hearing referenced above.

Discussion

Secton 5(a) of the 1984 Act (46 U.S.C. app. 1704(a)) requires that "every agreement entered into with respect to an activity described in section 4 of this Act shall be filed with the Commission." Section 4 of the Act (46 U.S.C. app. 1703) "applies to agreements by or among ocean common carriers." Section 7 of the Act exempts from the antitrust laws any agreement that has been filed and become effective under section 5 (46 U.S.C. app. 1706).

Section 3(18) of the Act (46 U.S.C. app. 1702(18)) defines an "ocean common carrier" as "a vessel-operating common carrier; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp." "Common carrier" is in turn defined in section 3(6) of the Act (46 U.S.C. app. 1702(6)) as:

> . . . a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that—
>
> (A) assumes responsibility for the transportation for the port or point of receipt to the port or point of destination, and
>
> (B) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

Two jurisdictional issues are presented by Agreement No. 207-010633. The first, a legal issue, is whether the Shipping Act of 1984 applies to the class of agreements between parcel tanker operators which are "ocean common carriers" within the meaning of that Act. If this issue is decided in the Affirmative the question then becomes whether Agreement No. 207-010633 is an agreement among two or more "ocean common carriers."[2]

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[1] Section 5 of the 1984 Act requires certain agreements involving ocean common carriers or marine terminal operators to be filed with the Commission. These agreements automatically take effect 45 days after filing unless the Commission rejects the agreement for failure to meet format requirements or the Commission seeks more information concerning the agreement pursuant to section 6(d) of the Act (46 U.S.C. app. 1705(d)) and suspends the agreement for an additional 45 days pursuant to section 6(c)(2) of the Act (46 U.S.C app. 1705(c)(2)), or the Commission obtains an injunction against the operation of the agreement from the appropriate United States District Court.

[2] In so stating the issues, we find that the Commission otherwise has subject matter

Continued

The Commission finds that the Shipping Act of 1984 applies to agreements between parcel tanker operators that, due to the nature of their operations, fall within the Act's definition of "ocean common carrier." However, the Commission cannot, on the basis of the facts before it, determine whether Agreement No. 207–010633 is an agreement among two or more "ocean common carriers". Accordingly, the Commission will order a further hearing on this issue.

The language of the relevant provisions of the 1984 Act, *i.e.* sections 3(18), 4 and 7, are clear and unambiguous and do not exclude from the coverage of the Act agreements between parcel tanker ocean common carriers. There would therefore appear to be no reason to resort to the legislative history of the Act to clarify the matter.[3] In arguing that agreements between parcel tanker operators are as a class beyond the scope of agreements subject to the 1984 Act, CMA, however, relies exclusively on such history. It first submits and relies on the following statement said to have been made by Congressman Walter Jones during the September 13, 1982 debate on H.R. 4374:

> At no time was this legislation ever intended to permit the formation of conferences or to extend this regulatory scheme to tanker or bulk cargo operators, even if those tanker operators carry chemical parcels in less than full shipload lots.

The statement, however, does not appear in the *Congressional Record* and thus is not a part of the official record of debates.[4] Moreover, as CMA itself pointed out in its comments of February 10, 1983 to the Senate Subcommittee on Merchant Marine, the statement fails to acknowledge that under the Shipping Act, 1916 (1916 Act) (46 U.S.C. app. 801, *et seq.*) a parcel tanker could be a carrier subject to that Act:

> This Congressional Record statement, however, may not be entirely correct since parcel tankers that operate as common carriers are subject to FMC jurisdiction under the present Act and under S. 47. The point that needs to be made is that parcel tankers have never been permitted to engage in cartel activity, nor will they be given this opportunity under S. 47.
>
> *S. 47, To Improve the International Ocean Commerce Transportation System of the United States: Hearings Before the Subcommittee on Merchant Marine of the Senate Committee on Commerce, Science and Transportation*, 98 Cong., 1st Sess. 131 (1983).

CMA's comments to the Subcommittee err to the extent they imply that agreements between two or more common carriers operating parcel tankers were beyond the scope of section 15 of the 1916 Act and could not receive antitrust immunity.[5] In any event, during the hearings on S. 47, CMA suggested the following amendment which would have left agreements between ocean common carriers operating parcel tankers exposed to the antitrust laws:

> [antitrust immunity is not intended to * * *]; or to any discussion or agreement among tanker or bulk cargo vessel owners or operators, even if such owners or operators carry chemical parcels in less than full shipload lots.
>
> *S. 47, To Improve the International Ocean Commerce Transportation System of the United States: Hearings Before the Subcommittee on Merchant Marine of the Senate Committee on Commerce, Science and Transportation*, 98 Cong., 1st Sess. 131 (1983).

Although such an amendment appeared in S. 504, it was not included in S. 47.

The second piece of legislative history cited by CMA is an amendment to S. 47 offered by Senator Strom Thurmond (Thurmond Amendment). The Thurmond Amendment, which was passed by the Senate, would have changed the definition of "ocean common carrier" to exclude:

> . . . one engaged in ocean transportation by ferry boat, ocean tramp *or bulk cargo vessels.* (Emphasis added).

The reason given for the Amendment was:

> To clarify that certain carriers not previously permitted to engage in cartel activity, will not be so permitted under this Act.

129 Cong. Rec. S1775 (daily ed. February 28, 1983).

Later, the bulk exception was removed. The Explanation of Changes in the Amendment to H.R. 1878, the third piece of legislative history cited by CMA, states only that:

> A small change was made in the definition of ocean common carrier by deleting the words "bulk cargo vessels." However, the elimination of the term is not intended to extend coverage of this Act to bulk shipments, but merely removes an ambiguity. That is, the antitrust immunity granted in H.R. 1878 does not extend to agreements relating to rates and service practices for the transportation of bulk commodities.

129 Cong. Rec. H8124 (daily ed. Oct. 6, 1983).

The intent of the change is further explained in the Conference Report as follows:

> The Conference bill excludes from the definition of "ocean common carrier" the words "bulk cargo vessels" that were in the Senate bill. The elimination of this phrase removes an ambiguity; it is not intended to provide a new exemption from the antitrust laws for agreements relating to the transportation of bulk commodities that the FMC has refused to approve under Section 15 of the Shipping Act, 1916, or likely would not have approved under principles it has established for agreements relating to bulk commodities transportation. At the same time, the bill is intended to continue the antitrust exemption for agreements relating to the transportation of bulk commodities that the FMC has approved under the 1916 Act or likely would have approved. Finally, the bill is not intended to alter the definition of "bulk cargo" as that term has been interpreted under the Shipping Act, 1916.

H.R. Rep. No. 600, 98th Cong., 2d Sess. 28 (1984).

On the basis of this explanation, CMA states:

> CMA recognizes that the Commission has found Flota and Andino to have operated as common carriers in Docket Nos. 79–2 and 79–3. This finding, however, was made based on a "common carrier" interpretation that arose under an Act with a public interest test and a Section 15 approval process (The Shipping Act, 1916). That Act did not contain four expressions of Congressional intent that agreements relating to bulk parcel tankers were not to be immunized. A wooden approach to the Agreement that simply asks whether the parcel tanker operator offers "ocean common carrier" service as traditionally interpreted under the 1916 Act would not sufficiently account for the unmistakable Congressional intent regarding parcel tanker operations.

The Commission disagrees. CMA acknowledges that the Commission found Flota and Andino were common carriers by water subject to the 1916 Act in Dockets Nos. 79–2 and 79–3, *Agreement Nos. 10293 and 10295*, 22 S.R.R. 965 (1984), but appears to argue that the interpretation of the term "common carrier" was somehow changed by the "public interest" standard in section 15.[6] the "public

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jurisdiction over the Agreement under section 4(a) of the Act. Agreement No. 207–010633 clearly contemplates activities to which that section applies.

[3] *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980).

[4] *See also Pennsylvania Railroad Company*, v. *International Coal Mining Company*, 230 U.S. 184, 198–99 (1913).

[5] Section 15 of the 1916 Act required certain agreements among common carriers in the foreign commerce of the United States to be filed and approved by the Commission before they could be implemented. Agreements so approved by the Commission were "excepted" from the antitrust laws.

[6] The point of CMA's argument is less than clear. It could also be read to suggest that before the Commission can assert jurisdiction over an agreement involving parcel tankers, it would first have to find that the agreement could have been approved under the "public interest" standard of

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interest" standard in section 15 was a standard of approval,[7] in no sense did it modify the definition of "common carrier by water" or otherwise limit the type of agreement subject that section.

Likewise, the legislative history cited by CMA does not modify the definition of "ocean common carrier" appearing in the Act. Of the "four expressions of Congressional intent" which CMA contends indicate that "agreements relating to bulk parcel tankers were not to be immunized" from the antitrust laws, three make no distinction between bulk parcel tankers and other types of bulk carriers. The fourth, as we have noted above, is not part of the official "legislative history" of the statute.

We believe that the discussion in H.R. Report 600, which explains the definition of "ocean common carrier" as it appears in the 1984 Act, indicates a Congressional intent to preserve the *status quo* regarding jurisdiction over agreements involving parcel tanker operators. Accordingly, we find that agreements between parcel tanker operators are within the scope of the 1984 Act to the extent that those operators are ocean common carriers within the meaning of section 3(18) of the Act.

Whether Agreement No. 207–010633 is *in fact* an agreement among two or more "ocean common carriers" cannot be resolved on the record before us. Flota operates as an ocean common carrier of freight in the trade between the United States and Colombia. The status of Andino is less clear. *Agreement Nos. 10293 and 10295, supra,* cannot be used here as a basis for finding that Andino continues to be an ocean common carrier. By the terms of Agreement No. 10293, Andino took responsibility for the cargo and its transportation, provided the ship, controlled the loading and navigation, published sailing schedules in conjunction with Flota and provided regular service at regular intervals from the United States Gulf to Colombia. It was on this basis that the Commission in *Agreement Nos. 10293 and 10295, supra,* found Flota and Andino to be operating a common carrier service.[8] The record in that case was closed with events that took place in early 1981.

Agreement No. 207–010633 now before us forms a joint venture; it provides no basis upon which to conclude that Andino now operates in the Colombian trade as it did under Agreement No. 10293.[9] Moreover, neither the information accompanying the Agreement nor that submitted by Proponents in response to our November 2, 1984 request, indicates the precise nature of Andino's present or future intended operations. Proponents advise only that Andino operates parcel tanker vessels in the trade between U.S. ports on the Gulf of Mexico and ports in South America, Central America and Caribbean Islands, and does not plan to offer its own service in the trade which will be served by Ligracol. This is obviously insufficient to permit the Commission to determine whether the operations of Andino are those of an ocean common carrier.

Even if Andino were not found to be an ocean common carrier, the Commission could nevertheless properly assert jurisdiction over Agreement No. 207–010633 if Ligracol's operations were found to be those of an ocean common carrier and the Agreement established a continuing cooperative working arrangement between Flota and Ligracol. *See Armada/GLTL East Africa Service (Agreement No. 10464),* 22 S.R.R. 500 (1984).[10] Information accompanying the Agreement and that furnished by Proponents in their letter of November 2, 1984 suggest that Ligracol's operations are those of an ocean common carrier. Whether Agreement No. 207–010633 establishes a continuing cooperative working arrangement between Ligracol and Flota of the type that supported jurisdiction in *Armada, supra,* cannot be determined from the information at hand.

Accordingly, the Commission will institute an investigation and hearing in order to determine whether Agreement No. 207–010633 is an agreement among two or more "ocean common carriers" within the meaning of sections 3(18) and 4(a) 4 of the 1984 Act.

Therefore, it is ordered, that pursuant to sections 4(a) and 11 of the Shipping Act of 1984, an investigation and hearing is instituted to determine whether Agreement No. 207–010633 is an agreement among two or more ocean common carriers;

It is further ordered, that a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge, but no later than 180 days after service of this order.

The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, that pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure (46 CFR 502.61), the initial decision of the Presiding Officer in this proceeding shall be issued by January 21, 1986 and the final decision of the Commission shall be issued by May 21, 1986;

It is further ordered, that in accordance with Rule 42 of the Commission's Rules of Practices and Procedure (46 CFR 502.42), the Commission's Bureau of Hearing Counsel shall be a party to this proceeding;

It is further ordered, that notice of this Order be published in the Federal Register, and a copy be served upon all parties of record.

It is further ordered, that any person other than parties of record having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further ordered, that all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing

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section 15. Application of that standard could, as it did in *Agreement Nos. 10293 and 10295,* require the so-called *"Svenska"* analysis. *Svenska Amerika Linien* v. *F.M.C.,* 390 U.S. 238 (1968). This would appear to be contrary to the thrust of the 1984 Act, which eliminated the pre-implementation approval process for agreements and the "public interest" standard for approval.

[7] Section 15 required the Commission, *inter alia,* to "disapprove, cancel or modify" any agreemenmt it found to be "contrary to the public interest."

[8] It should be noted, however, that the Commission in its decision in *Agreement No. 10293 and 10295,* disapproved Agreement No. 10293 and ordered Flota and Andino to cease and desist their operations under that agreement.

[9] There would also appear to be no grounds upon which to impute the status of the joint venture, Ligracol, to Andino. Even if Ligracol were found to be an ocean common carrier, its status could not be imputed to Andino *solely* on the grounds that Andino is a shareholder of Ligracol. *Grace Line, Inc.* v. *Skips A/S Viking Line,* 7 F.M.C. 432, 448 (1962).

[10] In *Armada,* Agreement No. 10464 was found to establish an ongoing relationship between the joint service created and its parties because it conferred rights and obligations on those parties vis-a-vis the joint service. While we recognize that Agreement No. 207–010633 does not contain provisions identical to those relied upon to find jurisdiction in *Armada,* we note that it does provide for an affiliate of Flota to act as Ligracol's port agent in Colombia, and Andino or an affiliate to perform a similar function in the United States. In addition, although not specifically mentioned in the Agreement, Proponents advise that Flotas and Andino will guarantee the financing of Ligracol's vessel.

conference, shall be mailed directly to all parties of record;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.

Bruce A. Dombrowski,

Assistant Secretary.

Commissioner Setrakian, Dissenting

Although I concur with the Commission's conclusion that agreements between parcel bulk tanker operators are within the scope of the 1984 Act if they are "ocean common carriers" within the meaning of the statutory definition at section 3(18), I do not agree that a hearing and investigation are called for to determine whether this particular agreement is one among ocean common carriers. The information available to the Commission, including that elicited from the proponents pursuant to section 6(d) of the Act, establishes in my mind that the parties are indeed ocean common carriers and that the Commission has jurisdiction over the parties and the activity proposed in this agreement. I therefore would not issue the Order of Investigation and Hearing, and would instead advise the parties that no further action will be taken to prevent or delay Agreement No. 203–010633 from going into effect.

[FR Doc. 85–1826 Filed 1–23–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Schroders Inc., Schroders PLC, Schroder International Holdings Ltd., and Schroder International Ltd.; Application To Engage de Novo in Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(3) for the Board's Regulation Y (12 CFR 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3) 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 engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the Offices Board of Governors not later than February 12, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Schroders Incorporated,* New York, New York; *Schroders PLC, Schroder International Holdings Ltd. and Schroder International Ltd.*, all of London, England; to engage *de novo* through its subsidiary, Schroder Trust Company of Florida, N.A., Miami, Florida; in consumer and mortgage lending, trust services and investment advisory services, and deposit-taking, including demand deposits. These activities are to be conducted in the Miami SMSA.

Board of Governors of the Federal Reserve System, January 17, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–1766 Filed 1–23–85; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Panels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain public advisory panels in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and those that will or may occur during the next 12 months.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 4 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESS: All nominations and curricula vitae should be sent to Marlene E. Haffner, Center for Devices and Radiological Health (HFZ–70), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7034.

FOR FURTHER INFORMATION CONTACT: Evelyn Gordon, Center for Devices and Radiological Health (HFZ–70), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7576.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for vacancies listed below. If specific expertise is not indicated, individuals should have expertise relevant to the field of activity of the panel.

1. Anesthesiology and Respiratory Therapy Devices Panel: two vacancies occurring November 30, 1985; anesthesiologists and pulmonary physicians.

2. Circulatory System Devices Panel: two vacancies occurring immediately; individuals with expertise in cardiac surgery, cardiology, and biomedical engineering.

3. Clinical Chemistry and Clinical Toxicology Devices Panel: on vacancy occurring Februry 28, 1985, and four vacancies occurring February 28, 1986;

doctors of medicine or doctors of philosophy experienced with clinical chemistry and clinical toxicology devices.

4. Dental Devices Panel: four vacancies occurring immediately and one vacancy occurring October 31, 1985; individuals with expertise in dental devices and materials.

5. Ear, Nose, and Throat Devices Panel: three vacancies occurring immediately and two vacancies occurring October 31, 1985; otolaryngologists.

6. Gastroenterology-Urology Devices Panel: three vacancies occurring immediately; individuals with expertise in therapeutic plasmapheresis or biomedical engineering.

7. General and Plastic Surgery Devices Panel: two vacancies occurring August 31, 1985; immunologists and practicing surgeons with laser experience.

8. General Hospital and Personal Use Devices Panel: four vacancies occurring immediately and one vacancy occurring December 31, 1985; individuals with clinical diabetes or hematology experience, general practitioners, internists, allergists, and dermatologists.

9. Hematology and Pathology Devices Panel: two vacancies occurring immediately, two vacancies occurring February 28, 1985, and one vacancy occurring February 28, 1986; individuals involved in the practice of medicine or clinical laboratory sciences familiar with clinical hematology and cell surface markers for thymus and bone marrow lymphocytes and expertise and/or experience with automated differential blood cell counters and blood cell sorters, or blood coagulation instrumentation, or human tumor stem cell assay.

10. Immunology Devices Panel: one vacancy occurring immediately, two vacancies occurring February 28, 1985, one vacancy occurring February 28, 1986; doctors of medicine or doctors of philosophy who have experience with immunology devices and/or clinical experience in cancer diagnosis and treatment; allergists.

11. Microbiology Devices Panel: one vacancy occurring immediately, one vacancy occurring February 28, 1985, two vacancies occurring February 28, 1986; infectious disease clinicians and individuals with expertise in antimicrobial susceptibility testing and devices.

12. Nuerological Devices Panel: two vacancies occurring immediately; neurosurgeons experienced with implanted devices.

13. Obstetrics-Gynecology Devices Panel: two vacancies occurring immediately, two vacancies occurring January 31, 1986; individuals with expertise in obstetrics and/or gynecology.

14. Ophthalmic Devices Panel: two vacancies occurring immediately, two vacancies occurring October 31, 1985; ophthalmologists and optometrists.

15. Orthopedic and Rehabilitation Devices Panel: one vacancy occurring immediately, two vacancies occurring August 31, 1985; orthopedic surgeons with expertise in joint structure and function, prosthetic ligament devices, or joint biomechanics and implants.

16. Radiologic Devices Panel: one vacancy occurring January 31, 1985; radiologists and radiation therapists.

Functions

The functions of the medical devices panels are to: (1) Review and evaluate available data concerning the safety and effectiveness of medical devices currently in use, (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to health associated with the use of devices, (5) advise on the formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

Qualifications

Persons nominated for membership on the medical devices panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The term of office is approximately 4 years.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA asks potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 94-263, 86 Stat. 770-776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: January 17, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-1742 Filed 1-23-85; 8:45 am]

BILLING CODE 4160-01-M

Office of Child Support Enforcement

Privacy Act of 1974; Proposed New System of Records

AGENCY: Office of Child Support Enforcement (OCSE), Department of Health and Human Services (HHS).

ACTION: Notification of New System of Records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), we are issuing public notice of our intent to establish a new system of records: "Research and Demonstration Data System, HHS/OCSE, 09-90-0150." The purpose of the system is to maintain information which we will use to conduct research and demonstration projects to add to existing knowledge and promote improvements or new methods and techniques in the area of child support enforcement operations. We also are proposing to establish routine uses of information which will be maintained in the proposed system as discussed below.

We invite public comments on the proposed routine uses.

DATES: We filed a report of the proposed system with the President of the Senate, the Speaker of the House of Representatives, and the Director, Office

of Management and Budget on January 9, 1985. The proposed system will become effective 60 days after the above date. The proposed routine uses will take effect (February 25, 1985, or on the system's effective date, whichever is later), unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this proposal by writing to the Director, Policy and Planning Division, Office of Child Support Enforcement, 6110 Executive Boulevard, Rockville, Maryland 20852. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Lowell H. Lima, Program Analyst, Policy and Planning Division, Office of Child Support Enforcement, 6110 Executive Blvd., Rockville, Maryland 20852, telephone (301) 443-2980.

SUPPLEMENTARY INFORMATION:

(a) Purpose of the New System

The proposed system will maintain data which will be used to perform research and statistical functions only, as well as other records which will be used to conduct program functions involving the research and demonstration projects. These projects are to add to existing knowledge and promote improvements or new methods and techniques in the area of child support enforcement operations. The data collected will relate to demographic characteristics will relate to demographic characteristics, education, marital status, dependents, family and household composition, employment, earnings, and other data necessary to conduct the research and demonstration projects.

Records collected under this system will be organized and maintained according to the particular study which they support. Records will not be entered into a general or comprehensive data base, nor will there be any general index identifying all persons who are subjects of records in the separate studies covered by this system. It would thus be helpful if notification of access requests included identification of the particular research project in which the requester participated. OCSE is treating the separate sets of records as a single system under the Privacy Act (1) because all of the sets of records serve the same research purposes and contain similar types of data, (2) in order to apply consistent policies and practices in the maintenance of such records, and (3) to make it easier for subject individuals to obtain notification of, or access to, their records.

(b) Proposed Routine Use Disclosures of Information

(1) Disclosure to a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We contemplate disclosing information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in an OCSE matter on his or her behalf. The information would be disclosed when the congressional representative makes an inquiry on behalf of the constituent whose record is requested.

(2) Disclosure to a contractor under contract to OCSE, for the performance of research and statistical activities directly related to this system of records in conducting the research projects; and to provide a statisical data base for research studies.

Contractors will perform statistical and research functions of collecting, compiling, storing, and analyzing data. When information is collected with the assurance that it will be used solely for research and statistical purposes, it will be disclosed to contractors (or their subcontractors) only to the extent necessary for the performance of contractual research and statisical duties, and not for any purpose of taking an action or making a determination about an individual.

(3) Disclosure to the Department of Justice in the event of litigation.

The possibility of lawsuits in which individuals may claim to have been harmed, e.g., financially, as a result of the research activities supported by this system motivates the proposal of a routine use to allow the Department of Justice to defend the Federal Government, the Department, or employees of the Department in case of such lawsuits.

(c) Records Storage and Safeguards

Data may be maintained on disc, magnetic tape, paper records or other formats as appropriate for the individual research project. The records in this system will be maintained in a secure manner compatible with their content and use. Contractors will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulation. The System Manager, the OCSE Project Officer, and the Contract Officer will control access to the data. Only contractor personnel, consultants to the contractor, the OCSE project officer, and OCSE employees whose duties require the use of such information will have regular access to records in this system. Records will be stored in locked files or secured areas. Names and other identifying particulars will be deleted when data from orginal records is encoded for analysis. The safeguards section of the notice of proposed system of records below contains further information. Contractors' procedures will be reviewed for adequacy and will be approved by OCSE before the start of each project.

(d) Effect of the Proposed System On Individual Rights

The projects are intended to add to existing knowledge and promote improvements or new methods and techniques in the area of child support enforcement operations. No individual will be allowed to suffer a disadvantage by reason of his or her inclusion in any project. Every individual has the right not to participate in any project.

Dated: January 9, 1985.

Martha A. McSteem,

Acting Director, Office of Child Support Enforcement.

09-90-0150

SYSTEM NAME:

Research and Demonstration Data System, HHS/OCSE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Child Support Enforcement, Department of Health and Human Services, 6110 Executive Boulevard, Rockville, Maryland 20852.

Contractor Sites: Contractor addresses may be obtained by writing to the System Manger at the address below.

CATEGORIES OF INDIVIDUALS GOVERNED BY THE SYSTEM:

Records may be maintained on custodial parents, absent parents, and their children. Such persons may include those who are eligible for and receiving AFDC, Food Stamps, Medicaid, and title XX social services as well as those who are non-AFDC recipients of Child Support Enforcement (CSE) services and their relations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will maintain records which will be used for statistical and research analysis only, as well as other records which will be used to conduct program functions involving the research and demonstration projects. Participants will be informed at the time of data collection that information obtained by survey or interview

exclusively for statistical and research purposes will be protected from disclosure for other purposes to the fullest extent permissible by law.

The information in this system may include for any person such items as name, social security number, date of birth, State case identification number, local identification number, type of case (AFDC, non-AFDC, full service, locate only, paternity, etc.), sex, education, race, marital status, medical insurance, AFDC benefits, Food Stamp benefits, Medicaid benefits, gross earned income, work expenses, disregards, child care expenses, unearned income, shelter expenses, title XX payments, child support obligated amount, child support payments paid and received, employment, assets, and other information as may from time to time be needed. The actual information obtained will vary from research project to research project and may include all, none, or some of the items listed.

AUTHORITY FOR MAINTAINING THE SYSTEM:

Pub. L. 93–647; Pub. L. 96–272; Sec. 1110 of Social Security Act; Pub. L. 98–378.

PURPOSE(S):

To enable researchers to obtain data needed to conduct various research and demonstration projects in the area of child support enforcement. These projects are to add to existing knowledge and promote improvements or new methods and techniques in the area of child support enforcement operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to the Department of Justice in the event of litigation where the defendant is (a) the Department of Health and Human Service (HHS), any component of HHS, or any employee of HHS in his or her official capacity; (b) the United States where HHS determines that the claim, if sucessful, is likely to directly affect the operations of HHS or any of its components; or (c) any HHS employee in his or her individual capacity where the Justice Department has agreed to represent such employee. In these cases, HHS may disclose such records as it deems desirable or necessary to the Department of Justice to enable that department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

(2) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of the individual.

(3) Disclosure may be made to a contractor under contract to OCSE for the performance of research and statistical activities directly related to this system of records in conducting the research and demonstration projects and to provide a statistical data base for research studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be maintained on disk, magnetic tape, paper records or other formats as appropriate for the individual research project.

RETRIEVABILITY:

Access to records will vary from project to project and may include such methods as name, social security number, State-assigned case number, etc.

SAFEGUARDS:

All contractors must certify that they are in compliance with the Privacy Act of 1974 and the rules and regulations issued pursuant to that act in the design, development, or operation of any system of records on individuals in order to accomplish an agency function which the contract specifically identifies.

All contractors are also subject to the provisions of a "Confidentiality of Information" article. This article provides that "Unless otherwise specified, all financial, statistical, personnel and/or technical data which is furnished, produced, or otherwise available to the contractor during the performance of this contract are considered confidential and shall not be used for purposes other than performance of work under this contract nor released by the contractor without the prior written consent of the project officer. Any presentation of any statistical or analytical materials, or any reports based on information obtained from the studies covered by this contract, will be subject to review by the Government's project officer before publication or dissemination."

In addition, where automated systems are used, safeguards shall be established in accordance with the Department's *ADP Systems Manual*, Part 6, ADP Systems Security.

RETENTION AND DISPOSAL:

At the conclusion of research and development studies, upon acceptance of the final report by OCSE, the identifying information will be separated from the records and stored in a locked file for a year, after which it will be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Policy and Planning Division, Office of Child Support Enforcement, 6110 Executive Boulevard, Rockville, Maryland 20852.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him or her by writing to the system manager at the above address and providing name, address and SSN. (Furnishing the SSN is voluntary, however, it would make searching for the individual's record easier and avoid delay. An individual who is unable or unwilling to furnish his or her SSN will be required to provide other information such as date and place of birth and both parents' names to enable us to locate the record. Also, it would be helpful but not absolutely necessary to identify the particular research project in which the individual participated.) These procedures are in accordance with HHS regulations, 45 CFR Part 5b.5.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These access procedures are in accordance with HHS regulations 45 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager and Address above, and reasonably identify the record and specify the information to be contested and corrective action sought with supporting justification. These procedures are in accordance with HHS regulations 45 CFR Part 5b.7.

RECORD SOURCE CATEGORIES:

Records in this system will be derived from individuals, program records of other Federal/State welfare programs (e.g., AFDC, Medicaid, Food Stamps, SSI), survey data collected by contractors, child support enforcement agencies, Health Care Financing Administration, employers, and other departments, agencies, or instrumentalities of the United States or any State.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85–1843 Filed 1–23–85; 8:45 am]
BILLING CODE 4190–11–M

Health Resources and Services Administration; Fiscal Year 1985 Funding Preference for Area Health Education Center Programs

The Bureau of Health Professions (the Bureau), Health Resources and Services Administration, announces the final funding preference which will govern the distribution of Fiscal Year 1985 awards for Cooperative Agreements for Area Health Education Center (AHEC) Programs under section 781(a)(1) of the Public Health Service Act.

The purpose of cooperative agreements for AHEC programs is to assist medical and osteopathic schools which have cooperative arrangements with one or more nonprofit private or public area health education centers for the planning, development and operation of area health education center programs.

A proposed funding preference was published for public comment in the Federal Register of November 2, 1984 (49 FR 44150) and no comments were received during the 30-day comment period.

Therefore, in making Fiscal Year 1985 grant awards for Cooperative Agreements for Area Health Education Center programs, the following funding preference will be used:

(1) Competing continuation applications,

(2) Planning and development projects under Section 781(a)(1) and

(3) Supplements to existing awards.

This preference is being used to assure the continuation of approved programs which are having a positive impact on the education and distribution of primary health care professionals, to establish new area health education centers in areas not now served by a center, and to provide increased support to existing centers which need additional funds.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: January 17, 1985.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 85-1811 Filed 1-23-85; 8:45 am]

BILLING CODE 4160-16-M

Public Health Service

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 49 FR 36927, September 20, 1984), is amended to reflect the following changes in the Office of the Associate Director for Health Facilities, Bureau of Health Maintenance Organizations and Resources Development: (1) The abolishment of the Division of Facilities Conversion and Utilization; (2) the abolishment of the Division of Energy Policy and Programs; (3) the establishment of the Division of Facilities Assistance and Recovery; (4) the establishment of the Division of Facilities Resources; and (5) amending the functional statement for the Division of Facilities Financing (the title of which is changed to the Division of Facilities Loans) to delete all references to grants monitoring and management.

Under *Section HB-10, Organization and Functions* amend the functional statements for the Office of the Associate Director for Health Facilities (HBHC) as indicated:

(1) Delete the functional statement of the *Division of Facilities Conversion and Utilization (HBHC3)* in its entirety.

(2) Delete the functional statement for the *Division of Energy Policy and Programs (HBHC5)* in its entirety.

(3) Under the *Division of Facilities Financing (HBHC4)* change the title to read *Division of Facilities Loans (HBHC4)* and delete the functional statement in its entirety and substitute the following:

Plans and directs the development of regulations and program guidelines for administering loan, loan guarantee and interest subsidy programs for health care facilities. Specifically: (1) Develops regulations, policy and procedures for administering loan and loan guarantee with interest subsidy programs; (2) administers the PHS responsibility for facility construction, renovation, and modification as described in interagency Memoranda of Agreement; (3) maintains an automated data system for the issuance of periodic and special reports and for the manipulation of institution specific data in performing tests for financial feasibility; (4) assists the Division of Facilities Assistance and Recovery in the evaluation and analysis of applications for construction under assigned grant programs; (5) reviews and recommends action on: (a) proposals for new health facilities or additions to or modernization of existing facilities under loan programs assigned to the Division, (b) requests for mortgage relief, such as forbearance of principal and/or interest payment, suspension of sinking fund deposits, modifications of loan terms, etc., and (c) requests for recovery and/or waiver of repayment of Federal loan funds; (6) provides advice and guidance to the regional offices and State Health Planning and Development Agencies on statutory and regulatory provisions and policy and procedures for administering programs assigned to the Division; and (7) maintains liaison with, coordinates its activities and jointly develops pertinent programmatic materials with other components of the Office, Bureau, HRSA, other PHS agencies, HHS, and other concerned Federal agencies, and also with private lending institutions and associations.

(4) Add the following divisions after the *Division of Facilities Loans (HBHC4)*:

Division of Facilities Assistance and Recovery (HBHC6)

Plans and directs the development of regulations and program guidelines for administering grant support for health care, health professions educational and nurse training facilities. Specifically: (1) Develops regulations, policy and procedures for administering a grant support program designed to help health facilities eliminate or prevent imminent safety hazards or avoid noncompliance with State or voluntary licensure or accreditation standards; (2) in close coordination with the Bureau of Health Professions, HRSA, develops regulations, policy and procedures for administering and monitoring health professions educational and nurse training facilities construction grant programs; (3) develops regulations, policy and procedures to insure that the Federal Government takes appropriate recovery action as prescribed by Titles VI, VII, VIII and XVI of the Public Health Service Act; (4) reviews in their entirety and recommends action to or on behalf of, the Administrator, HRSA, on: (a) Proposals for new health facilities or additions to or modernization of existing facilities under programs assigned to the Division, and (b) requests for recovery and/or waiver of recovery of Federal funds; (5) provides advice and guidance to the regional offices and State Health Planning and Development Agencies on statutory and regulatory provisions and policy and procedures for administering programs assigned to the Division; and (6) maintains liaison with and coordinates its activities and jointly develops pertinent programmatic materials with other components of the Bureau, HRSA, and other PHS agencies, HHS, and other concerned Federal agencis.

Division of Facilities Resources (HBHC7)

Produces operational methods, information, and analyses that improve the way in which OHF conducts its health care facility loan and grant responsibilities. Tracks events and trends in the health care industry to

determine appropriate OHF policy and operational responses to these events and trends. In turn, produces methods and information to assist decisionmakers in developing options for the most advantageous arrangement of the physical, financial, and organizational elements of the Nation's health care facilities resources.

Specifically: (1) Maintains an accurate information base on the status of the Nation's health care industry; (2) coordinates with and provides consultation and guidance to the OHF, other Government and private authorities responsible for health facilities systems management; (3) enhances the state-of-the-art in health facilities systems management by working with professional associations, Government agencies and other qualified entities in joint sponsorship of research, conferences, and seminars; (4) works with States to assist them in the discontinuance or conversion of unneeded hospital services and in their efforts to manage excess capacity; (5) develops and administers criteria for inclusion of health care facilities and medical equipment in State health plans; (6) works with Department entities to assure efficient nonduplicative collection of health facility data; (7) analyzes and reports on health facility data to improve OHF and BHMORD policy development; (8) in cunsultation with appropriate PHS units and national professional organizations, develops guidelines for the construction, modernization and equipping of health facilities insured under FHA-242 mortgage insurance program; (9) develops technical publications designed to enhance efficiency in planning, utilizing, and operation of health facilities; and (10) manages energy programs to improve the financial position of health care facilities and to be prepared for energy emergencies.

The title and functional statement of the *Division of Facilities Compliance (HBHC2)* remain unchanged.

The above functional changes are effective upon date of signature.

Dated: January 14, 1985.

Robert Graham, M.D.,

Administrator, Health Resources and Services Administration.

[FR Doc. 85-1812 Filed 1-23-85; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare a Comprehensive Conservation Plan/Environmental Impact Statement and Wilderness Suitability Assessment for Nowitna National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of scoping meetings.

SUMMARY: This notice advises the public that the Service intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS), a comprehensive conservation plan (CCP) and wilderness suitability assessment for the Nowitna National Wildlife Refuge in interior Alaska. Public meetings regarding preparation of this plan, and wilderness assessment will be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA Regulations 40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received by April 20, 1985. Public meetings or office visits regarding the Nowitna National Wildlife Refuge plan, EIS and wilderness assessment will be held in:

Fairbanks
February 20, 1985
Ryan Junior High School, 951 Airport Way
7:00 p.m.

Galena
February 26, 1985
FWS Headquarters Office
9:00 a.m. to 4:00 p.m.
and
7:00 p.m. to 9:00 p.m.

Ruby
March 19, 1985
Community Hall
7:00 p.m.

Anchorage
March 20, 1985
First floor conference room, FWS—1011 E. Tudor Road
1:00 p.m. to 4:00 p.m.
and
7:00 p.m. to 9:00 p.m.

Tanana
March 20, 1985
City Conference Room
7:00 p.m.

ADDRESSES: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503. Attention: Pamela D. Wilson.

FOR FURTHER INFORMATION CONTACT: Pamela D. Wilson, Public Affairs Specialist, Refuge Planning, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, Telephone (907) 786-3501.

SUPPLEMENTARY INFORMATION: This comprehensive conservation plan and wilderness suitability assessment is being prepared to fulfill requirements of the Alaska National Interest Lands Conservation Act of 1980, section 304g. The environmental review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), other appropriate Federal regulations, and Service procedures for compliance with those regulations.

We estimate the Draft Environmental Impact Statement and plan will be made available to the public by October 1986.

Dated: January 10, 1985.

Robert D. Jacobsen,

Acting Regional Director.

[FR Doc. 85-1757 Filed 1-23-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Designation of Research Natural Areas and Areas of Critical Environmental Concern, Ukiah District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of designations.

SUMMARY: Pursuant to 43 CFR 1610.7-2 the following areas were designated areas of critical environmental concern: Red Mountain, Cedar Roughs, Cache Creek Corridor, and the northern portion of Indian Valley. Pursuant to 43 CFR Part 8223 Red Mountain, California Chaparral Community and Cedar Roughs were designated as research natural areas. The designations for Cedar Roughs, Cache Creek Corridor, California Chaparral Community, and Indian Valley became effective on November 21, 1984 with approval of the Clear Lake Resource Area Management Framework Plan (MFP); the designations for Red Mountain became effective on December 5, 1984 with approval of a planning amendment decision record for the Red Mountain MFP.

FOR FURTHER INFORMATION CONTACT: Timothy P. Julius, Planning and Environmental Coordinator, Ukiah District Office, P.O. Box 940, Ukiah, California 95482, Telephone (707) 462-3873.

SUPPLEMENTARY INFORMATION: The decision records for these areas are available for review by contacting the Ukiah District Office. The general objectives and legal descriptions for Indian Valley are in 49 FR 26643 (June 28, 1984), and for Red Mountain, Cedar Roughs, Cache Creek Corridor, and California Chaparral Community are in 49 FR 30248 (July 27, 1984). Management plan will be prepared for each area and will be consistent with wilderness interim management policies within wilderness study areas. Any actions related to implementing these designations will begin 30 days after publication of this notice in the **Federal Register** unless a written protest is filed

with the Director of the Bureau of Land Management within the 30-day period. Protests should contain (1) the name, address, telephone number and interest of the person filing the protest, (2) a statement of the reason for the protest, (3) a copy of all documents addressing the issues that were submitted during the planning process by the protesting party, or an indication of the dates the issues were discussed for the record, and (4) a concise statement explaining why the State Director's decision is believed to be wrong.

Dated: January 14, 1985.

Van W. Manning,

District Manager.

[FR Doc. 85-1753 Filed 1-23-85; 8:45 am]

BILLING CODE 4310-84-M

[C-39512]

Realty Action; Exchange; Public Lands in Gunnison County, CO

The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian

T. 46 N., R. 3 W.,
Sec. 19, Lot 8.
T. 46 N., R. 4 W.,
Sec. 25, SW¼NE¼.
Containing 83.78 acres.

In exchange for these lands, the Federal government will obtain non-Federal lands in Gunnison County from Mr. A. E. Thomas, Route 4, Box 8, Powderhorn, Colorado 81243, described as follows:

New Mexico Principal Meridian

T. 46 N., R. 3 W.,
Sec. 18, NE¼NW¼, N½SE¼NW¼, NE¼ Lot 2, E½ Lot 1.
Containing 90 acres.

The purpose of the exchange is to obtain non-Federal lands for use in Federal recreation programs in the vicinity of the Bureau's Gate recreation Site on the Lake Fork of the Gunnison River, and to obtain physical and legal access to approximately 2600' of additional cold water stream fishing. The exchange is consistent with the Burerau's planning for the lands involved. The public interest will be well served by making the exchange. The values of the lands to be exchanged are approximately equal and the acreage will be adjusted or money will be used to equalize values upon completion of the final appraisal of the lands. The exchange involves both the surface and mineral estates.

Publication of this notice segregates the public lands from the operation of the public and land laws, including the mining and mineral leasing laws, for a period of two years from the date of publication. Additional information about the exchange is available for review at the Bureau of Land Management District Office, 2465 South Townsend, Montrose, Colorado 81401.

For a period of 45 days from the date of this notice, interested parties may submit comments or adverse claims to the Montrose District Manager. Adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination.

Paul W. Arrasmith,

Montrose District Manager.

[FR Doc. 85-1756 Filed 1-23-85; 8:45 am]

BILLING CODE 4310-JB-M

[CO-070-031]

Wilderness Intensive Inventory; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Release of South Shale Ridge Intensive Inventory Unit (CO-070-031) from further wilderness review.

SUMMARY: Notice is hereby given on the decision of the Interior Board of Land Appeals (IBLA) to affirm the Colorado State Director's Wilderness Inventory decision declaring that the South Shale Ridge inventory unit (CO-070-031) does not qualify as a wilderness study area. On November 14, 1980, the Acting State Director, Colorado, BLM, published a decision in the **Federal Register** (45 FR 75584), in part eliminating South Shale Ridge, totaling 28,260 acres, from further consideration as a WSA. However, on August 23, 1983, on appeal from the initial and intensive inventory decisions with respect to this unit, IBLA concluded that BLM had improperly deleted 3,200 acres from consideration during the intensive inventory. BLM was therefore directed to include the acreage and reinventory the entire unit. In a decision resulting from the Reinventory of unit CO-070-031, the Acting State Director, on June 1, 1984, again concluded that the unit did not qualify as a wilderness study area. This decision was again appealed to IBLA.

In their decision of December 10, 1984, IBLA affirmed the original decision by the Acting State Director that South Shale Ridge did not qualify as a WSA. Accordingly, as of December 10, 1984, South Shale Ridge (CO-070-031) is released from further wilderness review.

FOR FURTHER INFORMATION CONTACT: Barry A. Tollefson, Wilderness Coordinator, Colorado State Office, Bureau of Land Management, 2020 Arapahoe, Denver, Colorado 80205, (303) 294-7128.

Dated: January 11, 1985.

Kannon Richards,

State Director.

[FR Doc. 85-1751 Filed 1-23-85; 8:45 am]

BILLING CODE 4310-JB-M

Ukiah, CA District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a meeting of the Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Pub. L. 94-579 and 43 CFR Part 1780, a meeting of the Ukiah District Advisory Council will be held to discuss wilderness suitability of the King Range (CA-050-112) and Chemise Mountain (CA-050-011) wilderness study areas.

DATES: The meeting will start at 10:00 a.m. and adjourn at 4:00 p.m. on Wednesday, February 27, 1985.

ADDRESSES: The meeting will be held at the BLM Arcata Resource Area Office, 1125 16th Street, Arcata, California.

FOR FURTHER INFORMATION CONTACT: Barbara Gibbons, Ukiah District Office, Bureau of Land Management, P.O. Box 940, 555 Leslie Street, Ukiah, California 95482-0940, (707) 462-3873.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral or written statements to the council or submit written comments for the council's consideration. Opportunity for public comments will be provided at 1:00 p.m.

Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days following the meeting.

Dated: January 14, 1985.

Van W. Manning,

District Manager.

[FR Doc. 85-1752 Filed 1-23-85; 8:45 am]

BILLING CODE 4310-84-M

[NM 58275]

Zuni Salt Lake Exchange, Catron County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Designating Public Lands for Transfer Out of Federal Ownership in Exchange for State Lands to be Acquired for the Benefit of the Zuni Indian Tribe and Other Federal Programs.

SUMMARY: Pub. L. 95–280 (92 Stat. 244), being the Act of May 15, 1978, directed the Secretary of the Interior to acquire certain lands owned by the State of New Mexico and known as the Zuni Salt Lake, to be held on trust by the United States for the Zuni Indian Tribe. Other State of New Mexico lands important to Federal programs may also be considered for acquisition under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.S. 1716) or Section 104 of the San Juan Basin Wilderness Protection Act of 1984.

SUPPLEMENTARY INFORMATION: The following described public lands have been determined to be suitable for disposal, by exchange, in accordance with the laws cited above and the regulations contained in 43 CFR Part 2200:

New Mexico Principal Meridian, New Mexico

T. 2 N., R. 20 W.,
Sec. 8, N½SE¼;
Sec. 9, N½, N½SE¼;
Sec. 17, W½NW¼.
T. 2 N., R. 21 W.,
Sec. 1, Lots 3–13 inclusive, S½NW¼.
T. 3 S., R. 11 W.,
Sec. 21, All;
Sec. 22, W½.
T. 8 S., R. 13 W.,
Sec. 31, SE¼.

Totaling 2202.04 acres of public land in Catron County, New Mexico.

In exchange for these lands the United States will acquire from the State of New Mexico, the Zuni Salt Lake, described as follows:

New Mexico Principal Meridian, New Mexico

T. 3 N., R. 18 W.,
Sec. 301, Lots 3, 34, E½SW¼, W½SE¼;
Sec. 31, Lots 1, 2, E½NW¼, W½NE¼.
T. 3 N., R. 19 W.,
Sec. 25, SE¼SE¼;
Sec. 36, E½NE¼.

Totaling 618.41 acres more or less, of State lands in Catron County, New Mexico and/or such other State land as may have been taken by Federal actions or designated for acquisition by legislation or Bureau of Land Management planning actions. The value of lands exchanged will be approximately equal.

The lands to be transferred from the United States will be subject to:

1. All valid and existing rights including any right-of-way, easement, or lease of record. The State of New Mexico will assume all of the administrative responsibilities for rights-of-way granted by the United States.

2. A reservation to the United States for rights-of-way for ditches and canals under the act of August 30, 1980.

3. Minerals may or may not be reserved to the United States. Any mineral reservation will be subject to 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 this office.

4. Existing Federal grazing authorizations for a 2 year period, from the date of reciept of this notice, if other negotiated arrangements cannot be agreed on.

Existing Federal grazing lessees or permittees will be offered up to the legal maximum of a 5 year State Land Office grazing lease with the preferential right of renewal.

Publication of this Notice segregates the public lands from the operation of the public land laws, including the mining laws. The segregation shall terminate upon issuance of a conveyance document or upon publication in the Federal Register of a notice of termination of the segregation or the expiration of 2 years from the date of publication, whichever occurs first.

Further information concerning the exchange is available for review at the Bureau of Land Management, Las Cruces District, Socorro Resource Area Office, 122 Plaza, P.O. Box 1219, Socorro, New Mexico 87801.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the Bureau of Land Management office at the address listed above.

Dated: January 9, 1985.

Daniel C.B. Rathbun,

District Manager.

[FR Doc. 85–1849 Filed 1–23–85; 8:45 am]

BILLING CODE 4310-FB-M

Availability of a Record of Decision for the Sunnyside Combined Hydrocarbon Lease Conversion Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of a record of decision for the Sunnyside Combined Hydrocarbon Lease Conversion EIS.

SUMMARY: Notice is hereby given that a Record of Decision for the Sunnyside Combined Hydrocarbon Lease Conversion EIS is now available for public inspection. The Record of Decision identifies decisions made from alternative actions considered in the EIS. The decisions focus on whether or not to grant the conversion of certain existing oil and gas leases to combined hydrocarbon leases in the Sunnyside Special Tar Sand Area (STSA). Stipulations which would be a part of the new leases are also identified. The applicants are Amoco Production Company, Chevron USA Inc.-GNC Energy Corporation, Enercor, Mono Power Company, and Sabine Production Company. Each lease conversion application was considered individually in the decision making process. Cumulative impacts were also evaluated.

ADDRESS: A limited number of copies of the Record of Decision are available from:

Public Room, BLM Utah State Office, CFS Financial Center, 324 South State Street, Salt Lake City, Utah 84111–2303;

or

BLM, Moab District, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532.

FOR FURTHER INFORMATION CONTACT:

Ronald B. Bolander, BLM Utah State Office at (801) 524–3133;

or

Daryl Trotter, BLM Moab District at (801) 259–6111.

Dated: January 15, 1985.

Roland G. Robison,

State Director.

[FR Doc. 85–1822 Filed 1–23–85; 8:45 am]

BILLING CODE 4310-DQ-M

Amended Notice of Intent; Proposed Pacific Texas Pipeline Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to Notice of Intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management is amending its Notice of Intent to prepare, in coordination with other Federal agencies and the Port of Los Angeles, a joint Federal-State Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the proposed Pacific Texas Pipeline.

The number of public scoping meetings has been increased from seven to eight, and the location of the meeting originally scheduled for Las Cruces, New Mexico, on February 6, 1985, has been changed to El Paso, Texas, on February 6, 1985. The additional meeting

has been scheduled for Midland, Texas on February 8, 1985.

DATES: Following are the new scheduled dates, times and locations of the public scoping meetings:

Location	Date	Time
Board of Harbor Commissioners Meeting Room, Port of Los Angeles Admin. Office Building, 425 South Palos Verdes Drive, San Pedro, CA.	Jan. 28, 1985	2-4 p.m.
Multi-purpose Room, Carson Community Center, 801 East Carson Street, Carson, CA.	Jan. 28, 1985	7-9 p.m.
Mission Inn Room, Raincross Square, 3433 Orange Street, Riverside, CA.	Jan. 31, 1985	7-9 p.m.
Pima County Board of Supervisors Auditorium, 111 West Congress, Tucson, AZ.	Feb. 4, 1985	7-9 p.m.
Maricopa County Board of Supervisors Auditorium, 205 West Jefferson, Phoenix, AZ.	Feb. 5, 1985	7-9 p.m.
City Council Chambers, Santa Fe and Missouri Sts. El Paso City Hall, El Paso, TX.	Feb. 6, 1985	7-9 p.m.
Carlsbad Public Library, 101 South Halagueno, Carlsbad, NM.	Feb. 7, 1985	7-9 p.m.
City Council Chambers, Midland City Hall, 300 N. Loraine Midland, TX.	Feb. 8, 1985	7-9 p.m.

FOR FURTHER INFORMATION, CONTACT: Gerald E. Hillier, District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507, (714) 351-6386.

Dated: January 14, 1985.

Gerald E. Hillier,

District Manager.

[FR Doc. 85-1996 Filed 1-23-85; 8:45 am]

BILLING CODE 4310-40-M

[A-16963]

Public Lands Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Exchange, Public Lands in Mohave County, Arizona.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 25 N., R. 19 W.,
Sec. 16, E½NW¼.

Comprising 80 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from June Westcott of Kingman, Arizona:

T. 17 N., R. 20 W.,
Sec. 17, W½SW¼,SE¼SW¼, S½NE¼S W¼.

Comprising 140 acres, more or less.

The purpose of the exchange is to acquire the non-federal lands that contain diverse wildlife habitat and possible cultural resources near the southwest region of the Black Mountains southwest of Kingman, Arizona. The exchange is consistent with the Black Mountain and Cerbat Mountain Management Framework Plans and the public intrest will be well served.

The above lands will be subject to an appraisal to determine the value of the lands to be exchanged. The listed lands may change to reflect equal value following the completion of the appraisal.

The public lands to be transferred will be subject to the following reservations, terms and conditions:

1. A right-of-way 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. A reservation to the United States for powerline right-of-way A-18556 as provided under the authority of the Act of October 21 1976 (90 Stat. 2776; 43 U.S.C. 1716).

3. A reservation for telephone line right-of-way A-11587 as provided under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1716).

4. Such rights for road easement purposes as the County of Mohave may have under the authority of R.S. 2477.

5. A portion of the lands described herein are situated within the 100-year floodplain as identified by Federal Emergency Management Agency mapping. Developments will, therefore, he subject to County floodplain restrictions as adopted by the Mohave County Board of Supervisors on July 16, 1984.

6. All minerals in the subject are reserved to the State of Arizona purusant to the Act of 1910.

Private lands to be acquired by the United States will be subject to the following reservations, terms and conditions:

1. All minerals in the subject are reserved to the Santa Fe Pacific Railroad Company as set forth in Book 60 of Deeds, pages 394-396, Mohave County, Arizona.

2. An easement to the United States for an electric transmission line and patrol road as recorded in Docket 3, pages 456-465.

3. An easement to the United States for an electric transmission line as recorded in Book 258 of Official Records, pages 767-771.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman Arizona 86401. For a period of Forty-five (45) days from the date of this Notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. 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: January 15, 1985.

Marlyn V. Jones,

District Manager.

[FR Doc. 84-1758 Filed 1-23-84; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Environmental Processes and Effects Subcommittee of the Scientific Committee, Outer Continental Shelf (OCS) Advisory Board; Notice and Agenda of Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C. App. I and the Office of Management and Budget's Circular A-63 Revised.

The Scientific Committee of the Outer Continental Shelf Advisory Board will convene a meeting of its Environmental Processes and Effects Subcommittee on Tuesday, February 12, 1985, and Wednesday, February 13, 1985, in the Heritage Room of the Lenox Hotel, 710 Boylston Street at Copley Place, Boston,

Massachusetts 02116. The Subcommittee will meet during the period 9:00 a.m. to 5:00 p.m. on February 12, 1985, and 9:00 a.m. to 3:00 p.m. on February 13, 1985.

Agenda for the meeting will include the following subjects:

- Subcommittee Schedule for Fiscal Year 1985.
- Report on Status of Federal Action Plan for the Long-term Effects Plan.
- Review of Synthesis Chapter on the Interagency Commitee on Ocean Pollution Research, Development and Monitoring (COPRDM) Long-term Effects Plan.
- Development of Plan to Evaluate Environmental Studies Program Results and Accomplishments.

The meeting of this committee is open to the public. Approximately 15 visitors can be accommodated on a first-come/first-served basis. All inquiries concerning this meeting should be addressed to: Dr. Don V. Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division (644), Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240; telephone: (202) 343–7744.

Dated: January 17, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85–1777 Filed 1–23–85; 8:45 am]

BILLING CODE 4310-MR-M

Living Resources Subcommittee of the Scientific Committee, Outer Continental Shelf (OCS) Advisory Board; Notice and Agenda of Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. App. I and the Office of Management and Budget's Circular A–63 Revised.

The Scientific Committee of the Outer Continental Shelf Advisory Board will convene a meeting of its Living Resources Subcommittee on Monday, February 11, 1985, in the Heritage Room of The Lenox Hotel, 710 Boylston Street at Copley Place, Boston, Massachusetts 02116. The Subcommittee will meet during the period 9:00 a.m. to 5:00 p.m.

Agenda for the meeting will include the following subjects:

- Subcommittee Schedule for Fiscal Year 1985.
- Scope of Living Resources Studies.
- Studies Review Criteria.
- Requests for Action on Specific Proposals.

The meeting of this committee is open to the public. Approximately 15 visitors can be accommodated on a first-come/first-served basis. All inquiries concerning this meeting should be addressed to: Dr. Don V. Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division (644), Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240; telephone: (202) 343–7744.

Dated: January 17, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85–1776, Filed 1–23–85; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Municipal and Industrial Water Service Ratesetting Policy; Central Valley Project (CVP, California; Amendment to Notice of Availability of Policy Options Document and Intent To Hold Public Workshops and Hearings

The Department of the Interior, through the Bureau of Reclamation, has developed a municipal and industrial (M&I) water ratesetting options paper for the CVP. The paper was prepared pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187), Pub. L. 88–44 (Act of June 21, 1963, 77 Stat. 68), and the Reclamation Reform Act of 1982, Title II, Pub. L. 97–293 (96 Stat. 1263).

The Bureau of Reclamation hereby amends its Notice of Availability of Policy Options Document and Intent to Hold Public Workshops and Hearings as published in 49 FR, page 41114, October 19, 1984. The time period for submitting written statements on the ratesetting policy has been extended from January 15, 1985, to February 28, 1985.

Copies of the draft may be obtained without charge by writing to the Regional Director, Bureau of Reclamation, Water Rate Policy (MP–440), 2800 Cottage Way, Sacramento, CA 95825. Questions by telephone should be directed to Donna Tegelman at (916) 484–4540.

Dated: January 17, 1985.

Robert A. Olson,

Acting Commissioner of Reclamation.

[FR Doc. 85–1775 Filed 1–23–85; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Availability; Draft General Management Plan Addendum With Development Concept Plan and Environmental Assessment; Veterans Lake, Chickasaw National Recreation Area, Murray County, OK

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, and Part 516 of the Departmental Manual, the National Park Service has prepared a Draft General Management Plan Addendum, with Development Concept Plan and Environmental Assessment, Veterans Lake, Chickasaw Nation Recreation Area, Murray County, Oklahoma.

In March 1983, City of Sulphur, Oklahoma, voters passed a referendum in favor of the donation of the 343-acre Veterans Lake tract to Chickasaw National Recreation Area. On November 14, 1983, the city council formally conveyed title to the Federal government. The Draft General Management Plan Addendum, with Development Concept Plan and Environmental Assessment, will integrate Veterans Lake management and development strategies with existing park-wide strategies set forth in the 1980 General Management Plan.

Copies of the Draft General Management Plan Addendum, with Development Concept Plan and Environmental Assessment, are available from Chickasaw National Recreation Area, Post Office Box 201, Sulphur, Oklahoma 73086; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Anyone wishing to comment on the Draft General Management Plan Addendum, with Development Concept Plan and Environmental Assessment, should provide them to the Superintendent, Chickasaw National Recreation Area, Post Office Box 201, Sulphur, Oklahoma 73806, within 30 days from the publication date of this notice.

Dated: January 10, 1985.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 85–1880 Filed 1–23–85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-209]

Aluminum Frame Fabric-Covered Luggage and Components Thereof; Change of the Commission Investigative Attorneys

Before John J. Mathias, Administrative Law Judge.

Notice is hereby given that, as of this date, Steven H. Schwartz, Esq., and Juan S. Cockburn, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorneys in the above-cited investigation instead of Patricia Ray, Esq., and Scott Fields.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: January 17, 1985.

Arthur Wineburg,

Acting Chief, Unfair Import Investigations Division.

[FR Doc. 85-1863 Filed 1-23-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-214]

Certain Frozen Beverage Dispensing Machines; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 17, 1984, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Refreshment Machinery Incorporated, 300 Jacksonville Road, Warminster, Pennsylvania 18974. An amended complaint was filed on January 7, 1985. The complaint, as amended, alleges unfair methods of competition and unfair acts in the importation of certain frozen beverage dispensing machines into the United States, or in their sale, by reason of alleged (1) infringement of claims 1, 5, 7, and 10-13 of U.S. Letters Patent 4,195,754; (2) infringement of the claim of U.S. Letters Patent Des. 260,095; and (3) false representation of manufacturing source. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, after a full investigation, the Commission issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Gertler, Esq., or Patricia Ray, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-0115 or 202-523-1272, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on January 16, 1985, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain frozen beverage dispensing machines into the United States, or in their sale, by reason of alleged (1) infringement of claims 1, 5, 7, and 10-13 of U.S. Letters Patent 4,195,754; (2) infringement of the claim of U.S. Letters Patent Des. 260,095; and (3) false representation of manufacturing source, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complaint is—Refreshment Machinery Incorporated, 300 Jacksonville Road, Warminster, Pennsylvania 18974

(b) The respondent is the following company, alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Stewart Sandwiches, Inc. 5732 Curlew Drive, Norfolk, Virginia 23502

(c) Jeffrey L. Gertler, Esq., and Patricia Ray, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 125, Washington, D.C. 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondent in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21 as amended, 49 FR 46123). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause thereof is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the Administrative Law Judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is 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., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

Issued: January 17, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-1861 Filed 1-23-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-190 (Final)]

Stainless Steel Wire Cloth From Japan

AGENCY: International Trade Commission.

ACTION: Institution of 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-190 (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 stainless steel wire cloth, provided for in items 642.52, 642.64, and 642.74 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 (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before March 12, 1985, and the Commission will make its final injury determination by May 2,

1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b)).

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).

EFFECTIVE DATE: January 3, 1985.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–523–4612), 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 stainless steel wire cloth 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 June 1, 1984, by the American Wire Cloth Institute. 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 30027).

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 § 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(c) 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 prehearing staff report in this investigation will be placed in the public record on March 4, 1985, 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 March 19, 1985, 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 March 5, 1985. 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 9:30 a.m. on March 11, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 13, 1985.

Testimony at the public hearing is governed by § 207.23 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. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (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 March 25, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent ot the subject of the investigation on or before March 25, 1985.

A signed original 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, as amended by 49 FR 32569, Aug. 15, 1984).

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).

Issued: January 17, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–1862 Filed 1–23–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 104–TAA–24 and 104–TAA–25]

Suspension of Countervailing Duty Investigations Concerning Oleoresins From Spain and India, and Request for Public Comment on Termination of the Investigations

AGENCY: International Trade Commission.

ACTION: Request for comments on proposed termination of countervailing duty investigations under section 104(b) of the Trade Agreements Act of 1979 and notice of cancellation of prehearing conference and public hearing and suspension of investigations pending public comment.

FOR FURTHER INFORMATION CONTACT: Mr. Tedford Briggs, Office of Investigations, telephone 202–523–4612.

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 industry would be materially retarded, if the order were to be revoked. On June 17, 1982, the Commission received a request from the Government of Spain for the review of the countervailing duty order on oleoresins from Spain (T.D. 79-71). Notice of this countervailing duty order was published on February 28, 1979, in the Federal Register (44 FR 11214). On December 28, 1982, the Commission received a similar request from the Government of India for the review of the countervailing duty order on oleoresins from India (T.D. 79-107). Notice of this countervailing duty order was published on April 9, 1979, in the Federal Register (44 FR 21009).

The Commission received a letter on January 7, 1985, from Kalsec, Inc., the original petitioner for the countervailing duty orders, stating that it withdraws its requests for the imposition of countervailing duties under the above-referenced countervailing duty orders.

In light of the legislative history of section 704(a) of the Tariff Act of 1930 indicating Congress' expectation that the Commission will permit public comment prior to the termination, the Commission requests written comments from persons concerning the proposed termination of the investigations on oleoresins from Spain and India. These written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the Federal Register.

These countervailing duty investigations concerning oleoresins from Spain and India are suspended for the duration of the 30-day public comment period. Further, the prehearing conference scheduled for 9:30 a.m. on February 4, 1985, and the public hearing scheduled for 10:00 a.m. on February 12, 1985, are cancelled pending review of public.

Issued: January 18, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-1864 Filed 1-23-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Decision Not To Review Initial Determination Dismissing Three Respondents

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination (ID) dismissing three respondents from the above-captioned investigation.

SUMMARY: The Commission has determined not to review a Commission administrative law judge's ID granting a joint motion to dismiss Sheng Feng Woodworking Machine Co., Ltd., Allied Manufacturers International Corp., and Tomita Enterprise Co., Ltd., as respondents in the subject investigation, on the grounds that they do not manufacture, export, or sell any of the machines at issue. By virtue of the Commission's decision not to conduct a review, the ID has become the Commission's determination. 19 CFR 210.53(h), as amended at 49 FR 46123 (Nov. 23, 1984).

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION: Investigation No. 337-TA-174 is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain woodworking machines, by reason of the following unfair acts: (1) Patent infringement, (2) common-law and registered trademark infringement, (3) passing off, (4) false representation of manufacturing source, and (5) false and deceptive advertising. 48 FR 55786 (Dec. 15, 1983); 49 FR 23464 (June 6, 1984). The complainant is Delta International Machinery Corp. 49 FR 23463 (June 6, 1984).

On November 7, 1984, respondents Sheng Feng, Allied, and Tomita filed a joint motion (No. 174-46) requesting that they be dismissed from the investigation because they do not produce, export, or sell, directly or indirectly, any of the machines in controversy. The motion explained further that Sheng Feng manufactures and sells industrial-grade woodworking machines only, Allied is a trading company, and Tomita is no longer in business, and has not been in business during the course of the investigation. Neither complainant Delta nor the Commission investigative attorney opposed the motion.

On November 29, 1984, the presiding administrative law judge issued an ID granting the motion. Copies of the ID were served on other Federal agencies on November 30, 1984, but no comments were received in response. No party filed a petition for review, and the Commission determined that a review on the Commission's own motion, pursuant to 19 CFR 210.55, was not warranted.

By virtue of the Commission decision not to review the ID, the ID became the Commission's determination. 19 CFR 210.53(h).

Copies of the ID, the motion to dismiss, and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471.

Issued: January 17, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-1860 Filed 1-23-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 16308 (Sub-1)]

Wheeling & Lake Erie Railway Co.; Revoval of Purchase Fund Condition

AGENCY: Interstate Commerce Commission.

ACTION: Proceeding reopened and comments requested.

SUMMARY: By petition filed November 30, 1984, the Norfolk and Western Railway Company (NW) seeks reopening for the limited purpose of removing a purchase fund condition imposed on the New York, Chicago and St. Louis Railroad Company (Nickel Plate) in *Wheeling & L.E. Ry. Lease*, 271 I.C.C. 713,752 (1949), *modified* 275 I.C.C. 185, 188 (1949).

The proceeding is reopened pursuant to 49 U.S.C. 11343 and 11351, to consider the requested change. Interested parties may file comments in support of, or in opposition to, removal of the purachase fund condition. NW indicates that copies of its petition have been mailed to registered holders of common stock of the Wheeling & Lake Erie Railway Company as of November 2, 1984. Those persons who have been served with a copy of the petition and who have filed replies need not refile under this notice.

DATES: Comments are due on February 25, 1985. Replies are due on March 18, 1985.

ADDRESSES: Send an original and 15 copies of pleadings referring to Finance Docket No. 16308 (Sub-No. 1) to:

(1) Office of the Secretary Case Control Branch Interstate Commerce Commission Washington, DC 20423

(2) And one copy to petitioner's representative: J. Gary Lane P.O. Box 3069 Norfolk, VA 23514

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

Decided: January 16, 1985.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayner,

Secretary.

[FR Doc. 85-1754 Filed 1-23-85; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice

[Volume OP1-015]

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful contral, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness o this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: January 15, 1985.

By the Commission, Motor Carrier Board Members, Dobbins, Guyton, and Johnson. Guyton not participating.

James H. Bayne,

Secretary.

Note.—Please direct status inquires to Team 1, (202) 275-7992)

MC-F-16030, filed January 3, 1985. CAROLINA ASSOCIATES, INC. (Carolina Associates) (P.O. Box 8329, LaJolla, CA 92038)—CONTROL—CAROLINA COACH COMPANY (CCC) (P.O. Box. 28066, Raleight, NC 27611) and SEASHORE TRANSPORTATION COMPANY (STC) (812 Broad Street, New Bern, NC 28506). Representative: Lawrence E. Lindeman, P.C., 805 King Street, Alexandria, VA 22314. Carolina Associates, a non-carrier, seeks authority to acquire control of the operating rights and property of CCC and STC through its purchase from North American Philips Corporation of all the issued and outstanding stock of CCC and STC. Nicholas Wallner and Peter S. Redfield, who control Carolina Associates through stock ownership, and are officers and directors thereof, also seek authority to acquire control of such operating rights and property through this transaction. CCC is authorized to operate as a motor common carrier pursuant to Certificate No. MC-13300 and subnumbers thereunder, as well as certain intrastate rights authorizing the transportation of passengers, (1) over regular routes, in interstate and intrastate commerce, extending generally between Philadelphia, PA on the north and Fayetteville and Charlotte, NC on the south, serving numerous intermediate points in Delaware, Maryland, Virginia, North Carolina, and the District of Columbia; and (2) over irregular routes, in charter and special operations, between points in the United States. STC holds authority in Certificate No. MC-28985 and subnumbers thereunder, as well as certain intrastate rights, authorizing the transportation of passengers, (1) over regular routes, in interstate and intrastate commerce, extending generally between Rocky Mount, NC on the north and Myrtle Beach, SC on the south, serving numerous intermediate points in North Carolina; and (2) over irregular routes, in charter and special operations, between points in the United States.

Note.—This does not purport to be a complete description of the operating rights held by CCC and STC.

[FR Doc. 85-1755, Filed 1-23-85; 8:45 am]

BILLING CODE 70-35-01-M

DEPARTMENT OF JUSTICE

Consent Decree in an Action Under the Clean Water and Refuse Acts; American Cyanamid Co.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on December 27, 1984, a consent decree in *United States v. American Cyanamid Co.* C.A. No. 83-260C (N.D.W.V.), was lodged with the Clerk of the Court for the United States District Court, Northern District of West Virginia. The decree requires American Cyanamid to clean up leaked benzene to a level of 1ppb from the aquifer underlying its facility near the Willow Island Lock and Dam, to install

additional monitoring wells, to monitor Cow Creek, to conduct its cleanup operations so as to insure that nothing it does or fails to do will cause ambient benzene levels in Cow Creek to exceed 40 ppd, to sumbit monitoring and cleanup programs to U.S.E.P.A. and West Virginia DNR for approval within specified time limits, to implement approved plans within specified time limits and to pay stipulated penalties for violations of the consent decree.

The Department of Justice will receive for thirty (3) days from the publication date of this notice, written comments relating to the decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *American Cyanamid*, D. J. 90–5–1–1–866.

The consent decree can be examined at the Office of the United States Attorney, P. O. Box 3234, Wheeling, West Virginia, at the Office of Regional Counsel, U.S.E.P.A. Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania, and at the Office of the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice (Rm. 1515), Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the consent decree can be obtained from the Environmental Enforcement Section in person or by mail at the above address at a cost of $2.60 (10 cents per page).

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–1759 Filed 1–23–85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Proposed Consent Decree Pursuant to the Clean Water Act; Dexter Clark, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 26, 1984, a proposed Consent Decree in *United States* v. *Dexter Clark, et al.*, Civil Action No. A84–334 was lodged with the United States District Court for the District of Alaska.

The proposed Consent Decree requires the defendants to comply with Section 301 of the Clean Water Act and refrain from all discharges of pollutants without the authorization of a National Pollutant Discharge Elimination System (NPDES) permit. The decree also imposes reporting requirements upon the defendants with respect to any mining operations in which they may become involved and imposes stipulated penalties on the defendants for any failure on their part to obtain NPDES permits or to comply with their reporting obligations. The decree also provides for the payment of a civil penalty in the amount of $7,500 for violations of the Clean Water Act. The defendants are required to pay $2,500 within 30 days from the entry of this decree, with the balance of $5,000 to be paid over a two-year period.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Dexter Clark, et al.*, D.J. No. 90–5–1–1–2217.

The proposed Consent Decree may be examined at the office of the United States Attorney, Federal Building & U.S. Courthouse, 701 C Street, Room C–252, Mail Box 9, Anchorage, Alaska 99513; and at the Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the case and decree and enclose a check in the amount of $1.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–1760 Filed 1–23–85; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Computer Aided Manufacturing-International; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98–462 ("the Act"), Computer Aided Manufacturing-International, Inc. has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to Computer Aided Manufacturing-International, Inc. and its general areas of planned activities are given below.

Computer Aided Manufacturing-International, Inc. was incorporated as a membership organization in May 1972, for the purpose of sponsoring joint research and development in the use of computer systems and software to improve the productivity of industry. Its members contribute to, and with the assistance of professional staff, plan and contract for, basic research and development projects in such areas as geometric modeling, process planning, advanced numerical control, sculptured surfaces, robotics automation, quality assurance, factory management, and electronics automation. Upon completion, including testing and evaluation, the results of the projects are made available to the public for a fee. The members include corporations, government agencies, and educational institutions located in the United States, Europe, and Japan.

The current industrial member companies in the United States are: 3M Company/EMRD; Applicon/MDSI; Avco Aerostructures Division; B. F. Goodrich Company; Bendix Corporation/Kansas City Division; Boeing Computer Services; Camax Systems, Inc.; Caterpillar Tractor Company; Computervision Corporation; Cray Research, Inc.; Cummins Engine Company, Inc.; Daisy Systems Corporation; Deere & Company; Denelcor, Inc.; Digital Electronics Automation, Inc.; Digital Equipment Corporation; Douglas Aircraft Company; E.I. Du Pont de Nemours & Co., Inc.; Eastman Kodak Company; Eaton Corporation; Evans & Sutherland Computer Corp.; Ford Motor Company; General Dynamics/Convair; General Dynamics/Fort Worth; General Electric Company; General Motors Corporation; Grumman Aerospace Corporation; Hughes Aircraft Company; Lawrence Livermore National Laboratory; Lockheed Missiles & Space Co., Inc.; Lockheed-Georgia Company; Los Alamos National Laboratory; LTV Aerospace & Defense Company; Martin Marietta Data Systems; Martin Marietta Energy Systems, Inc.; McDonnell Aircraft Company; McDonnell Douglas Automation Co.; Morton Thiokol, Inc.; Northrop Aircraft Corporation; Optical

Gaging Products, Inc.; Raytheon Company; Scientific Calculations, Inc., SEI Information Technology; Sheffield Measurement Division; Warner & Swasey Co.; United Technologies Corporation; USAF AFWAL/MLTC; Valid Logic Systems, Inc.; and Westinghouse Electric Corporation.

The current industrial member companies in Europe are: ADEPA (France); Adolf Waldrich Coburg GmbH & Co. (Federal Republic of Germany); Aerospatiale (France); Asea AB (Sweden); British Aerospace Aircraft Group (United Kingdom); Construcciones Aeronauticas, S.A. (Spain); Calma (UK) Limited (England); Daimler-Benz AG (West Germany); Deutsche Forschungs und Versuchsanstalt fur Luft und Raumfahrt e.V. (West Germany); Electronic Control Systems S.p.A. (Italy); Elsag (Italy); Fiat S.p.A. (Italy); Finmeccanica Alfa Romeo (Italy); General Electric Co. P.L.C. (England); Hewlett Packard GmbH (Federal Republic of Germany); Ingersoll Engineers (England); International Computers, Ltd. (United Kingdom); Istel Limited (United Kingdom); ITT IITE AMT Center (Belgium); IVF (Sweden); Jaguar Cars Limited (England); Lucas Group Services Limited (England); Vandelli S.p.A. (Italy); Matra-Datavision, Inc. (France); Messerschmitt-Bolkow-Blohm GmbH (West Germany); Nuovo Pignone S.p.A. (Italy); Philips International B.V. (The Netherlands); Prime Computer CAD/CAM Ltd. (United Kingdom); Racal-Redac Limited (England); Renault (France); Saab-Scania (Sweden); Sandvik AB Coromant (Sweden); Short Brothers Limited (Northern Ireland); Siemans AG (West Germany); STC Telecommunications, Ltd. (United Kingdom); The Plessey Company PLC (England); Thomson Informatique Services-CSF (France); TNO Metaalinstituut (The Netherlerlands); Valmet Procons OY, Ltd. (Finland); Volkswagenwerk AG (West Germany); and VTT—Technical Research Centre/Finland (Finland).

Current industrial member companies in Japan are: Computer Services Corporation; Daikin Industries, Ltd.; Fujitsu Limited; Hitachi, Ltd.; Honda Engineering Co., Ltd.; Japan Information Services, Ltd.; Kawasaki Heavy Industries, Limited; Matsushita Electric Industrial Co., Ltd.; Mitsubishi Electric Corporation; Nachi Fujikoshi Corporation; NEC Corporation; Nippon Telegraph & Telephone Public Corp.; Nippon Univac Kaisha, Ltd.; Oki Electric Industry Co., Ltd.; Omron Tateishi Electronics Co., Ltd.; Sanyo Electric Company, Ltd.; Shoko Co., Ltd.; and Toshiba Corporation.

Current educational members in the United States are: Bradley University; Brigham Young University; California Polytechnic State University; Carnegie-Mellon University; Cornell University; Iowa State University; Lehigh University; Massachusetts Institute of Technology; Michigan State University; Michigan Technological University; New Mexico State University; North Carolina State University; Oklahoma State University; Pennsylvania State University; Rensselaer Polytechnic Institute; Texas A & M University; University of New Orleans; University of Rochester; University of Texas at Arlington; and Wichita State University.

Current educational members in Europe are: Aachen Technical University (West Germany); Bordeaux 1 University—GRAI (France); Cambridge University (England); Cranfield Institute of Technology (England); Katholieke Universiteit Leuven (Belgium); Lund Institute of Technology (Sweden); Politecnico di Milano (Italy); Royal Institute of Technology (Sweden); Technical University of Berlin (West Germany); Universitat Karlsruhe (TH) (West Germany); Universitat Stuttgart (West Germany); University of Manchester (England); University of Nottingham (England); and University of Oulu (Finland).

Current educational members in Japan are: Hokkaido University; Kobe University; and Tokyo University.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-1829 Filed 1-23-85; 8:45 am]

BILLING CODE 4410-01-M

Parole Commission

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Notice.

SUMMARY: The U.S. Parole Commission is implementing an experimental procedure for advancing a parole date by up to two months if an offender first completes 480 hours of reparative work. Carefully screened offenders will perform work without pay which provides meaningful, realistic and needed service to the community. The propose of the project is to develop a sanction that punishes the offender but also allows him or her to repay the harm done to society by their crimes. Participants will complete the work while residing in a community treatment center during the last months before release and still under the custody of the Bureau of Prisons.

In order to expedite the experimental procedure, it will be necessary for jurisdiction of cases who have volunteered for the program to be transferred from the Regional Commissioner to the Chairman of the Commission (or a designated National Commissioner). After a prisoner has been approved by the Bureau of Prisons, the parole file will be sent from the regional office to the central office and the Chairman or the designated National Commissioner will decide whether to approve the prisoner's application. A prisoner must be approved by both the Bureau of Prisons and the Parole Commission before being accepted into the program. If a prisoner is accepted and if he completes the reparative work program, the parole date will be advanced and made effective by the Chairman or designated National Commissioner. After the parole date has been made effective, the case file will be returned to the appropriate regional office. Developing the release plan and supervising the offender after release will be done in the regional office under normal procedures.

The project will continue for two years and will eventually involve approximately 300 offenders. After two years, the project will be examined to see if the results justify continuing the program in the future or if the project warrants consideration by state correctional agencies, many of which have serious overcrowding problems.

DATE: These procedures will go into effect on a trial basis immediately.

FOR FURTHER INFORMATION CONTACT: James L. Beck, United States Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Tel: (301) 492-5952.

Dated: January 15, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-1798 Filed 1-23-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D-3970]

Proposed Class Exemption To Replace PTE 79-1 and PTE 84-46 for Certain Transactions Involving Employee Benefit Plans and Securities Broker-Dealers

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Proposed class exemption, and proposed revocation of existing class exemptions.

SUMMARY: This document contains a notice of pendency before the Department of a proposed class exemption and of a proposed revocation of existing class exemptions. If adopted, the proposed class exemption would replace Prohibited Transaction Exemption (PTE) 79-1, which permits broker-dealers (or their affiliates) who serve as fiduciaries of employee benefit plans to exercise discretionary authority to effect or execute securities brokerage transactions on behalf of their plan clients without violating section 406 of the Employee Retirement Income Security Act of 1974 (ERISA), and PTE 84-46, which provides similar relief in the case of life insurance company pooled separate accounts that recapture brokerage profits generated by securities transactions effected by affiliates of the insurance company. The exemption and proposed revocation would affect those with an interest in the investments of employee benefit plans. The proposed exemption would provide conditional relief that differs, in some respects, from that provided by PTE 79-1 and PTE 84-46.

DATES: Written comments and requests for a public hearing should be received by the Department before March 25, 1985. The replacement exemption would be effective 30 days following publication of the final grant notice in the **Federal Register.**

ADDRESSES: All written comments and requests for a hearing (preferably 3 copies) should be sent to: Office of Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, Room C-4526, 200 Constitution Ave. NW, Washington, DC 20210, Attn: Brokerage Exemption Revisions. The application for exemption, as well as all comments and requests for a public hearing, will be available for public inspection in the Public Documents Room, Office of Pension and Welfare Benefits Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Ave. NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: E. F. Wiliams, Office of Regulations and Interpretations, Room C-4526, Washington, D.C. 20210, (202) 523-8194 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed class exemption that would replace PTE 79-1 [1] and PTE 84-46,[2] which are class exemptions from the restrictions of section 406 of ERISA and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code) by reason of certain transactions described in Code sections 4975(c)(1) (A) through (F).[3] Notice is also hereby given of the pendency before the Department of a proposed revocation of PTE 79-1 and PTE 84-46. In part, this proposal is the Department's response to an application filed by the Securities Industry Association (SIA), a trade association for securities broker-dealers. The application was filed under section 408(a) of ERISA and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) by letters to the Department from the SIA dated November 29, 1982, April 22, 1983, May 24, 1983 and July 23, 1984. In addition, the document contains proposals that the Department is making on its own motion pursuant to the authority described above.

Section 406(a) of ERISA prohibits, among other things, the provision of services between a plan and parties in interest (including fiduciaries) with respect to that plan and the transfer of plan assets to a party in interest unless a statutory or administrative exemption applies to the transaction. In addition, unless exempted, section 406(b) of ERISA prohibits, among other things, a fiduciary's dealing with the assets of a plan in his or her own interest. Although section 408(b)(2) of ERISA provides a conditional statutory exemption permitting plans to make resonable contractual arrangements with parties in interest for the provision of services necessary for the plan's operations, that exemption does not extend to acts of self-dealing described in section 406(b) of ERISA.[4] A fiduciary performing both investment management and brokerage services for the same plan is in a position where his or her decision, as an exercise of fiduciary discretion, to engage in a portfolio trade on behalf of the plan would result in the plan's paying the fiduciary and additional fee for performance of the brokerage services. In the Department's view, such decision involves an act of self-dealing prohibited by section 406(b) of ERISA and not exempt by section 408(b)(2) of ERISA.

PTE 79-1 is intended to provide relief from the restrictions of section 406 in order to permit a plan fiduciary to act as both investment manager and securiteis broker for the same plan, under conditions designed as appropriate safeguards to ensure the protection of the plan assets involved in the transactions. Those safeguards rely heavily on the prior authorization and monitoring of the fiduciary's activities by a second plan fidicuary, who is independent of the first. PTE 84-46 is similar to PTE 79-1 but was designed to alleviate practical problems presented by certain conditions of PTE 79-1 as they apply to insurance company pooled separate accounts. For a more complete discussion of the relief provided by PTE 79-1 and PTE 84-46, interested persons are referred to the exemptions themselves as published in the Federal Register and cited above.

The principal respects in which the proposed exemption would, if adopted, provide relief that differs from that provided by the two class exemptions it would replace are discussed below.

A. Replacement of Annual Authorization Requirement

Sections II (b) and (c) of PTE 79-1 require that a transaction must be performed pursuant to a written authorization executed by a fiduciary of the plan who is independent of the person engaging in the transaction, and that the continuance of such authoriztion for more than one year must be similarly authorized at least annually by the independent fiduciary. The Department required annual authorizations when it granted PTE 79-1 because it believed that these requirements would provide a continuing safeguard against the conflict of interest which exists when a plan fiduciary can select itself to provide brokerage services for a plan at a profit.[5]

[1] 44 FR 5963 (January 30, 1979).

[2] 49 FR 22157 (May 25, 1984).

[3] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. For the sake of clarity, the remainder of the preamble refers only to Title I of ERISA. However, these references apply to the corresponding provisions of section 4975 of the Code as well.

[4] For a more complete explanation of the provisions of section 408(b)(2) and its relationship to section 406, see generally the Department's regulations at 29 CFR 2550.408b-2.

[5] 44 FR at 5965 (January 30, 1979).

1. Summary of the SIA's Representations Concerning the Costs and Benefits of the Annual Authorization Requirement

In its application, the SIA represents the following: Based on its members' experience since the adoption of PTE 79–1, it fails to perceive any benefit to plan participants from the annual authorization requirement. It does not know of any instance in which an independent fiduciary, having initially authorized a broker-dealer fiduciary to execute trades for a plan, has failed ultimately to renew the authorization. However, the independent fiduciaries are very slow in responding to requests for annual authorizations.

If annual authorizations are not received in time because of administrative delays, plan accounts are denied the benefits of obtaining brokerage services from broker-dealer fiduciaries. For example, if a broker-dealer aggregates orders from various accounts, plan accounts for which renewals have not been received are denied the lower commission rates and better executions derived from that aggregation because a broker-dealer fiduciary must place orders to buy or sell securities for those plans with another brokerage firm. Generally, if a broker-dealer fiduciary places a securities order for a plan with another firm, the chances of an optimal execution are substantially reduced because of the inability of the broker-dealer fiduciary to control order flow.

Moreover, if the annual authorization is not received from a plan, some brokerage firms will close the plan's account because they are not structured to manage plan accounts and execute trades through another firm. Other firms will charge the plan a higher rate for management without brokerage. In addition, certain brokerage firms have simply decided not to offer brokerage services to their managed plan accounts because of the administrative burdens and costs of complying with the annual authorization requirement.

Compliance with the annual authorization requirement is costly and unnecessarily burdensome. These costs and burdens stem from the printing and mailing of the annual authorization forms and, more importantly, from the time spent by account executives or other firm employees ensuring compliance with the requirement.

In general, broker-dealer fiduciaries must mail two or three renewal forms to the relevant independent fiduciaries prior to securing renewal authorizations. Second mailings are virtually mandatory, and it is estimated that approximately 50% of the relevant accounts return their renewal forms thereafter. The "success rate" of renewal form returns after the third mailing is approximately 78%. After a third mailing, repeated phone calls are necessary to obtain completed renewal forms, and sometimes account executives must pick up renewal forms on personal visits to the clients.

A typical procedure for compliance with the annual consent requirement involves the following: One month prior to the termination of an annual consent, renewal forms are printed and mailed to the independent fiduciaries. An employee is assigned to tabulate the results and to determine which plans have returned their renewals and which plans must receive second or third renewal forms. In certain firms, the particular account executives also track the renewal process with regard to the plan accounts to which they are assigned. They communicate with the independent fiduciaries of plan accounts to remind them of the renewal requirement. The expenditure of time by account executives in such "non-productive" activities can constitute a major cost of the renewal process to various firms.

Based upon reasonable best estimates available to the SIA, the costs of following this procedure amounts to $15,000 a year for a brokerage firm with approximately 40 small plan accounts and $75,000 for a firm with approximately 450 institutional-size plan accounts.

2. The SIA's Request for an Alternative Requirement

The SIA states in its application that a better approach towards accomplishing the objective of the authorization requirement at a smaller cost to the securities industry would be to require a broker-dealer fiduciary to send to the independent fiduciary annually a form for terminating the authorization of the broker-dealer to effect agency transactions for the plan. This form would state in a prominent manner that the authorization is terminable at will by the plan, without penalty, upon receipt by the broker-dealer of written notice from the plan. This form would be accompanied by instructions making clear that failure to return the form would result in the continued authorization of the broker-dealer to effect agency transactions for the plan. This approach would not penalize the plan and broker-dealer if the independent fiduciary fails to respond to a request for continued authorization. In addition, the deletion of an annual affirmative renewal by the plan would be more consistent with SEC Rule 11a2-2(T) under the Securities Exchange Act of 1934 (the 1934 Act).[6]

3. The Department's Responses

On the basis of the SIA's representations, the Department has tentatively concluded that the benefits derived from the current annual authorization requirement compared with those that would be derived from an alternative such as suggested by the SIA, are not sufficiently greater that they warrant the annual authorization requirement's additional costs. Therefore, the Department is proposing to replace the annual authorization requirement with a requirement that the annual report to the authorizing fiduciary required by proposed section III(f) (and discussed below) be accompanied by a form that the authorizing fiduciary may return at any time in order to terminate the authorization. In addition, such a form must be supplied to the authorizing fiduciary before the initial authorization is made. See section III (c), (d) and (g) of the proposed exemption

B. Amendments to Reporting Requirements.

Sections II (e) through (g) of PTE 79–1 require that reports be sent to independent plan fiduciaries not less than quarterly disclosing: the total charges related to exempt transactions in the past quarter, including a breakdown between the portion of those charges retained by the person covered by the exemption and the portion paid to other persons for execution or other services; rates for transaction-related charges anticipated to be made in the coming three months for transactions normally entered into by the plan; and a statement to the effect that brokerage commission in the United States are not fixed by any stock exchange of other authority and are subject to negotiation.

1. Summary of the SIA's representations concerning the costs and benefits of the quarterly reports

In its application, the SIA represents the following: It fails to see the benefits derived by plan participants from the requirement that independent

[6] 17 CFR 240.11a2-2(T). In general, a member of a national securities exchange may not effect securities transactions on that exchange for an account with respect to which it or any associated person thereof exercises investment discretion without complying with Rule 11a2-2(T). That rule requires annual reports of these securities transactions by the investment adviser to the "person or persons authorized to transact business for the account," but does not require annual reauthorization to effect the transactions.

fiduciaries be sent reports quarterly. With the information from the confirmation provided under SEC Rule 10b–10, the plan can closely monitor its agency transactions performed by a broker-dealer.[7]

With regard to the contents of the report, the SIA points out that SEC Rule 11a2–2(T) does not require estimates of future costs or a statement concerning the negotiability of brokerage commission rates. The SIA has no objections to the requirement that its members disclose the total transaction charges incurred by a plan and the amount of those charges retained by the broker-dealer or its affililates. However, it is unnecessary to state that commissions are no longer fixed as the advent of negotiated rates in 1975 has been well publicized. Moreover, in the current era of negotiated commission rates, it is extremely difficult to predict accurately the transaction-related charges to a plan at some future date. Such a prediction may be misleading because actual charges would depend on the specific nature of the transaction and a variety of competitive factors.

The SIA contends that the costs involved in preparing the quarterly reports are unduly high, considering that they duplicate much of the information received in Rule 10b–10 confirmations. This is especially true for those firms that utilize outside service bureaus to handle back-office processing operations, since those bureaus do not usually provide a service to comply with the quarterly report requirements of PTE 79–1. Other firms must compile the data manually because it would be costly to redesign their own computer systems to perform a special run to comply with the requirement. The average time devoted to this requirement is approximately two weeks on the part of a brokerage firm employee before the end of each quarter. Estimates of the cost for a brokerage firm to comply with the quarterly report requirement range from $2,500 to $5,000 per year on a regular basis, plus the time and expense involved in developing a special computer or manual system to handle this requirement.

2. The SIA's Request for an Alternative Requirement and Related Representatives.

The SIA requests in its application that reporting be required at least annually rather than quarterly. It suggests that the Department specifically include as a condition to the exemption that an independent fiduciary of a plan receive a confirmation under SEC Rule 10b–10 for each trade executed or effected for that plan by a broker-dealer or affiliated adviser that serves as an ERISA fiduciary to the plan. It also requests the elimination of the requirements of estimates of future costs and of the statement concerning the negotiability of commission rates.

The SIA makes the following representations relating to these requests: If a plan is an advisory client of a broker-dealer or an investment adviser controlled by or under common control with a broker-dealer, an independent fiduciary of the plan will receive a confirmation of each securities trade effected or executed by the broker-dealer for that plan because the plan is considered the "customer" under the confirmation delivery requirement in SEC Rule 10b–10. The information in the confirmations is sufficient to allow an independent fiduciary to evaluate the execution services provided by a broker-dealer. From the viewpoint of the plan, the critical elements of an execution are the price of the security bought, the total commission charges, and the date and time of the trade. These elements are all required by SEC Rule 10b–10 to be included in the confirmation. While the quarterly report summarizes the commission charges received by the broker-dealer during the quarter, such a summary can easily be constructed by an independent fiduciary from the confirmations. While it is true that the confirmations do not delineate the allocation of the commissions between the broker-dealer and its sub-agents, an independent fiduciary should be primarily interested in the total commissions charged to the plan, not the allocation. According to the SIA, as long as the total commissions are acceptable to the plan, it is of little relevance how the broker-dealer organizes its business relationships to achieve those commission levels. In any event, an independent fiduciary would receive at least annually a summary of the total commissions paid by the plan to the broker-dealer fiduciary and the amount of those commissions retained by the broker-dealer.

3. The Department's Response.

On the basis of the SIA's representations, the Department has tentatively concluded that in cases where transaction-by-transaction confirmations are supplied to independent fiduciaries, the benefits derived from the current reporting requirements compared with those that would be derived from the reporting requirements proposed in this document are not great enough to justify the current reporting requirements' additional costs.

However, the Department is not certain that in all cases the confirmations required by Rule 10b–10 are normally provided to the independent plan fiduciaries referred to above. For example, the Department believes it should assume, for purposes of this proposed exemption, that there are entities established for the collective investment of plan assets that would themselves, rather than the plans that invest in them, be considered the "customers" of broker-dealers effecting securities transactions on behalf of the entities. Where the managers of such entities are affiliated with the broker-dealers and, therefore, not independent, the substitution of the SIA's suggested reporting requirement for the quarterly reporting requirement contained in PTE 79–1 would impose an obligation on these collection investment entities to send a confirmation of every trade to every plan invested in the entity. The Department believes that this would increase, rather than decrease, the reporting burdens imposed on these entities. The Department, therefore, proposes to retain the quarterly reporting requirement as an alternative option for fiduciaries with respect to such entities who prefer to comply with it rather than with the SIA's proposed substitute. Section IV(d) of the proposal was designed to address the situation where the manager of the entity and the broker-dealer are affiliates. Conversely, if the manager of the entity is not affiliated with the broker-dealer, and the broker-dealer is not otherwise a person in whom the manager has an interest that might affect the manager's best judgement as a fiduciary, such manager would be an appropriate independent fiduciary for purposes of the authorization and reporting requirements under the proposal. In the latter case, it is expected that the broker-dealer could comply with the basic requirements contained in section III of the proposal.

The Department has also considered whether the proposed quarterly

[7] SEC Rule 10b–10 under the 1934 Act, 17 CFR 240.10b–10, already requires a broker-dealer to provide each of its customers, with certain specific exceptions, with a confirmation for each securities transaction the broker-dealer effects for the account of the customer. This confirmation for an agency securities transaction must include: (1) A statement disclosing whether the broker-dealer is acting as an agent for the customer, for some other person, or for both; (2) the date and time of the securities transaction (or the fact that this information will be provided on request); (3) the identity, price and number of securities traded; (4) the amount of remuneration to be received by the broker-dealer from the customer in connection with the securities transaction; and (5) certain other information about remuneration received by the broker-dealer from other sources in connection with the securities transaction.

reporting option should be modified to require reporting on a less frequent basis. While the Department believes that an annual summary of securities-related transactions, discussed in greater detail below, is appropriate in all cases, it also believes that the annual summaries alone would not provide sufficient up-to-date information to enable the independent plan fiduciaries responsible for monitoring the performance of the broker-dealer to discharge that responsibility adequately.[8] By its tentative decision to retain the quarterly reporting requirement on an optional basis (for pooled funds), the Department does not intend to suggest that in all cases quarterly reporting will provide information sufficient under the circumstances to permit adequate review under section 404 of ERISA by appropriate independent plan fiduciaries. Rather, the Department believes that it is reasonable to require, in the context of a class exemption, a uniform standard that may obviate, to a substantial degree, the necessity for monitoring fiduciaries to request additional information at what they believe to be reasonable intervals during the periods between receipt of the annual summaries.

With regard to the annual summaries, the Department has tentatively decided to retain certain information presently required under PTE 79–1 that does not necessarily appear in the confirmation slips: A breakdown of the charges retained by the authorized person and any portion paid to other persons. In addition, the Department proposes to require certain additional information in those summaries that it believes will make the other information provided more meaningful to the authorizing fiduciary.

First, the Department believes that portfolio turnover calculations should be provided in the annual summaries. Second, the Department's current view is that it will be difficult, if not impossible, for monitoring fiduciaries to review adequately the performance of an investment manager unless the summary discloses the nature of any research services or other goods or services (in addition to brokerage services) that the investment manager has received in consideration for commissions paid.[9]

In view of the foregoing, the Department is proposing to make the following changes: (i) Substituting annual reporting and the furnishing of confirmation slips for securities trades (proposed sections III (e) and (f)) for the quarterly reporting requirement of PTE 79–1; (ii) adding annual summaries of the confirmations and portfolio turnover calculations to the contents of the periodic reports (proposed section III(f)); and (iii) requiring that disclosure be made, in the annual report, as to the nature of any research services provided in exchange for brokerage commissions paid by the plan (proposed section III(f)(3)). The Department also proposes to eliminate the required statement concerning the negotiability of commissions (section II(f) of PTE 79–1), in view of the time that has elapsed since the advent of the negotiated rate system.

C. Changes in the Scope of the Exemption

PTE 79–1 provides an exemption from both section 406(a) and section 406(b) of ERISA. The proposed exemption, on the other hand, provides relief only from the restrictions of section 406(b). The Department believes that any relief from the provisions of section 406(a) that may be required in connection with the transactions covered by the exemption should be provided in accordance with the conditions contained in section 408(b)(2), the statutory exemption for the provision referred to above. One principal consequence of the proposed modification would be to make it clear that if the fiduciary engages in portfolio trading that is excessive under the circumstances ("churning"), the conditions of section 408(b)(2) would fail to be satisfied,[10] and there would be no exemption for the fiduciary's violation of section 406(a) of ERISA.

In addition, restricting the relief in the manner proposed should help make clear that the Department does not intend that the exemption will apply to underlying securities transactions that are prohibited by section 406(a) (such as the sale of securities by a plan to a party in interest) merely because the fiduciary causing the plan to engage in the transaction is also acting as the plan's broker therefor.

D. Agency Cross Transactions

Agency cross transactions are transactions in which both a buyer and a seller of a security use the same broker. Submissions on behalf of the Investment Company Institute, the First Manhattan Company (a securities broker-dealer), and the SIA indicate that it is important to plans for broker-dealers who are fiduciaries to be able to effect or execute securities agency cross transactions on behalf of their plan clients. It is represented that SEC regulations adequately protect plans and that agency cross transactions often save clients money.

The SIA has sought either clarification that agency cross transactions are covered by PTE 79–1 or an amendment to the exemption that would remove any uncertainty regarding the applicability of the exemption to such transactions.

A broker-dealer that is not a fiduciary of a plan for which it is acting as an agent in an agency cross transaction does not need an exemption from the prohibitions of section 406(b) of ERISA, because that section applies only to acts by fiduciaries. Therefore, nothing in this exemption would apply to that situation.

However, a broker-dealer may be a fiduciary of a plan under the following circumstances. First, the broker-dealer may be a plan fiduciary for reasons unrelated to the transaction in question, so that he or she does not have the authority or control to cause plan assets to be involved in the transaction. In that situation, the broker-dealer is merely executing the transaction pursuant to appropriate instructions by another plan fiduciary but,[11] because of the broker-dealer's status as fiduciary, may be in violation of section 406(b)(3) of ERISA by receiving a commission from a party

[8] For a brief discussion of the responsibility of appointing fiduciaries to review the performance of other fiduciaries they appoint, see Question and Answer FR–17 in ERISA Interpretive Bulletin 75–8 (29 CFR 2509.75–8). Fiduciaries with responsibilities regarding the obtaining or performing of brokerage services to plans are under a duty to obtain best execution for the plans, as part of their obligations under section 404(a) of ERISA. The proposed exemption, if adopted, would not diminish those obligations. See section I of the preamble, General Information, *infra*.

[9] Section 28(e) of the 1934 Act provides, in part, that no person, in the exercise of investment discretion with respect to an account, shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of his or her having caused the account to pay a broker an amount of commission for effecting a securities transaction in excess of the amount of commission another broker would have charged for effecting that transaction, if that person determined in good faith that the amount of commission was reasonable in relation to the value of brokerage and research services provided by that broker.

[10] The statutory exemption for services applies only in the case of "legal, accounting, or other services necessary for the establishment or operation of the plan". See section 408(b)(2) of ERISA. The Department's regulation 29 CFR 2550.408b–2 identifies such services as those that are "appropriate and helpful to the plan . . . in carrying out the purposes for which the plan is established or maintained". The exemption is further conditioned on the plan's paying no more than reasonable compensation for the services. "Churning" would result in the plan's paying excessively high compensaiton for brokerage services. The Department similarly proposes that the scope of the exemption from the prohibitions of section 406(b) not extend to fiduciary acts that result in "churning". See proposed section II(e).

[11] See 29 CFR 2510.3–21.

to the transaction other than the plan.[12] The Department believes that the potential for abuse to the plan by the broker-dealer under such circumstances is minimal. Therefore, the Department proposes that the relief provided for such transactions be unconditional. See section IV(b) of the proposed exemption.

Second, the broker-dealer may be a fiduciary with respect to the plan assets involved in the transaction but neither exercises investment discretion nor provides investment advice with respect to any assets proposed to be committed to the transaction by any person on the "other side" of the transaction (i.e., sellers if the plan is a buyer, or buyers if the plan is a seller). Under these circumstances, subject to the conditions set forth in section III(h) of the proposal, section II (b) and (c) of the proposal provide the exemptive relief necessary to permit plans to participate in agency cross transactions.

The first three conditions in section III(h) are derived from Rule 206(3)-2 under the Investment Advisers Act of 1940 (17 CFR 275.206(3)-2, which relates to the effecting of agency cross transactions for an advisory client by registered investment advisers or by registered broker-dealers affiliated with any such adviser. These conditions differ in some respects from (but are not inconsistent with) the corresponding provisions of Rule 206(3)-2. Conditions III(h) (1) and (2) require that the information accompanying a request for authorization of the broker-dealer to effect agency cross transactions on behalf of the plan includes a statement to the effect that the person effecting the transactions will have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transactions, and that the annual summary of transactions discussed above, separately identify the number of agency cross transactions and the remuneration from all sources received or to be received in connection therewith by the broker-dealer. Condition III(h)(3) requires, in summary, that the broker-dealer cannot have investment management authority or investment advisory responsibilities with respect to both sides of the transaction. This condition is designed to limit the applicability of the exemption to the situation described above.

Conditions III(h) (4) and (5) are derived from Rule 17a-7 under the Investment Company Act of 1940 (17 CFR 270.17a-7). They require that the security that is the subject of the transaction be one for which market quotations are readily available, and that the transaction be effected at a price no less favorable to any plan involved in the transaction than the "current market price" as defined in paragraph (b) of Rule 17a-7.[13] These conditions are designed to provide an independent objective standard for the fairness to the plan of the underlying transaction and to assist the authorizing fiduciary in monitoring these transactions.

The SIA states that a broker-dealer executing an agency cross transaction performs services in addition to those that would be required if the broker-dealer were acting as agent for only one side of the transaction, and that the receipt of commissions from parties on both sides of any agency transaction is, therefore, warranted. The Department has not been persuaded, however, that agency cross transactions are not more profitable to the broker-dealer, taking into account the effort and expense involved, than other transactions. It believes, therefore, that the broker-dealer may be presented with a greater conflict of interest in agency cross transactions, even though the potential for abuse is less than if the broker-dealer had, for example, discretionary authority over both sides of the transaction. Accordingly, the Department has tentatively concluded that these additional conditions are warranted to restrict the ability of the broker-dealer to effect transactions for its own benefit.

Finally, there may be instances in which a broker-dealer has discretionary authority or renders investment advice with respect to both sides of the transaction. The SIA has not specifically requested, and the Department is not proposing to provide, relief in this situation. Proponents of any such exemptive relief will have the burden of demonstrating why and under what conditions such relief would be appropriate, in view of the additional potential for abuse that would appear to be present in such a situation.

E. Changes in the Definition of Affiliate

In addition to nonsubstantive language simplification changes, the Department has added a sentence to the end of the definition of the term "affiliate" stating explicitly that a person is not an affiliate of another person merely because the other person has investment discretion over the person's assets. Under the subdivision labeled (1) at the end of PTE 79-1 and section I(a) of the proposed exemption, a "person" includes affiliates of the person. Under the definitions of "affiliate" in the two documents, a person "controlled by" another person is an affiliate of the other person. The new sentence clarifies that a transaction between a plan and an entity whose assets are managed by a fiduciary of the plan is not considered to be a principal transaction between the plan and that fiduciary merely because of the fiduciary's investment discretion over the entity's assets.

F. Recapture Provisions

Section II(h) of PTE 79-1 permits a fiduciary broker to effect or execute transactions for a plan for which he or she is a trustee, etc., without annual authorizations from an independent fiduciary if that person returns or credits all profits he or she earns in connection with the transactions to the plan. The substance of the provision is in section IV(c) of the proposed exemption.

G. Special Rules for Pooled Funds

As indicated above, the Department has granted a class exemption, PTE 84-46, relating to insurance company pooled separate accounts. The applicants in that matter had requested relief that would permit an affiliate of the insurance company maintaining the pooled separate account to provide brokerage services for the account. The applications stated that the affiliated broker would return or credit to the account all profits derived from those brokerage activities.

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[12] Section 406(b)(3) provides that a fiduciary with respect to a plan shall not receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

[13] Rule 17a-7(b) defines "current market price" to mean:

(1) If the security is a "reported security" as that term is defined in rule 11Ac3-1 under the Securities Exchange Act of 1934 [17 CFR 240.11Ac3-1], the last sale price with respect to such security reported in the consolidated transactions reporting system ("consolidated system") or the average of the highest current independent bid and lowest current independent offer for such security (reported pursuant to rule 11Aa1-1 under the Securities Exchange Act of 1934 [17 CFR 240.11Aa1-1] if there are not reported transactions in the consolidated system that day; or

(2) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or the average of the highest current independent bid and lowest current independent offer on such exchange if there are no reported transactions on such exchange that day; or

(3) If the security is not a reported security and is quoted in the NASDAQ System, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ; or

(4) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry.

The applicants stated that it was not possible, as a practical matter, for them to comply with the requirements of PTE 79–1 relating to authorizations and terminations of such authorizations. Under PTE 79–1, the required authorizations were ineffective unless and independent fiduciary with respect to every plan invested in the account authorized the use of the affiliated broker-dealer. In addition, if the arrangements were authorized, termination of the authorization by a single plan fiduciary would serve to terminate the authorization for the entire account. As adopted, PTE 84–46 provides relief similar to that provided by the recapture exemption under PTE 79–1, but with an alternative method for obtaining and continuing authorization for the use of a broker-dealer affiliated with the insurance company that was designed ot accommodate the needs of funds or accounts in which the assets of many plans are collectively invested. The substance of these alternative requirements, modified to take into account other proposed changes to PTE 79–1 previously discussed, are incorporated in section IV(d) of the proposed exemption. In addition, for the reason stated above, the Department proposes to make the alternative authorization method available in the case of any account or fund for the collective investment of the assets of more than one plan without requiring the recapture of brokerage profits on behalf of that account or fund.

The elimination, in PTE 84–46, of the requirement that the authorizing fiduciary be independent of the insurance company in the case of a plan covering only employees of the insurance company has been extended in the proposal to apply to plans covering only employees of the investment manager (as defined in section 3(38) of EISA) that maintains a pooled fund for the collective investment of plan assets, provided that such manager recaptures brokerage profits on behalf of the pooled fund.

In the preamble to PTE 84–46, the Department stated that it would be willing to consider elimination of the quarterly reporting requirement and clarification of the term "profit" in that exemption with respect to transactions covered by the exemption in the course of this current proceeding.

As is discussed above, the Department has considered whether, as a general matter, the quarterly reporting option should be modified where independent plan fiduciaries do not receive transaction-by-transaction confirmations, and has tentatively concluded that it should not. In the context of a managed account in favor of which brokerage profits are recaptured, the Department is not persuaded that recapture necessarily eliminates the necessity for independent performance review on a basis more frequent than annual. In part, the Department's concern arises from the fact that the recapture of "profit," as that term is used for purposes of PTE 79–1 and as is defined in PTE 84–46, allows recoupment by the manager of not only direct, but also indirect, expenses.[14] The applicants and commentators in the proceeding that culminated in the granting of PTE 84–46 have raised additional questions concerning what is, or should be, included within the scope of the term "profits," such as whether losses in one year can be carried over to later years in computing amounts to be recaptured. Resolution of these questions may well have some bearing on whether the frequency of reporting should be reduced. Tentatively, however, the Department has concluded that the recapture of profits (as defined) does not necessarily result either in superior brokerage services being provided or in elimination of all motivation for excessive trading. Therefore, the Department has decided to invite interested parties to file comments setting forth changes they would like to see to the reporting requirements as they relate to the provisions relating to life insurance company pooled separate accounts (or other pooled investment funds), together with an explanation of why, in the absence of transaction-by-transaction confirmations to plan fiduciaries independent of the life insurance company (or other pool manager) involved, less frequent reporting would be appropriate.

H. Notice to Interested Persons

Because all plan participants and beneficiaries whose plans might authorize a broker to approve transactions between himself or herself and the plans could conceivably be considered interested persons, the Department has determined that the only practical form of notice is publication in the **Federal Register**.

I. General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA does not relieve a fiduciary or other party in interest from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA. That section requires, among other things, that a fiduciary discharge his or her duties respecting a plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA. In addition, it does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) Before an exemption may be granted under section 408(a) of ERISA, the Department must find that the exemption is administratively feasible, in the interests of the affected plans and of their participants and beneficiaries, and protective of the rights of those participants and beneficiaries.

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transactioin is in fact a prohibited transaction.

(4) The proposed exemption, if granted, will not extend to transactions described in section 406(a) of ERISA.

J. Written Comments and Hearing Request

All persons are invited to submit written comments or requests for a public hearing on the proposed exemption or the proposed revocation of PTE 79–1 and PTE 84–46 to the address and within the time period set forth above. All comments will be made a part of the appropriate record. Comments and requests for a hearing should state the reasons for the writer's interest in the matter. Comments received will be available for public inspection with the application for exemption at the address set forth above.

K. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting provisions that are included in this proposed class exemption are being submitted to the Office of Management and Budget for its review and approval.

[14] See the preamble to PTE 79–1, note 12 (44 FR at 5964).

Proposed Exemption

On the basis of the facts and representations set forth in the application and this document, the Department proposes the following exemption under ERISA Procedure 75–1 and sections 408(a) of ERISA and 4975(c)(2) of the Code to read as follows:

Section I. Definitions and Special Rules

The following definitions and special rules apply to this exemption:

(a) The term "person" includes the person and affiliates of the person.

(b) An "affiliate" of a person includes the following:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, the person.

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or sister, of the person.

(3) Any corporation or partnership of which the person is an officer, director or partner.

A person is not an affiliate of another person solely because one of them has investment discretion over the other's assets. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) An "agency cross transaction" is a securities transaction in which the same person acts as agent for both any seller and any buyer for the purchase or sale of a security.

(d) The term "covered transaction" means an action described in section II (a), (b) or (c) of this exemption.

(e) The term "effecting or executing a securities transaction" means the execution of a securities transaction as agent for another person and/or the performance of clearance, settlement, custodial or other functions ancillary thereto.

(f) A plan fiduciary is independent of a person only if the fiduciary has no relationship to or interest in such person that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) The term "profit" includes all charges relating to effecting or executing securities transacations, less reasonable and necessary expenses—including reasosnable indirect expenses (such as overhead costs) propertly allocated to the performance of these transactions under generally accepted accounting principles.

(h) The term "securities transaction" means the purchase or sale of securities.

Section II. Covered transactions

Effective [insert date 30 days after date final exemption is published in the Federal Register], if each condition of section III of this exemption is either satisfied or not applicable under section IV, the restrictions of section 406(b) of ERISA and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (E) or (F) or the Code shall not apply to—

(a) A plan fiduciary's using its authority to cause a plan to pay a free for effecting or executing securities transactions to that person as agent for the plan, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency;

(b) A plan fiduciary's acting as the agent in an agency cross transaction for both the plan and one or more other parties to the transaction; or

(c) The receipt by a plan fiduciary of reasonable compensation for effecting or executing an agency cross transaction to which a plan is a party from one of more other parties to the transaction.

Section III. Conditions

Except to the extent otherwise provided in section IV of this exemption, section II of this exemption applies only if the following conditions are satisfied:

(a) The person engaging in the covered transaction is not a trustee or administrator of the plan or an employer any of whose employees are covered by the plan.

(b) The covered transaction is performed under a written authorization executed in advance by a fiduciary of each plan whose assets are involved in the transaction, which plan fiduciary is independent of the person engaging in the covered transaction.

(c) The authorization referred to in paragraph (b) of this section is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized person of written notice of termination.

(d) Within three months before an authorization is made, the authorizing fiduciary is furnished with any reasonably available information that the person seeking authorization reasonably believes to be necessary for the authorizing fiduciary to determine whether the authorization should be made, including a copy of this exemption, the form for termination of authorization described in section III(g), and any other reasonably available information regarding the matter that the authorizing fiduciary reasonably requests.

(e) The authorizing fiduciary is furnished with a confirmation slip for each securities transaction underlying a covered transaction within 10 business days of the securities transaction containing the following information:

(1) A statement that the person effecting or executing the securities transaction is acting as an agent for the plan, and whether the person is also acting as agent for some other person.

(2) The date and time of the securities transaction.

(3) The identity, price and quantity of securities traded.

(4) The amount of remuneration to be received by the person effecting or executing the securities transaction from the plan in connection with the securities transaction.

(5) The source and amount of any other remuneration received or to be received by the person effecting or executing the securities transaction in connection with the securities transaction.

(f) The authorizing fiduciary is furnished with a summary of the information required under paragraph (e) of this section at least once per year. The summary must be furnised within 45 days after the end of the period to which it relates, and contain the following:

(1) The total of all securities transaction-related charges incurred by the plan during the period in connection with covered securities transactions.

(2) The amount of the securities transaction-related charges retained by the authorized person and the amount of these charges paid to other persons for execution or other services.

(3) A statement disclosing whether the securities transaction-related charges are attributable in any part to consideration for any goods or services other than effecting or executing the transactions, and, if so, a detailed description of those goods and services and the amounts paid therefor.

(4) The annualized portfolio turnover ratio calculated as a percentage of the plan assets consisting of securities or cash the authorized person had discretionary investment authority over (or rendered, or had any responsibility to render, investment advice with respect to) (the "portfolio") at any time during the period covered by the report. For purposes of this paragraph, the "annualized portfolio turnover ratio" is obtained by dividing the product of (A) twelve and (B) the lesser of the aggregate dollar amount of purchases or sales of securities in the portfolio during such time or times during the period that the authorized person had such authority or responsibility, by the product of (C) the aggregate duration of such time or times, expressed in months (and fractions thereof) and (D) the

monthly average of the market value of the portfolio during such time or times.

(g) A form must accompany each summary referred to in paragraph (f) of this section expressly providing an election to terminate the authorization described in paragraph (b) of this section with instructions on the use of the form. The instructions must include the following information:

(1) The authorization is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized person of written notice from the authorizing fiduciary or other plan official having authority to terminate the authorization.

(2) Failure to return the form would result in the continued authorization of the authorized person to engage in the covered transactions on behalf of the plan.

(h) If an agency cross transaction to which section IV(b) does not apply is involved, the following conditions must also be satisfied:

(1) The information required under section III(d) or IV(d)(1)(B) of this exemption includes a statement to the effect that with respect to agency cross transactions the person effecting or executing the transactions will have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transactions.

(2) The summary required under section III(f) or IV(d)(2) of this exemption includes a statement identifying the total number of agency cross transactions during the period covered by the summary and the total amount of all commissions or other remuneration received or to be received from all sources by the person engaging in the transactions in connection with those transactions during the period.

(3) The person effecting or executing the agency cross transaction neither has (A) the authority to cause both any seller and any purchaser to engage in the transaction, nor (B) provides any investment advice with respect to the transaction to both any seller and any purchaser engaged in the transaction.

(4) The agency cross transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available.

(5) The agency cross transaction is effected at a price no less favorable to any plan involved in the transaction than the "current market price" of the security, as that term is defined in Rule 17a–7(b) under the Investment Company Act of 1940 (17 CFR 270.17a–7(b)).

Section IV. Exceptions From Conditions

(a) *Certain Plans Not Covering Employees.* Section III of this exemption does not apply to covered transactions to the extent they are engaged in on behalf of individual retirement accounts meeting the conditions of 29 CFR § 2510.3–2(d), or plans, other than training programs, that cover no employees within the meaning of 29 CFR § 2510.3–3.

(b) *Certain agency cross transactions.* Section III of this exemption does not apply in the case of an agency cross transaction, provided that the person effecting or executing the transaction (1) does not render investment advice to any plan for a fee within the meaning of section 3(21)(A)(ii) of ERISA with respect to the transaction; (2) is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction, see 29 CFR § 2510.3–21(d); and (3) does not have the authority to engage, retain or discharge any person who is or is proposed to be a fiduciary regarding any such plan assets.

(c) *Recapture of profits.* Section III(a) of this exemption does not apply in any case where the person engaging in a covered transaction returns or credits to the plan all profits earned by that person in connection with the securities transactions associated with the covered transaction.

(d) *Special rules for pooled funds.* In the case of a person engaging in a covered transaction on behalf of an account or fund for the collective investment of the assets of more than one plan (pooled fund):

(1) Sections III (b), (c) and (d) of this exemption do not apply if—

(A) The arrangement under which the covered transaction is performed is subject to the prior and continuing authorization, in the manner described in this paragraph (d)(1), of a plan fiduciary with respect to each plan whose assets are invested in the pooled fund who is independent of the person. The requirement that the authorizing fiduciary be independent of the person shall not apply in the case of a plan covering only employees of the person, if the person (i) is an "investment manager" as defined in section 3(38) of ERISA, and (ii) returns or credits to the pooled fund all profits earned by the person in connection with all covered transactions engaged in by the person on behalf of the fund.

(B) The authorizing fiduciary is furnished with any reasonably available information that the person engaging or proposing to engage in the covered transactions reasonably believes to be necessary to determine whether the authorization should be given or continued, not less than 30 days prior to implementation of the arrangement or material change thereto, and, where requested, with any reasonably available information regarding the matter upon the reasonable request of the authorizing fiduciary at any time.

(C) In the event an authorizing fiduciary submits a notice in writing to the person engaging in or proposing to engage in the covered transaction objecting to the implementation of, material change in, or continuation of, the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the pooled fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the nonwithdrawing plans. In the case of a plan that elects to withdraw under this subparagraph (d)(1)(C), the withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw.

(D) In the case of a plan whose assets are proposed to be invested in the pooled fund subsequent to the implementation of the arrangement and that has not authorized the arrangement in the manner described in subparagraphs (d)(1) (B) and (C) of this section, the plan's investment in the pooled fund is subject to the prior written authorization of an authorizing fiduciary who satisfies the requirements of subparagraph (d)(1)(A).

(2) Section III(e) of this exemption does not apply if the report described in section III(f) of this exemption and a compilation of the information described in section III(e) are furnished to the authorizing fiduciary of each plan whose assets are invested in the pooled fund at least once every three months and within 45 days after the end of the period to which it relates.

Proposed Revocation of Existing Exemptions

On the basis of the material referred to in this document, the Department is considering revoking PTE 79–1 and PTE 84–46, effective 30 days after notice of the revocation is published in the **Federal Register.**

Signed at Washington, DC, this 18th day of January, 1985.

Robert A.G. Monks,

Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 85-1778 Filed 1-23-85; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

One-Time Grant Awards; Announcement

AGENCY: Legal Services Corporation.

ACTION: Announcement of One-Time Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) annouces that it is considering an award of a one-time grant of $22,603 to the Minnesota State Bar Association for the implementation of Minnesota's Interest on Lawyers' Trust Account (IOLTA) program and an award of a one-time grant of $2,500 to the State Bar of Montana for the development of Montana's IOLTA program. The $22,603 grant to the Minnesota State Bar Association consists of a $12,912 contingent IOLTA Implementation Grant awarded in August, 1983 and an additional $9,691 requested in July, 1984. Both the grant to the Minnesota State Bar Association and the grant to the State Bar of Montana, if awarded, will be on a non-recurring basis under the authority of Sections 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended in 1977. These grants would cover the period beginning February 15, 1985 and ending February 14, 1986. There would be no refunding rights for these one-time grants under section 1011 of the Legal Services Corporation Act or Part 1625 of the Corporation's Regulations. This public notice is issued pursuant to Section 1007(f) of the Legal Services Corporation Act, with a request for comments and recommendations within a period of thirty (30) days from date of publication of this notice. These grant awards will not become effective and grant funds will not be distributed prior to the expiration of this thirty-day period.

DATE: All comments and recommendations must be received by the Office of Field Services/Program Development Unit of the Legal Services Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Heidi J. Ackerman, IOLTA Project Coordinator, Office of Field Services/Program Development Unit, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C. 20005 (202) 272-4356.

SUPPLEMENTARY INFORMATION: These grants, if awarded, will be made pursuant to the Legal Services Corporation's announcement of the continued availability of funds to develop and implement Interest on Lawyers' Trust Account (IOLTA) programs [49 FR 22899]. LSC intends these grants to develop and foster IOLTA programs which will serve as a source of private sector funding to supplement federal funding for the direct delivery of civil legal services to poor individuals.

The Minnesota IOLTA program has been implemented by order of the State Supreme Court. The Montana IOLTA program is being developed jointly by the State Bar of Montana and the Montana Legal Services Association.

Under an IOLTA program, attorneys holding client funds which are "nominal in amount" or being held for a "short period of time" pool these funds in trust Negotiable Order of Withdrawal (NOW) accounts. Traditionally, such funds have been placed in non-interest bearing accounts. The interest generated by the NOW accounts is transferred to a not-for-profit corporation which disburses the funds to appropriate law-related public service projects. Before an IOLTA program can be established in a state, it must be approved by either the state's Supreme Court or its Legislature.

These LCS grants have been matched dollar-for-dollar by the grant applicants. In addition, as a condition to these grants the Corporation has required a commitment from the grant applicants that they will use their best efforts to develop and/or implement an IOLTA program which expends no less than two-thirds of the IOLTA proceeds, excluding administrative costs and a reserve, for the delivery of civil legal services to poor individuals.

Donald P. Bogard,

President, Legal Services Corporation.

[FR Doc. 84-1762 Filed 1-23-84; 8:45 am]

BILLING CODE 6820-35-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-364]

Alabama Power Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Alabama Power Company (the license) to withdraw its December 8, 1983 application of the Joseph M. Farley Nuclear Plant Unit 2, located in Houston County, Alabama. The proposed amendment would have revised the Technical Specifications for the Farley Unit 2 to correct Table 3.7-4a which lists hydraulic snubbers. The Commission issued a Notice of Consideration of Issuance of the Amendment in the Federal Register on February 24, 1984 (48 FR 7029). By letter dated July 6, 1984, the licensee requested, pursuant to 10 CFR 2.107, permission to withdraw its application for the proposed amendment. The basis for withdrawal of the amendment request was that Commission guidance (Generic Letter 84-13) has resulted in removal of the snubber table from the Technical Specification in its entirety. The Commission has considered the licensee's July 6, 1984 request and has determined that permission to withdraw the December 8, 1983 application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated December 8, 1983; (2) the licensee's letter dated July 6, 1984, withdrawing the application for license amendment; and (3) Commission letter dated August 24, 1984, and (4) our letter dated January 16, 1985. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Dated at Bethesda, Maryland this 16th day of January 1985.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 85-1859 Filed 1-23-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-413]

Catawba Nuclear Station, Unit No. 1; Issuance of Facility License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-35 to Duke Power Company, North Carolina Electric Membership Corporation, and Saluda River Electric Cooperative, Inc., (the licensees) which authorizes operation of the Catawba Nuclear Station, Unit 1, at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the license, the Technical Specifications, and the Environmental Protection Plan.

On December 6, 1984, the Commission issued Facility Operating License No. NPF-31 to the licensees which authorized operation of Catawba Nuclear Station, Unit 1, to five percent of full power (170 megawatts thermal).

License No. NPF-35 supersedes NPF-31.

The Catawba Nuclear Station, Unit 1, is a pressurized water reactor located in York County, South Carolina, approximately 6 miles north of Rock Hill, South Carolina.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on June 25, 1981 (46 FR 32974). The power level authorized by this license and the conditions contained therein are encompassed by that prior notice.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of relief and the issuance of exemptions included in this license will have no significant impact on the environment (49 FR 46966).

For further details with respect to this action, see (1) Facility Operating License NPF-35; (2) Facility Operating License NPF-31; (3) Facility Operating License NPF-24; (4) the Commission's Safety Evaluation Report, dated February 1983 (NUREG-0954), and Supplements 1 through 4; (5) the Final Safety Analysis Report and Amendments thereto; (6) the Environmental Report and supplements thereto; (7) the Final Environmental Statement, date Jaunary 1983 (NUREG-0921); (8) the Partial Initial Decision of the Atomic Safety and Licensing Board, dated June 22, 1984; (9) the Supplemental Partial Initial Decision on Emergency Planning dated September 18, 1984; (10) the Partial Initial Decision Resolving Foreman Override Concerns and Authorizing Issuance of Operating Licenses dated November 27, 1984, and (11) the transcript of the public meeting on the Commission's immediate effectiveness review of the foregoing decisions.

These items are available at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. A copy of Facility Operating License NPF-35 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements (NUREG-0954) and the final Environmental Statement (NUREG-0921) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call (301) 492-9530.

Dated at Bethesda, Maryland, this 17th day of January 1985.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 85-1858 Filed 1-23-85; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-321 and 50-366]

Georgia Power Co., et al. (Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2); Exemption

I

The Georgia Power Company (GPC) or the licensee) and three other co-owners are the holders of Facility Operating Licenses Nos. DPR-57 and NPF-5 which authorize operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Hatch or the facilities) at steady state reactor power levels not in excess of 2436 megawatts thermal for each unit. The facilities are boiling water reactors located at the licensee's site in Appling County, Georgia. The licenses are subject to all rules and regulations of the Nuclear Regulatory Commission (the Commission).

II

Subsection (c) of 10 CFR 50.48 requires that fire protection modifications for which plant shutdown is not required (other than alternate shutdown capability) be completed nine months after the effective date of Appendix R. For the items covered by this exemption, the licensee was able to take advantage of the "tolling provision," subsection (c)(6), thereby commencing the nine-month period upon issuance of the staff Safety Evaluation dated April 18, 1984. The deadline for these modifications was therefore January 18, 1985.

In a submittal dated September 4, 1984, supplemented by letters dated October 2, 1984, October 19, 1984, October 26, 1984, and December 20, 1984, the licensee requested an exemption from the schedular requirements of 10 CFR 50.48(c) which would extend the deadline from January 18, 1985, to November 30, 1986, for installation of fire protection modifications in certain areas of Units 1 and 2 for which plant shutdown is not required in order to install the modifications. The proposed exemption is needed since the licensee has indicated that the installation of the non-outage related fire protection modifications in these areas of Units 1 and 2 cannot be completed on the schedule stated in 10 CFR 50.48(c) for the following reasons:

(1) The magnitude of the overall fire protection enhancement program at plant Hatch is large and has a projected cost of 25 million dollars (excluding the alternate shutdown system for the control room/cable spreading room fire).

(2) Currently, extensive redesign and modifications of safe shutdown related equipment and cables is underway in response to equipment qualification, operational safety enhancement and plant reliability improvement projects. These projects are interdependent with the fire protection program and the design for Appendix R cableway barriers must, in many cases, follow the final design of the equipment qualification project.

(3) Design sequences of the Appendix R modifications are complex and the final bill of materials and specifications for the bidding of installation contracts cannot proceed until the design is near its final stages. Following design, implementation must await rerouting of cables from Appendix R or equipment qualification modifications.

The first of these reasons, the overall extent and cost of the fire protection program at Hatch, is not by itself an acceptable basis for extension of the schedule. Based on the information provided, the Hatch program is commensurate with programs at other facilities both in extent and cost. This Exemption is therefore not based on this factor. The second and third reasons, having to do with the interrelationship between non-outage-related and outage-related work and the inability to

perform certain tasks before a final design has been completed, are acceptable bases on which a schedule extension can be granted.

The licensee indicated that in each area for which schedular exemptions are requested, the vulnerable systems will be protected by one of the following means: (1) A fire watch; (2) automatic fire detection and fire suppression systems; (3) complete, noncombustible fire barriers or a combination of (2) and (3).

In those locations where a fire watch will be provided, an individual will be present to detect and respond to any fire emergency. This provides reasonable assurance that a fire will be discovered in its initial stages before significant damage occurs and will be suppressed manually by either the fire watch or the plant fire brigade. Under these circumstances, fire damage will be limited, and no loss of safe shutdown capability should occur.

In several locations, the licensee has proposed to install a complete noncombustible fire barrier to protect one shutdown division. If a fire were to occur, the existing fire detection systems or a plant operator would detect a fire and summon the fire brigade. One shutdown division would be protected by the barrier until fire extinguishment was effected. Consequently, the Commission's staff has reasonable assurance that safe shutdown could be achieved and maintained via the undamaged shutdown division.

Based on the considerations discussed above, the Commission concludes that the licensee has provided reasonable and acceptable interim post-fire safe shutdown capability or interim fire protection measures to support the exemption request.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption as requested by the licensee's letter of September 4, 1984, and supplemented by letters dated October 2, 1984, October 19, 1984, October 26, 1984, and December 20, 1984, is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. The Commission hereby grants an exemption from the requirements of 10 CFR 50.48(c) to extend the deadline for completion of fire protection modifications not requiring plant shutdown at the Edwin I. Hatch Nuclear Plant, Units 1 and 2, until November 30, 1986, for each Unit.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (50 FR 2113).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 16th day of January 1985.

For the Nuclear Regulatory Commission.

Edson G. Case,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-1856 Filed 1-23-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352 OL, 50-353 OL]

(Limerick Generating Station, Units 1 and 2); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of January 16, 1985, oral argument on the appeals of Limerick Ecology Action, Air and Water Pollution Patrol, and Friends of the Earth from the Licensing Board's August 29, 1984, partial initial decision (LBP-84-31) will be held at *1:30 p.m. on Monday, March 4, 1985, in the NRC Public Hearing, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: January 17, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85-1857 Filed 1-23-85; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Nonresident Questionnaire.

(2) Form(s) submitted: RRB-1001.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 1,000.

(7) Annual reporting hours: 83.

(8) Collection description: The benefits payable to an annuitant under the Railroad Retirement Act living outside the United States may be subject to withholding under Pub. L 98-21 and 98-76. The form obtains the information needed to determine the amount to be withheld, if any.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Robert Fishman (202-395-6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85-1761 Filed 1-23-85; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-13158]

Joseph E. Seagram & Sons, Inc. and the Seagram Company Ltd.; Application and Opportunity for Hearing

January 17, 1985.

Notice is hereby given that Joseph E. Seagram & Sons, Inc., an Indiana corporation ("JES"), and The Seagram Company Ltd., a Canadian corporation ("Seagram"), have filed an Application pursuant to section 310(b)(1)(iii) of the Trust Indenture Act of 1939, as amended (the "1939 Act"), for a finding by the Securities and Exchange Commission (the "Commission") that service by The Bank of New York, a New York banking corporation (the "Bank"), as Trustee under (a) an Indenture, dated as of June 1, 1984, among JES, as issuer, Seagram, as guarantor, and the Bank, as Trustee, with respect to Guaranteed Debt Securities of JES (the "Indenture"), and (b) an Indenture, dated as of November 23, 1984, among JES, as issuer, Seagram, as guarantor, and the Bank, as Trustee, with respect to US $125,000,000 in aggregate principal amount of 12¼% Guaranteed Bonds due 1994 (the "Eurobond Indenture"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under the Indenture.

Section 310(b) of the 1939 Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

In support of its application, JES and Seagram allege that:

1. The Indenture secures payment of Guaranteed Debt Securities of JES, of which, as of the date hereof, $125,000,000 in aggregate principal amount of 11⅜% Guaranteed Notes due November 1, 1986 (the "Notes") are outstanding. The Indenture was qualified under the 1939 Act and filed with the Commission as Exhibit 4 to the Registration Statement (No. 2-91771) under the Securities Act of 1933, as amended (the "Securities Act"), filed by JES and Seagram.

The Notes, and the other Guaranteed Debt Securities to be issued under the Indenture, are wholly unsecured obligations of JES, ranking equally with other unsubordinated and unsecured indebtedness of JES. Seagram has unconditionally guaranteed the due and punctual payment of the principal of and interest on the Guaranteed Debt Securities (including the Notes) when and as the same shall become due and payable. Seagram's guarantees of the Notes have been issued under the Indenture and rank equally with other unsubordinated and unsecured indebtedness of Seagram, and Seagram's guarantees of the Guaranteed Debt Securities will be issued under the Indenture and will constitute wholly unsecured indebtedness of Seagram.

The Indenture is unlimited as to the principal amount of Guaranteed Debt Securities of JES, and could function as a continuous long-term facility. In submitting its Application, JES and Seagram request that the Commission issue its Order with respect to the Bank's role as Trustee under the Indenture, recognizing that the Indenture may, in the future, govern other Guaranteed Debt Securities of JES, guaranteed by Seagram.

2. The Eurobond Indenture covers US $125,000,000 in aggregate principal amount of 12¼% Guaranteed Bonds Due 1994 of JES (the "Bonds") which may be purchased by holders of Warrants issued by Jes (the "Warrants"). Neither the Warrants nor the Bonds were required to be registered under the Securities Act because the Warrants and the Bonds will not be offered or sold in the United States or any of its territories or possessions or to any person who is a national or resident thereof or to any person purchasing for the account of or for resale to any such person. Therefore, the Eurobond Indenture was not qualified under the 1939 Act.

The Warrants will be exercisable from the date of issuance until November 23, 1989, after which time unexercised Warrants will be void.

The Bonds, when issued upon exercise of the Warrants, will be unsecured obligations of JES ranking equally with all other unsubordinated and unsecured indebtedness of JES, including the Notes. Seagram will unconditionally guarantee the due and punctual payment of the principal of and interest and any other payments on the Bonds when and as the same shall become due and payable. Seagram's guarantees of the Bonds will be issued under the Eurobond Indenture and will rank equally with other unsecured and unsubordinated debt of Seagram.

3. The Bank acting as trustee under both the Indenture and the Eurobond Indenture may involve the Bank in a conflict of interest within the meaning of Section 310(b) of the 1939 Act and Section 608 of the Indenture.

4. Each the Indenture and the Eurobond Indenture apply to wholly unsecured indebtedness of JES. The Notes and the Bonds rank equally with all other unsubordinated and unsecured indebtedness of JES. The guarantees to be issued by Seagram under each of the Indenture and the Eurobond Indenture will constitute wholly unsecured indebtedness of Seagram. Seagram's guarantees of the Notes and the Bonds rank equally with all other unsubordinated and unsecured indebtedness of guarantees. Therefore, the Bank, in serving as Trustee under each of the Indenture and the Eurobond Indenture, and in taking action on behalf of the respective security holders, will not be placed in a situation in which the potential for a material conflict of interest would arise.

Indenture, and in taking action on behalf of the respective security holders, will not be placed in a situation in which the potential for a material conflict of interest would arise.

5. JES and Seagram have waived any hearing on the issues presented by its application, as well as notice of any hearing, and all rights to specify procedures with respect to the application under the rules of practice of the Commission.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the office of the Commission at the Public Reference Room, 450 5th Street, NW., Judiciary Plaza, Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after February 11, 1985, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the 1939 Act. Any interested person may, not later than February 11, 1985 at 5:30 p.m., Eastern Standard Time, in writing, submit to the Commission his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request shall be addressed: John Wheeler, Secretary, Securities and Exchange and Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-1799 Filed 1-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14318; 812-5955]

ML Venture Partners I, L.P., et al.; Application

January 11, 1985.

Notice is hereby given that ML Venture Partners I, L.P. ("Partnership") and Merrill Lynch KECALP L.P. 1984 ("KECALP"), limited partnerships organized under the laws of Delaware (Partnership and KECALP together, "Applicants"), 165 Broadway, One Liberty Plaza, New York, New York 10080, filed an application on October 4, 1984, and an amendment thereto on December 31, 1984, for an order of the

Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting the concurrent investment by Applicants in preferred stocks issued by Private Satellite Network, Inc. ("PSN") and Data Recording Systems, Inc. ("DRS"), from the provisions of Sections 17(d) and 57(a) of the Act, and Rule 17d–1 thereunder. 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 statutory provisions.

The Partnership was formed in 1982 under Delaware law and has elected to be treated under the Act as a business development company, having as its investment objective long-term capital appreciation through venture capital investments. The Partnership's managing partner, which is also a limited partnership, is Merrill Lynch Venture Capital Co., L.P. ("Managing General Partner"). The general partner of the Managing General Partner is Merrill Lynch Venture Capital, Inc. ("Management Company"), which is also the management company for the Partnership. The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML&Co."), a holding company which, through its subsidiaries, provides investment, financing, real estate, insurance and related services. At June 30, 1984, the Partnership had net assets of approximately $70.1 million.

Applicants further state that KECALP, is an employees' securities company as defined in section 2(a)(13) of the Act, organized under Delaware law and registered under the Act as a closed-end, non-diversified management company, having as its investment objective long-term capital appreciation together with the tax advantages resulting from certain investments. Limited partnership interests in KECALP were sold in an aggregate principal amount of $3,747,000 in a registered public offering which closed in May, 1984, exclusively to those employees of ML&Co. and its subsidiaries who received annual compensation in 1983 of at least $75,000, and to non-employee directors of ML&Co. One of the limited partners of KECALP is an officer and a director of the Managing General Partner (of the Partnership). Such individual's capital contribution to KECALP constituted less than one percent of the aggregate capital contributions to KECALP by its limited partners. KECALP operates in accordance with the terms of an exemptive order issued pursuant to Section 6(b) of the Act on April 8, 1982 (Investment Company Act Release No. 12363) ("KECALP Exemptive Order") (for a further description of KECALP and its operations, see Investment Company Act Release No. 12290, March 11, 1982).

It is further stated that PSN, organized in 1983, is engaged in the business of building and operating private television networks for geographically diversified corporations and other organizations. PSN has entered into contracts with several large corporations, including American Telephone and Telegraph Company, and ML&Co. As of July 31, 1984, the stockholders of PSN consisted of certain of tis employees, and 12 venture capital organizations. It is represented that insofar as Applicants are aware, no stockholder of PSN is an employee of ML&Co., or its affiliates.

Applicants state that on August 2, 1984, the Partnership acquired 4,445 shares of Series B Convertible Preferred Stock of PSN, at a price of $225 per share, while KECALP acquired, on a conditional basis, 667 shares of the same issue, at the same price per share. The Partnership's acquisition, amounting to an aggregate price of $1,000,125, represented approximately 10.9% of the Series B class (less than 2.0 percent of the Partnership's net assets), while KECALP's acquisition amounted to an aggregate price of $150,075, representing approximately 1.6% of the Series B shares outstanding (less than 3 percent of KECALP's net assets taken at May 22, 1984). It is stated that in all other respects, the terms of KECALP's purchase are the same as those of the Partnership.

Applicants represent that the investment opportunity regarding the Series B shares of PSN was initially brought to the attention of KECALP in May, 1984, and thereafter brought to the attention of the Partnership by a member of the investment committee of the board of directors of the general partner of KECALP—KECALP, Inc., a wholly-owned subsidiary of ML&Co. It is further stated that KECALP, Inc. and the Managing General Partner conducted independent evaluations of the proposed investment and independently arrived at the decision to invest in PSN, based upon the respective investment objectives and policies of the two funds.

Applicants state that because of questions as to the applicability of section 57(a) of the Act to their purchases of PSN shares, and as to the scope of the KECALP Exemptive Order, they have filed their application. They have applied for relief from the Act's prohibitions against joint transactions between affiliates pursuant to section 6(c) of the Act because that section sets forth the Commission's general exemptive authority under the Act, including the power to exempt transactions entered into, prior to the filing of an application for an exemption from section 17.

Applicants further state that DRS, a Delaware corporation organized in 1983, is engaged in the business of developing, manufacturing and marketing electronic laser printers. As of July 31, 1984, the stockholders of DRS consisted of certain of its employees and five venture capital organizations, none of which is, to Applicants' knowledge, and employee of ML&Co., or its affiliates. It is further stated that in March 1983, the Partnership had acquired 250,000 shares of Series A Convertible Preferred Stock of DRS at a price of $4.00 per share, for an aggregate purchase price of $1 million. At July 31, 1984, the Partnership's position in DRS constituted approximately 23.5% of the Series A Convertible Preferred Stock outstanding (less than 1.5 percent of the Partnership's net assets). It is also stated that the chairman of the board of directors of the Management Company, George Kokkinakis, is a director of DRS.

In May 1984, Applicants state, the Partnership was initially offered the opportunity to participate in a second round of financing by DRS through acquisition of the DRS Series B Convertible Preferred Stock. The Managing General Partner thereupon conducted an evaluation of the proposed investment, and, based upon the investment objectives and policies of the Partnership, decided to approve an investment of up to $1 million. Thereafter, KECALP, Inc. authorized an investment by KECALP in the Series B Convertible Preferred Stock of DRS, based upon an independent evaluation of the proposed investment by the investment committee of the board of KECALP, Inc., and the conclusion that the investment would be consistent with the investment objectives and policies of KECALP. On August 15, 1984, KECALP and DRS entered into a subcription agreement pursuant to which KECALP agreed to purchase 12,120 shares of Series B Convertible Preferred Stock of DRS at a price of $8.25 per share, subject to the receipt of the order requested herein. In all other respects, it is stated, the terms of the purchases by the Partnership and KECALP of the DRS Series B Convertible Preferred are the same. For the same reasons stated above in regard to the request for an exemption of the PSN transaction,

Applicants seek relief from the affiliated transactions bar of sections 57(a) and 17(d), seeking that relief under section 6(c), and the standards prescribed thereby.

The Series B Convertible Preferred shares of DRS held by the Partnership and KECALP represent approximately 21.04% and 1.43%, respectively, of such stock presently outstanding, it is stated. The combined investment by the Partnership in securities of DRS, including both the Series A and the Series B Convertible Preferred shares, represent less than 3 percent of the Partnership's net assets, while less than 5 percent of KECALP's net assets is represented by KECALP's position in DRS securities.

Notice is further given that any intereted person wishing to request a hearing on the application may, not later than January 31, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interet, the reasons for the request, and the specific issues 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. Proof 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.

John Wheeler,

Secretary.,

[FR Doc. 85-1800 Filed 1-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21656; File No. SR-PSDTC-84-16]

Pacific Securities Depository Trust Co.; Filing of a Proposed Rule Change

January 14, 1985.

The Pacific Securities Depository Trust Company ("PSDTC"), on December 17, 1984, filed a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing this notice to solicit comment on the proposal.

PSDTC's proposal would establish a bearer municipal bond program at PSDTC. Specifically, the proposal would make certain bearer municipal bonds eligible for deposit and would establish procedures for their book-entry processing. The proposed procedures govern deposits, book-entry deliveries pledges, interest collection and payment, call and maturity processing, and transfer to registered form.

Under PSDTC's proposal, all processing must occur in special PSDTC Bearer Municipal Bond Accounts. Participants may make deposits to these accounts by deliverying certificates, in good deliverable form, to a PSDTC processing window at any of PSDTC's offices. Similarly, participants may withdraw certificates from these accounts, or convert book-entry positions in bearer bonds to registered form, by submitting appropriate instructions to one of PSDTC's offices.

Book-entry positions in these accounts can be pledged, as loan collateral, by completing a special pledge deposit form or by entering an instruction on the Pacific Participant Terminal System ("PPTS"). Movements between accounts of PSDTC participants also can be made either by manual input or PPTS entry. Participants may submit instructions for inter-depository deliveries to Depository Trust Company and to Midwest Securities Trust Company.

Under the proposal, PSDTC participants would receive coupon interest payments for deposited bearer municipal bonds automatically (i.e., without any participant instruction). On record dates, PSDTC will advise participants of their account positions and projected interest payments. Then, on payable dates, Pacific Clearing Corporation ("PCC") will include the interest payments in participants' next day settlement reports. On the following day, the interest payments will be included in PCC's Net Settlement Sheets and reflected on participants' Pay/Collect Reports. If PSDTC does not receive interest payments from paying agents prior to paying interest to participants, PSDTC will recoup its financing costs by charging each participant a daily finance charge on the uncollected balance. This charge will be reflected as Bearer Interest Charges on monthly billing statements.

Under PSDTC's proposal, PSDTC will monitor financial publications for notice of bond calls, but participants are ultimately responsible for notifying PSDTC of call notices. PSDTC will submit certificates to the redemption agent, collect redemption proceeds, disburse proceeds to participants by issuing checks, and then cancel participants' positions in redeemed bonds.[1] For total redemptions, PSDTC will submit all positions in the called security for redemption and will make the security ineligible for continued and future deposit at PSDTC. For partial redemptions, PSDTC will use an impartial lottery to allocate called bonds among all participants' positions. Selected bonds will be submitted for redemption and the remainder will continue to be held in book-entry form.

PSDTC will process maturing bonds by submitting certificates to the paying agent. On maturity date, maturity values will be reflected on PSDTC Member Position and Cash Reports and all participants' positions in the maturing bond will be cancelled. PSDTC will issue checks for the bonds on the business day following the maturity date. Like uncollected interest payments, maturity payments not collected by PSDTC from paying agents prior to PSDTC's payments of participants will result in daily finance charges to participants.

PSDTC's proposal includes a fee schedule for PSDTC services in this program. The fees cover account dues,[2] book-entry movements,[3] custody services,[4] deposits,[5] various certificate related charges,[6] and transfers.[7] Additionally, incidental expenses and research costs will be passed through to participants.

PSDTC plans initially to operate the program on a limited basis with a small number of bearer municipal bond issues eligible for deposit. Additional issues will be added subsequently. To be included in the initial operation of the program, certificates must be in multiples of $1000 and must have CUSIP numbers on them. PSDTC intends to develop additional eligibility criteria to standardize eligibility criteria with other depositories.

Under an agreement between PSDTC and Security Pacific Clearing and Services Corporation ("Security Pacific"), custodial services and certificate handling will be performed for PSDTC by Security Pacific. Security Pacific at all times will maintain custody of deposited bonds in California. Security Pacific will collect interest.

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[1] Participants that do not want PSDTC to process their called bonds must withdraw them from PSDTC prior to a date to be specified for each call.

[2] Dues are $250 per month for the first bearer municipal bond account and $50 per month for sub-accounts.

[3] Most book-entry movement fees are $1.50.

[4] Custody service fees are $1.95 per issue per month, plus $0.01 per CUSIP value on deposit each month (as of the second to last day of the month).

[5] Deposit fees range from $5 to $13, depending on time of deposit.

[6] There is a $5 fee for certificate withdrawals, plus $0.04 per $1000 par value, up to $20.

[7] Transfers into registered form cost $2.50 per transfer.

redemption and maturity payments from paying agents and will pay PSDTC these amounts in next day funds on applicable payable dates. If Security Pacific experiences delays in collecting payments from paying agents, Security Pacific will charge PSDTC a daily financing charge for payments advanced to PSDTC. Similarly, if Security Pacific fails to timely present bonds for call or maturity payments, or fails to timely pay interest on deposited bonds, Security Pacific must pay PSDTC daily finance charges. Under the agreement, PSDTC and Security Pacific each bear the risk of damages arising out of their own acts or omissions.

PSDTC believes that the proposal is consistent with the Act because it would reduce physical deliveries of securities, enhance the safekeeping of securities, and enhance the interface between registered securities depositories. PSDTC also believes that the proposal is consistent with the Act because it equitably allocates fees and other charges among its participants.

To assist the Commission in determining whether to approve the proposal or institute proceedings to determine whether the proposal should be disapproved, interested persons are invited to submit written data, views and arguments concerning the proposal within 21 days from the date this notice is published in the **Federal Register**. Please file six copies of written comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–PSDTC–84–16.

Copies of the proposal, all subsequent amendments, all written statements with respect to the proposal which are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, are available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the proposal and any subsequent amendments also are available at the principal office of PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85–1801 Filed 1–23–85; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 14320; 812–5959]

John Hancock Variable Life Insurance Co., et al.; Application

January 14, 1985.

Notice is hereby given that John Hancock Variable Life Insurance Company ("JHVLICO" or the "Company"), a stock life insurance company, Variable Life Stock Account of John Hancock Variable Life Insurance Company, Variable Life Bond Account of John Hancock Variable Life Insurance Company, Variable Life Money Market Account of John Hancock Variable Life Insurance Company, the latter three registered under the Investment Company Act of 1940 (the "Act") as open-end management investment companies (the "Accounts"), and John Hancock Mutual Life Insurance Company ("John Hancock"), a mutual life insurance company and the parent of JHVLICO (collectively "Applicants"), John Hancock Place, P.O. Box 111, Boston, Massachusetts 02117, filed an application on October 10, 1984, and an amendment thereto on January 7, 1985, for an order of the Commission pursuant to Section 6(c) of the Act exempting Applicants from sections 2(a)(32), 2(a)(35), 22(c), 22(d), and 27(c)(1) of the Act and Rules 6e–2(b)(1), 6e–2(b)(12), 6e–2(b)(13), 6e–2(c)(1), 6e–2(c)(4), and 22c–1 thereunder, in connection with the issuance and funding of certain single-premium variable life insurance contracts. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and are referred to the Act and rules thereunder for a statement of the relevant statutory provisions.

Applicants represent that the Accounts are separate accounts to which assets are allocated from time to time to support benefits payable under the Company's variable life insurance contracts. Applicants intend to offer a new single-premium variable life insurance contract to be funded through the three Accounts. The single-premium contract will differ from the Company's existing periodic-premium contracts in certain respects, including the fact that no front-end sales charge will be deducted from the single-premium payment and that the surrender values are structured so as to impose what may be considered to be the imposition of a surrender charge or a contingent deferred sales load ("CDSL").

Applicants state that the surrender values under the contract will be adjusted to reflect a charge equal to 9% of the contract's cash value in the first contract year, declining by 1% each year thereafter until the charge is 1% in the ninth contract year and 0% in all succeeding contract years. Applicants represent that the CDSL will not exceed 9% of the single premium. It will apply upon the full or partial surrender of a contract and may apply to an exchange of a contract for a fixed-benefit contract during the first 24 months after its issue. Applicants state that the CDSL will be imposed only upon the amount surrendered, and only in an amount reflecting the permissible percentage charge applicable to the year of surrender, based on the issue date of the contract originally bought.

Applicants assert that their deferred sales load benefits the public and is consistent with the essential purpose of variable life insurance. They submit that a single-premium contract is less expensive to distribute and administer than periodic-payment contracts. Elimination of the front-end charge permits either a reduction in the gross premium payment needed to purchase an equivalent initial death benefit or an increase in the initial amount of the death benefit, according to Applicants. Applicants state that their contract has been designed so that the same amount of premium that would be paid under an otherwise comparable from-end loaded contract results in a greater initial face amount of insurance. Applicants further submit that a CDSL will generally provide higher surrender values than a front-end sales charge since more money is at work for the contract holder from the start of the contract.

Applicants believe that both the language and history of Rule 6e–2 anticipated variable life insurance contracts with sales charge provisions other than front-end deductions from premiums, and that the CDSL under their policy is consistent in terms of amount and timing with that rule. However, Applicants further assert that Rule 6e–2 can be read as only contemplating sales loads imposed upon a premium payment, and Applicants seek exemptive relief in order to avoid any question regarding complete compliance with the Act and rules thereunder.

Applicants assert that section 2(a)(35) contemplates that a charge to cover sales and promotional expenses incurred in connection with the sale of investment company securities will be deducted at the time payment for those securities is made, and that a CDSL may not be encompassed by the definition of sales load in Rule 6e–2, paragraphs (b)(1) and (c)(4). Applicants seek exemptive relief from these provisions

to permit the imposition of A CDSL on the grounds, *inter alia*, that the timing of the CDSL does not change its essential nature. Applicants also seek exemptive relief from sections 2(a)(32) and 27(c)(1) and Rule 6e–2, paragraphs (b)(12) and (b)(13)(iv), to the extent that such provisions do not contemplate the imposition of a sales charge at the time of redmption, arguing that the provisions of Rule 6e–2 adopt the Act's concept of redeemable security in recognition of the insurance nature of variable life insurance. With respect to section 22(c) of the Act and Rule 22c–1, Applicants asserts that Rule 6e–2(b)(12) affords exemptive relief from these provisions with respect to redemption procedures, which include surrender and exchange procedures in the context of variable life insurance, and that Rule 6e–2(b)(12) could be read as being premised on the absence of a CDSL. Applicants state that their CDSL would in no way have the dilute effect which Rule 22c–1 was designed to prohibit, that variable life insurance contracts do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against, and that a CDSL would discourage rather than encourage any such trading. Applicants request exemption from Rule 6e–2(c)(1)(i), which defines "variable life insurance contract" in terms of a cash surrender value that varies to reflect the investment experience of a separate account, to the extent necessary for this provision to be deemed to apply to the structure of cash surrender values under the Applicants' contract. Finally, Applicants request exemption from section 22(d) and Rule 6e–2(b)(12)(ii), the latter of which grants exemption from the uniform offering price requirements of the former. Applicants submit that the rule conceivably may not contemplate situations such as Applicants', where variable life insurance separate accounts fund both contracts with a front-end sales load and contracts with a CDSL. Applicants represent that any variation in the offering price of their contracts is reasonable, fair, and not discriminatory to the interest of any holder of contracts of the same class or series.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 8, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this 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 shall be served personally or by mail on Applicants at the address stated above. Proof 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.

John Wheeler,

Secretary.

[FR Doc. 85–1768 Filed 1–23–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 23571; 70–6927]

National Fuel Gas, et al.; Proposed Intra-System Borrowing Arrangements, Issuance and Sale of Commercial Paper and Short-Term Unsecured Notes; Exception From Competitive Bidding

January 15, 1985.

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and its subsidiaries, National Fuel Gas Distribution Corporation ("Distribution"), National Fuel Gas Supply Corporation ("Supply"), Penn-York Energy Corporation ("Penn-York"), Empire Exploration, Inc. ("Empire"), 10 Lafayette Square, Buffalo, New York 14203 and Seneca Resources Corporation ("Seneca"), Capital Bank Plaza, 333 Clay St. Suite 4150, Houston, Texas 77002 have filed with this Commission a proposal pursuant to sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b)(2), 43, 45, 50(a)(2), and 50(a)(5) thereunder.

By orders dated February 2, 1981 (HCAR No. 21903), December 31, 1981 (HCAR No. 22351), November 22, 1982 (HCAR No. 22722), and December 30, 1983 (HCAR No. 23193), applicants were authorized to participate in a system money pool through December 31, 1985. The procedures for borrowing from and lending to the pool are set forth in those orders. Applicants now propose that they continue to participate in the pools. Total outstanding short-term borrowings through the money pool will not exceed $150 million for Distribution, $125 million for Supply, and $20 million for Penn-York. On September 20, 1984 (HCAR No. 23427), the Commission authorized Seneca to borrow funds short-term in the amount of $109,625,000 through September 27, 1985.

By this application it is proposed that Seneca maintain this borrowing limit for purposes of the money pool. In addition, National seeks authorization for Empire to establish an unsecured borrowing limit of $20 million through the money pool for 1985. National will borrow through the money pool or from any subsidiary.

If intrasystem sources of funds are insufficient to meet short-term loan needs, National proposes to issue and sell unsecured notes to certain banks and/or commercial paper to Merrill Lynch Money Market Inc. ("Dealer") up to an aggregate principal amount at any one time outstanding of $375 million pursuant to National's Restated Certificate of Incorporation. The maximum principal amount of unsecured debt that the system may have outstanding at any one time is limited to 25% of the consolidated capitalization of the system pursuant to a restriction in National's Certificate. As of September 30, 1984, 25% of its consolidated capitalization equals $139.2 million. Borrowings by Supply to finance its inventory of storage gas and by Distribution to finance its retail accounts receivable are excluded from the definition of unsecured debt permitting borrowings in excess of the unsecured debt limitations.

National proposes to issue and sell, through December 31, 1985, up to $80 million aggregate principal amount at any one time outstanding of its commercial paper to the Dealer and/or short/term unsecured notes to Chase Manhattan Bank, N.A. Commercial paper will have varying maturities not to exceed nine months and will not be prepayable prior to maturity. No commission will be payable, however, the Dealer will reoffer and sell the commercial paper to a limited, defined group of buyers at a discount rate of ⅛ of 1% per annum less than the prevailing discount rate from the Dealer to National.

The short-term bank notes will be issued to certain banks, up to an aggregate principal amount at any one time outstanding of $262 million. Each unsecured note will mature not later than 12 months from the date of issue and will be prepayable at any time, in whole or in part, without penalty or premium. The notes will bear interest at the prime rate at each individual bank.

Costs, in the form of compensating balances or commitment fees, may be incurred to support the line of credit. The aggregate of the operating balances

of National, Distribution, Supply, Penn-York, Empire, and Seneca are expected to cover these amounts. Assuming National borrowed the full amount under each line of credit, and a compensating balance of 10% under each line was required, the effective cost of money, based on a 10.5% prime rate, would be 11.67%. Initially, the cost of compensating balances and commitment fees will be allocated to the participating subsidiaries on the basis of 35% to Distribution, 26% to Seneca, 29% to Supply, 5% to Penn-York and 5% to Empire. At the end of the calendar year costs will be retroactively reallocated among the subsidiaries to reflect the maximum outstanding short-term borrowings of each subsidiary.

In addition to the lines of credit, certain of the banks may have funds available to lend National at fixed rates below the existing prime rate for short periods of time (1–180 days), depending upon market conditions. National may repay existing notes outstanding at the prime rate with funds borrowed at the lower fixed rate. Since the 1–180 day notes are not prepayable, National will not utilize such notes unless it needs the funds for at least the maturity of the notes.

National requests that the sale of its commercial paper be excepted from the requirements of Rule 50 pursuant to subparagraph (a)(5) since the notes will have maturities not to exceed nine months, will be issued to a limited defined group of buyers, interest cost will not exceed the cost of equivalent borrowings from Chase, and the rate for commercial paper for prime issuers such as National are ascertainable by reference to daily publications.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 11, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy of the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–1771 Filed 1–23–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14321; 811–2917]

SPR Fund, Inc.: Application

January 14, 1985.

Notice is hereby given that SPR Fund, Inc. (the "Applicant"), 6983 Prom Way Avenue, NW., North Canton, OH 44720, a Delaware corporation registered under the Investment Company Act of 1940 (the "Act") as a closed-end, diversified management investment company, filed an application on November 21, 1984, for an order of the Commission, pursuant to section 8(f) of the Act declaring that Applicant has ceased to be an investment compnay. 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 applicable provisions thereof.

Applicant states that it filed a notification of registration on April 2, 1979 and a registration statement on July 2, 1979 in accordance with the Act. Prior to March 30, 1979, Applicant was engaged in the manufacture and sale of engineered building and industrial products. At a special meeting on March 30, 1979, the Applicant's shareholders approved the sale of substantially all operating assets of the Applicant and certain amendments to the Applicant's Certificate of Incorporation. The amendments, which changed the applicant's activities to those of an investment company and its name, and the sale of assets were effective as of March 30, 1979. On November 8, 1984, the Applicant exchanged substantially all of its assets in the amount $5,510,154.61 (less $150,000 in cash held back to meet certain obligations and expenses) for shares representing a beneficial interest in Fidelity Municipal Bond Fund ("Fidelity"). The Applicant distributed such Fidelity shares to its shareholders pursuant to an Agreement and Plan of Reorganization and liquidation, dated as of October 17, 1984, between the Applicant and Fidelity. The Agreement and Plan of Reorganization and Liquidation were approved on November 8, 1984 by Applicant's shareholders.

The Applicant represents that Applicant does not have any securityholders or assets, that it is not a party to any litigation or administrative proceeding and does not intend to engage in business activities other than those necessary for the winding up of its affairs. Finally, the application represents that the Applicant will file a Certificate of Dissolution under Delaware Corporation law on or before November 30, 1984.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 8, 1985, 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. Proof 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.

John Wheeler,

Secretary.

[FR Doc. 85–1767 Filed 1–23–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21662; File No. SR–MSRB–85–1]

Rulemaking Board; Filing and Immediate Effectiveness of Proposed Rule Change; Self-Regulatory Organizations; the Municipal Securities

January 15, 1985.

The Municipal Securities Rulemaking Board ("MSRB") on January 7, 1985, submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to provide an interpretation of MSRB rule G–17, which sets forth a general requirement that municipal securities dealers deal with all persons fairly and not engage in any deceptive, dishonest, or unfair practice. The interpretation addresses situations where a syndicate manager sells "short" for its own account with knowledge that the syndicate account is not successful, and then requires syndicate members to take their allotments of unsold bonds. In such situations, the syndicate manager then covers its short position when the syndicate members attempt to sell their

allotments at the lower market price. The MSRB has concluded that those syndicate managers using information on the status of the syndicate account that is not available to syndicate members, to the detriment of the syndicate account, appear to violate Board rule G–17, because syndicate managers act in a fiduciary capacity in relation to syndicate accounts.

This proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the Federal Register. Persons submitting written comments should file six copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR–MSRB–85–1.

Copies of the submission and all related items, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the office of the MSRB.

For the Commission, by the Division of Market Regulation pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85–1773 Filed 1–23–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Pacific Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 14, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Emerson Electric Co.
Common Stock, $1.00 Par Value, File No. 7–8210

Chemical New York Corp.
Common Stock, $12.00 Par Value, File No. 7–8211

C–3, Inc.
Common Stock, $.01 Par Value, File No. 7–8212

Integrated Resources
Common Stock, $.10 Par Value, File No. 7–8213

United Illuminating
Common Stock, No Par Value, File No. 7–8214

W.W. Grainger
Common Stock, $1.00 Par Value, File No. 7–8215

Bowne & Company
Common Stock, $1.00 Par Value, File No. 7–8216

Science Management
Common Stock, $.10 Par Value, File No. 7–8217

Security Capital
Common Stock, $1.00 Par Value, File No. 7–8218

Materials Research
Common Stock, $.05 Par Value, File No. 7–8219

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 4, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–1770 Filed 1–23–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Philadelphia Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 14, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

NWA, Inc.
Common Stock, $2.00 Par Value, File No. 7–8207

Gannett Company, Inc.
Common Stock, $1.00 Par Value, File No. 7–9208

Western Digital Corporation
Common Stock, $.10 Par Value, File No. 7–8209

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 4, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–1769 Filed 1–23–85; 8:45 am]

BILLING CODE 8010–01–M

Worldwide Ventures Corp.; Order of Suspension of Trading

January 17, 1985.

It appearing to the Securities and Exchange Commission that there has been a lack of current and accurate information concerning the affairs of Worldwide Ventures Corporation ("Worldwide"), and that Worldwide has failed to file a Quarterly Report on Form 10–Q for the period ended June 30, 1984, and an Annual Report on Form 10–K for the year ended September 30, 1984, nor reported to the Commission or otherwise desseminated information to the public concerning certain other matters, including the disposition of a major asset; the reported resignation of its independent accountant; changes in the composition of the Board of Directors;

and a dispute over control of the company, the Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Worldwide Ventures Corporation.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that the suspension of trading of such securities will be effective commencing at 10:00 a.m. January 17, 1985 and terminating at midnight on January 26, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-1851 Filed 1-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21669; File No. SR-OCC-84-18]

Self-Regulatory Occupations; Order Granting Accelerated Approval of a Proposed Rule Change of the Options Clearing Corp.

January 17, 1985.

The Options Clearing Corporation ("OCC") on December 5, 1984, filed a proposed rule change under Section 19(b) of the Securities Exchange Act of 1934 (the "Act") that would change the qualifications for OCC's Board of Directors in Article I, Section 1(l) and Article III, Section 2 of OCC's By-Laws. Notice of the proposal was published in the Federal Register on December 28, 1984.[1] The Commission received no public comment on the proposal. As discussed below, the Commission is approving the proposal.

OCC's Board of Directors is composed of Member Directors (representing OCC members), Exchange Directors (representing the registered options exchanges that own OCC), and one Management Director (representing OCC management). OCC Member Directors currently must be either: (1) An individual OCC Clearing Member, or (2) the general partner or principal officer of a Clearing Member Organization. The proposal broadens the qualifications for OCC's Member Directors by also allowing a director of a Clearing Member Organization to serve on OCC's Board of Directors. Additionally, the proposal provides that no person will be eligible to be a Member Director if appointment or election of that person would result in simultaneous service as Member Directors of two or more persons associated with affiliated Clearing Members.

OCC believes that the proposal will facilitate the selection of individuals most qualified for membership on OCC's Board of Directors. OCC notes a recent trend among its members to establish separate service entities to perform functions associated with OCC membership. The service entities become OCC members and the parent entities then withdraw from OCC membership. In those instances, knowledgeable, experienced personnel of the parent might become a director, but not a general partner or principal officer, of the service entity. Under current OCC By-Laws, those individuals would be ineligible for membership on OCC's Board of Directors.

OCC further believes that the proposal, by limiting Member Directors from affiliated Clearing Member Organizations, should ensure continued fair representation on OCC's Board of Directors. Specifically, the limitation should assure that affiliated Clearing Members, with similar interests, cannot have excessive representation on OCC's Board of Directors.

For the following reasons, the Commission is approving OCC's proposal. First, the Commission agrees with OCC that corporate reorganizations in the securities and financial services industries may result in separation of functions and key personnel among various newly affiliated entities. In the case of OCC Clearing Members that form service subsidiaries to perform the functions associated with OCC membership, not all personnel who are experienced and knowledgeable about clearing operations would be transferred to the new entity. Instead, such individuals may only serve on the board of directors of the new service entity and continue as officers of the parent entity. The Commission believes that key personnel who continue to be involved in management of clearing operations, even if only through membership on the board of directors of the new service entity, should qualify to serve as OCC directors. Accordingly, the Commission is approving the broadening of OCC's qualifications for directors to include those individuals.

Second, the Commission believes that OCC's proposal ensures continued fair representation of a cross section of OCC's Clearing Member community on OCC's Board of Directors. Along with broadened qualifications for directors, OCC has limited affiliated Clearing Member Organizations to one seat on OCC's Board of Directors. The Commission agrees with OCC that this limitation will adequately prevent distortions in representation on OCC's Board of Directors that otherwise potentially could result from the broadened qualifications for OCC directors.

Finally, the Commission believes that OCC's proposal will enhance OCC's ability to safeguard securities and funds by ensuring that highly qualified persons continue to be eligible to serve on OCC's Board of Directors.

OCC requested accelerated approval of this proposal [2] because at least one OCC Clearing Member, following the type of corporate restructuring discussed above, is maintaining its OCC membership solely to enable a key individual to continue to qualify as an OCC director. Accelerated approval will allow one of the affiliated entities to withdraw from OCC membership immediately and thereby save costs associated with OCC membership.

The Commission is granting OCC's request for accelerated approval because the Commission believes that OCC's proposal will facilitate effective administration of OCC while continuing to ensure fair representation on OCC's Board of Directors. In addition, the Commission received no public comment on the proposal.

For the reasons discussed above, the Commission finds the proposal consistent with the Act and, in particular, with Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-1852 Filed 1-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21576; File No. SR-Phlx-84-28]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc., Relating to Options on the National Over-the-Counter Index

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 November 7, 1984, Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission

[1] 49 FR 50491.

[2] OCC letter dated January 8, 1985, in File No. SR-OCC-84-18.

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 Organizations' Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") hereby proposes to trade options on the National Over-the-Counter Index. These options will be traded pursuant to current PHLX rules governing the trading of index options. (See particularly, PHLX Rules 1000A through 1103 A, and generally, PHLX Rules 1000 through 1070.)

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 purpose of the proposed rule change is to accommodate options trading on the National Over-the-Counter Index. The specifications of the National Over-the-Counter Index option contracts are as follows:

Ticker Symbol: XOC.

Underlying Index: The National Over-the-Counter Index is a capitalization-weighted index composed of the 100 most highly capitalized "National Market Tier 1" common stock issues traded in the U.S. over-the-counter securities market. The index, which has been developed by the Exchange, is composed of issues from approximately thirty industry groups and responds to general market trends of the over-the-counter market.

In order to keep the National Over-the-Counter Index current and representative of general market trends in the over-the-counter market, each January and July the Exchange will identify and rank the 125 most highly capitalized over-the-counter "National Market Tier 1" common stock issues. The issues in the 125 ranking will be compared to the issues in the index. An issue(s) in the index which is not ranked within the 100 most highly capitalized issues will be deleted from the index and replaced by the issue(s) which has increased in capitalization since the previous ranking. Thus, on a semi-annual basis the index issues will be adjusted to reflect changes in the capitalization ranking of over-the-counter common stock issues. Additionally, any time an index component issue registers on a national securities exchange or is the subject of a merger or acquisition such issue will be deleted from the index on the corporate action date and replaced by the next highest capitalized issue as identified on the most current ranking of the 125 most highly capitalized over-the-counter issues. When stock splits or dividends occur, the index will be adjusted accordingly.

To compute the National Over-the-Counter Index the following formula is used:

$$\frac{MV(1)+MV(2)+MV(3)+\ldots MV(N)}{BMV}\times 100=\text{Index Value}$$

where:

MV = (Price × Shares Outstanding) for the instant computation, summed for all issues.

BMV = Summation (Closing Price × Shares Outstanding) for the day prior to the start of the index calculation.

The current market value of each component issue is multiplied by the number of outstanding shares. The resulting market values are added to determine the current aggregate market value of the issues in the index. To compute the current index value, the aggregate market value is divided by the base market value and multiplied by 100. The value of the National Over-the-Counter Index was set to equal 150 on September 28, 1984. The Exchange has made daily computations of this index beginning on January 2, 1979 through the present.

To account for changes in capitalization of any of the component issues resulting from mergers, acquisitions, listings, substitutions, etc., the base market value will be adjusted periodically. The following formula is used to make such adjustments:

$$NBMV=\frac{OBMV\times NMV}{OVM}$$

where:

NBMV = new base market value
OBMV = old base market value
NMV = new market value
OMV = old market value

Adjustments in the value of the index which are necessitated by the addition and/or deletion of an issue from the index are made by adding and/or subtracting the market value (price × shares outstanding) of the relevant issue(s).

The National Over-the-Counter Index value will be updated dynamically every minute during the trading day. The PHLX has retained Bridge Data, Inc. to compute the index. Pursuant to PHLX Rule 1100A, update index values will be disseminated and displayed by means of the Consolidated Last Sale Reporting System and the facilities of the Options Price Reporting Authority. The index value will also be available on broker-dealer interrogation devices to subscribers of the option information. In addition, the closing index value will be published in "The Wall Street Journal" and other financial publications.

Unit of Trading: Each options contract will represent $100, the index multiplier, times the index value. For example, an index value of 150 will result in a dollar contract value of $15,000 ($100 × 150).

Exercise Price: Exercise price will be set at five point intervale in terms of the current value of the index. Additional exercise prices will be added whenever the index value touches the highest or lowest existing exercise price. For example, assume exercise prices of 145, 150 and 155 are outstanding. When the index reaches 155, the PHLX would normally add an exercise price of 160.

Aggregate Exercise Price: The aggregate exercise price is found by multiplying the index multiplier ($100) by the exercise price.

Expiration Cycles: The PHLX will trade consecutive and cycle month series pursuant to PHLX Rule 1101A.

Premium Quotations: Premiums will be expressed in terms of dollars and fractions of dollars pursuant to PHLX Rule 1033A. For example, a bid or offer

of 1½ will represent a premium per options contract of $150 (1½×$100).

Position and Exercise Limits: The PHLX will employ position and exercise limitations pursuant to PHLX Rules 1001A and 1002A, respectively, which shall not be larger than the equivalent of $300 million on the same side of the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because Section 12(a) of the Act (15 U.S.C. 78m(a)) as currently interpreted by the Commission prohibits this option (*see* Securities Exchange Act Release No. 20423, November 29, 1983; 49 FR 55660), the PHLX consents to an extension of time for Commission action on this proposal until the Commission may adopt the recently proposed amendments to Rule 12a–6 under the Act (Securities Exchange Act Release No. 20854, April 12, 1984, 49 FR 15222) that would exempt index options like the ones PHLX proposes (*i.e.*, ones containing over-the-counter stocks) from the registration requirements of Section 12(a). Should the Commission adopt such amendments to Rule 12a–6 under the Act, the Commission will then either

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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, DC 20549. Copies of such filing will also be available for inspection and copying at the principal 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 February 14, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

January 18, 1985.

[FR Doc. 85–1853 Filed 1–23–85; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Designation of Disaster Loan Area #2179]

Texas; Designation of Disaster Loan Area

The City of Pasadena, located in Harris County in the State of Texas constitutes a disaster area because of damage caused by high winds and tornadoes which occurred on December 31, 1984. Applications for loans for physical damage may be filed until the close of business on March 18, 1985, and for economic injury until the close of business October 17, 1985, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane Suite 110, Grand Prairie, Texas 75051, or other locally announced locations.

Interest rates are:

Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations	11.125

The number assigned to this disaster is 217912 for physical damage and for economic injury the number is 626400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 17, 1985.

Irene Castillo,

Acting Administrator.

[FR Doc. 85–1868 Filed 1–23–85; 8:45 am]

BILLING CODE 8025–01–M

[Proposed License No. 02/02–0482]

Norstar Capital Inc.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*), has been filed by Norstar Capital Inc., (Applicant) with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1984).

The officers, directors and shareholders of the Applicant are as follows:

Name and address, title, or relationship	Percent of ownership
Raymond A. Lancaster, 9 Coventry Road, Glenmont, New York 12207, President, Director	
John B. Robinson, Jr., 208 Granflunder Drive, Momands, New York 12204, Treasurer, Director	
Harry P. Meislahn, 18 Axbridge Lane, Delmar, New York 12054, Secretary, Director	
Norstar Bancorp Inc., 1450 Western Avenue, Albany, New York 12203	100

The Applicant, a New York corporation, with its principal place of business at 1450 Western Avenue, Albany, New York 12203, will begin operations with $3,950,000 of paid-in capital and paid in surplus. The Applicant will conduct its activities principally in the Northeastern section of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Albany, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 16, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-1867 Filed 1-23-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circ., Public Debt Series—No. 1-85]

Treasury Notes of January 31, 1987, Series R-1987

Washington, January 17, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of January 31, 1987, Series R-1987 (CUSP No. 912827 RU 8). The Securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated January 31, 1985, and will bear interest from the date, payable on a semiannual basis on July 31, 1985, and each subsequent 6 months on January 31 and July 31 until the principal becomes payable. They will mature January 31, 1987, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2 The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1 Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, January 23, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 22, 1985, and received no later than Thursday, January 31, 1985.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks

will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5. must be made or completed on or before Thursday, January 31, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, January 29, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, January 31, 1985. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration had been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-1879 Filed 1-22-85; 10:12 am]

BILLING CODE 4810-40-M

Fiscal Service

[Dept. Circ. 570, 1984 Rev., Supp. No. 8]

Surety Companies Acceptable on Federal Bonds; ITT Lydon Property Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $1,670,000 has been established for the company.

Name of Company:
ITT Lyndon Property Insurance Company

Business Address:
12555 Manchester Road
St. Louis, MO 63131

State of Incorporation:
Missouri

Certificates of Authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1984 Revision, at page 27255 to reflect this addition. Copies of the circular, when issued, may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226.

Dated: January 10, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-1738 Filed 1-23-85; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 16
Thursday, January 24, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Commodity Futures Trading Commission	1-9
Equal Employment Opportunity Commission	10
Federal Communications Commission	11
Federal Election Commission	12
Federal Home Loan Bank Board	13
Federal Maritime Commission	14
Federal Reserve System	15
International Trade Commission	16, 17
Nuclear Regulatory Commission	18

1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 1159.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, January 31, 1985.

CHANGES IN THE MEETING: The consideration of the Amex Commodities Corporation application to trade options on gold bullion has been postponed until Friday, February 12, 1985, at 10:00 a.m.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-1900 Filed 1-22-85; 11:18 am]
BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 1, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-1951 Filed 1-22-85; 3:37 pm]
BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, February 5, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:
—Budget Categories, Plans, Priorities 2nd Quarter, FY 1985
—Status report on Reparations

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-1952 Filed 1-22-85; 3:37 pm]
BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Tuesday, February 5, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Budget Categories, Plans, Priorities for 2nd Quarter, 1985.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-1953 Filed 1-22-85; 3:37 pm]
BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 8, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A Webb,
Secretary of the Commission.
[FR Doc. 85-1954 Filed 1-22-85; 3:37 pm]
BILLING CODE 6351-01-M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, February 12, 1985.

PLACE: 2030 K Street, NW., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application of the Chicago Board of Trade for designation in silver options.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-1955 Filed 1-23-85; 3:37 pm]
BILLING CODE 6351-01-M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 15, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-1956 Filed 1-22-85; 3:37 pm]
BILLING CODE 6351-01-M

8

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Friday, February 22, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application of the Chicago Mercantile Exchange for designation in Swiss franc options and British pound options.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-1957 Filed 1-22-85; 3:38 pm]
BILLING CODE 6351-01-M

9

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 22, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–1958 Filed 1–22–85; 3:38 pm]

BILLING CODE 6351–01–M

10

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time) Tuesday, January 15, 1985.

CHANGE IN THE MEETING: The following item was moved to the closed portion of the meeting:

Proposed Contract for Expert Services in Connection With a Court Case

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change:

Tony E. Gallegos, Commissioner
William A. Webb, Commissioner
Fred Alvarez, Commissioner
R. Gaull Silberman, Commissioner

Opposed: None.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: January 22, 1985.

Johnnie L. Johnson, Jr.,

Attorney-Advisor.

This Notice Issued January 22, 1985.

[FR Doc. 85–1918 Filed 1–22–85; 8:45 am]

BILLING CODE 6750–06–M

11

FEDERAL COMMUNICATIONS COMMISSION

January 18, 1985.

Deletion of Agenda Item From January 18th Open Meeting

The following item has been deleted at the request of the Mass Media Bureau from the list of agenda items scheduled for consideration at the January 18, 1985 Open Meeting, and previously listed in the Commission's Notice of January 11, 1985.

Agenda, Item No., and Subject

Mass Media—4—*Title:* Review of Technical and Operational Requirements of Part 76, Cable Television. *Summary:* In this Notice of Proposed Rule Making, the Commission will consider whether to remove the quality performance regulations for cable television systems and whether to relax the signal leakage limits.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–1959 Filed 1–22–85; 3:44 pm]

BILLING CODE 6712–01–M

12

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 29, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, January 31, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and Approval of minutes
Eligibility for candidates to receive Presidential Primary Matching Funds
Draft Advisory Opinion #1984–63
Warren L. Blackmon, Good Government Committee of AmeriFirst Federal Savings and Loan Association
Routine Administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85–1950 Filed 1–22–85; 3:31 pm]

BILLING CODE 6715–01–M

13

FEDERAL HOME LOAN BANK BOARD

FEDERAL REGISTER'S CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 50, Published January 14, 1985, Page No. — 1973.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meetings.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6677).

CHANGES IN THE MEETING: The following items have been added to the open portion of the Bank Board meeting scheduled, Thursday, January 31, 1985 at 11:00 a.m.

Conversion from Mutual to Stock Form Brokered Deposits

No. 2, January 22, 1985.

[FR Doc. 85–1881 Filed 1–22–85; 10:23 am]

BILLING CODE 6720–01–M

14

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m., January 30, 1985.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Agreement No. 202–010390–005: Modification of the Atlantic and Gulf/Ecuador Conference to restate the agreement, change the geographic scope, and authorize intermodal service in the U.S. and in Ecuador.
2. Agreement No. 203–010698: Atlanttrafik Express Service, Ltd./Rederiaktiebolaget Transocean Non-compete Agreement—Consideration of whether certain terms of the agreement are clear and definete.
3. Trans-Pacific Freight Conference of Japan/Korea Tariff FMC No. 11 and Japan/Korea-Atlantic and Gulf Freight Conference Tariff FMC-No. 8—Consideration of the acceptability of the tariffs publishing the essential terms of service contracts.
4. Docket No. 83–32—Kuehne & Nagel, Inc. v. Barber Blue Sea Line and Nedlloyd Lines—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Assistant Secretary (202) 523–5725.

Bruce Dombrowski,

Assistant Secretary.

[FR Doc. 85–1970 Filed 1–22–85; 4:02 pm]

BILLING CODE 6730–01–M

15

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 28, 1985.

PLACE: Marriner S. Eccles Federal Reserve Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business

days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-1871 Filed 1-18-85; 5:08 pm]

BILLING CODE 6210-01-M

16

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-06]

TIME AND DATE: 2:00 p.m. (Monday) January 28, 1985.

PLACE: Room 331, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Investigation 701-TA-235 [Preliminary] (Iron pellets from Brazil)—briefing and vote.
6. Investigation 731-TA-211 and 212 [Preliminary] (Certain welded carbon steel pipes and tubes from Taiwan and Venezuela)—briefing and vote.
7. Investigation 701-TA-225/234 and 731-TA-213/235 [Preliminary] (Certain carbon steel products from Austria, Czechoslovakia, East Germany, Finland, Hungary, Norway, Poland, Romania, Sweden and Venezuela)—briefing and vote.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[FR Doc. 85-1870 Filed 1-18-85; 5:08 pm]

BILLING CODE 7020-02-M

17

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-07]

TIME AND DATE: 11:00 a.m., Friday February 1, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Investigation 22-47 (Certain tobacco)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary. (202) 523-016.

[FR Doc. 85-1869 Filed 1-18-85; 5:08 pm]

BILLING CODE 7020-02-M

18

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 21, 28, February 4, and 11, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Week of January 21

Wednesday, January 23
10:00 a.m. Affirmation Meeting (Public Meeting) (if needed)

Week of January 28—Tentative

Monday, January 28
2:00 p.m.: Proposed Legislative Package on Regulatory Reform (Public Meeting) * (postponed from January 14)

Tuesday, January 29
10:00 a.m.: Discussion of Plant Issues with Regional Administrators (Public Meeting)

Wednesday, January 30
10:00 a.m.: Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemption 2 and 6)

Thursday, January 31
10:00 a.m.: Discussion of 1985 Policy and planning guidance (Public Meeting)
2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed)

Week of February 4—Tentative

Tuesday, February 5
2:00 p.m.: Briefing by INPO (Public Meeting)

Thursday, February 7
2:00 p.m.: Briefing by EPRI on Standard Design Process (Public Meeting)
3:30 p.m.: Affirmation/Discussion and Vote (Public Meeting): a. San Onofre Order (Tentative)

Friday, February 8
10:00 a.m.: Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

Week of February 11—Tentative

Tuesday, February 12
2:00 p.m.: Discussion/Possible Vote on Full Power Operating License for Byron-1 (Public Meeting)

Wednesday, February 13
2:00 p.m.: Quarterly Briefing on Safety Goal Evaluation Report (Public Meeting)

Thursday, February 14
2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION:

Discussion of Adjudication Matters Related To Catawba-1 scheduled for January 15, *cancelled.*

Discussion and Vote on the Proposed Hydrogen Control Rule (Public Meeting) was held on January 17.

To verify the status of meetings call (recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Dated: January 18, 1985.

George T. Mazuzan,

Office of the Secretary.

[FR Doc. 85-1855 Filed 1-18-85; 5:07 pm]

BILLING CODE 7590-01-M

federal register

Thursday
January 24, 1985

Part II

Department of the Treasury

Office of Revenue Sharing

31 CFR Part 51

Financial Assistance to Local Governments; Final Rule

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Financial Assistance to Local Governments

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Final rule.

SUMMARY: This final rule contains the amended Revenue Sharing regulations. The changes made result from the amendments to the Revenue Sharing Act by the Local Government Fiscal Assistance Amendments of 1983 (Pub. L. 98–185), enacted on December 28, 1980. This final rule implements the changes proposed to be made to the regulations on July 6, 1984 (49 FR 27777). The revisions are primarily technical and procedural to conform certain regulations to existing operating procedures. The final rule also adds a new § 51.56, Nondiscrimination on the Basis of Age, which is the only change to Subpart E, the nondiscrimination provisions.

EFFECTIVE DATES: February 25, 1985.

FOR FURTHER INFORMATION CONTACT: Richard S. Isen, Chief Counsel, Office of Revenue Sharing, or
Jacqueline L. Jackson, Attorney-Advisor.
Telephone: (202) 634–5182

SUPPLEMENTARY INFORMATION:

Background

The Local Government Fiscal Assistance Act Amendments of 1983 (Pub. L. 98–185) were enacted to amend the Revenue Sharing Act, 31 U.S.C. 6701 to 6724, which established the Revenue Sharing Program. The Revenue Sharing Act had previously been amended by the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94–488) and the State and Local Fiscal Assistance Act Amendments of 1980 (Pub. L. 96–604). The 1983 amendments extended the Revenue Sharing Program for three years, until the end of fiscal year 1986 (September 30, 1986). The amendments also eliminated the proposed use hearing and added an annual audit for governments receiving more than $100,000 per entitlement period. The 1983 Amendments also made certain technical changes to the formula provisions in the Act. The 1983 Amendments necessitated several changes to the regulations contained in 31 CFR Part 51, which implement the Revenue Sharing Act. Proposed rulemaking was published in the **Federal Register** on July 6, 1984 (49 FR 27777–27786) and comments were requested for forty-five (45) days, ending August 20, 1984. Four comments were received and are discussed in the Section-by-Section Analysis contained in Appendix A. All of 31 CFR Part 51 is set forth below including Subpart G to which further consideration will be given at a future date. No changes have been made to the provisions of Subpart E, nondiscrimination except for the addition of § 51.56 "Discrimination on the basis of age." No changes have been made to Subpart G.

Discrimination of the Basis of Age

This final regulation contains a new § 51.56 which implements the incorporation of the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101, hereafter referred to as the ADA) into the Revenue Sharing Act. As required by the ADA, the regulation was first issued as a proposed rule on December 31, 1979 (44 FR 77356). At that time ORS notified the public that the ADA was in effect and enforceable using the HEW Government-wide regulations, issued June 12, 1979 (44 FR 33768) as guidance. A draft of the final regulations was submitted to HHS for approval on July 18, 1980 as required by ADA. These final regulations make minor changes to the proposed rule based upon comments by HHS and upon the HHS final regulations for its own programs issued December 28, 1982 (47 FR 57850). A discussion of the changes and other provisions of the regulations is contained in the Section-by-Section Analysis contained in Appendix A. Appendix B contains the ORS list of the age distinction in the ORS regulations required by § 90.32 of the government-wide regulation and explanatory materials issued by HHS in the Government-wide regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, (Pub. L. 96–354, hereinafter referred to as the RFA) provides that regulations with significant economic impact on a substantial number of "small entities" should undergo a regulatory flexibility analysis. With respect to the Revenue Sharing Program, small entities are defined as recipient governments with a population below 50,000.

The final regulations are primarily interpretative, providing needed guidance to recipient governments with respect to the Revenue Sharing Program. The final regulations are not expected to have a significant economic impact on small government units. Accordingly, the provisions of the RFA were not applicable to this regulatory project, and an initial regulatory flexibility analysis was not required.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 350 (h)), the following is the list of control numbers for record-keeping or reporting requirements in the regulations approved for collection by OMB:

Number	Regulation section	Expiration date
1505–0036	Self evaluation-transition plan (§ 51.55(c)).	Dec. 31, 1986
1505–0038	Maintenance of proposed enacted budget for public inspection (§ 51.11(b)).	Do.
	Retention of records of real property purchases (§ 51.70).	
	Collection of information to determine compliance with Act (§ 51.11(a)).	
	Retention and submission of audit workpapers and related audited reports (§ 51.108 (c) and (d)).	
	Retention of books, documents, papers and records to determine compliance with Act. (§ 51.101(d)).	
1505–0082	Economic dislocation certification (§ 51.22(c)(2)).	Apr. 30, 1987
1505–0074	Maintenance of use report and supporting documentation for public inspection (§ 51.12(b)).	Dec. 31, 1986
1505–0066	Retention of documentation concerning public participation requirements for 3 years (§ 51.11(b)).	Aug. 31, 1987
	Application for waiver of newspaper publication (§ 51.13(e)).	
	Notification of election to use State or local law in audit requirement (§ 51.102(b)).	
	Application for waiver of audit requirement (§ 51.103)).	
	Requirement for publication of notice of availability of audit report for public inspection (§ 51.108(b)).	

Executive Order 12291 "Federal Regulation"

The regulations do not constitute a "major rule" within the meaning of Section 1(b) of Executive Order 12291, entitled "Federal Regulation." A regulatory analysis is not required.

List of Subjects in 31 CFR Part 51

Accounting, Administrative practice and procedure, Civil rights, Handicapped, Aged, Indians, Revenue sharing, Reporting and record-keeping requirements.

Authority: This final rule is issued under the authority of the Revenue Sharing Act (31 U.S.C. 6701 through 6724) and Treasury Department Order No. 224, dated January 26, 1973 (38 FR 3342) as amended by Treasury Department Order No. 103–1 dated March 18, 1982.

31 CFR Part 51, is therefore amended as follows:

Dated: December 13, 1984.

Michael F. Hill,

Director, Office of Revenue Sharing.

31 CFR Part 51 is revised to read as follows:

PART 51—FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS

Subpart A—General Information

Sec.
51.0 Scope and application of regulations.
51.1 Establishment of the Office of Revenue Sharing.
51.2 Definitions.
51.3 Procedures for effecting compliance for violations of provisions other than Subpart E.
51.4 Transfer of entitlement funds to secondary recipients.
51.5 Effect of State or local law.
51.6 Applicability of other Federal laws.

Subpart B—Assurances, Reports, And Public Participation

51.10 Definitions.
51.11 Reports to the Director; assurances; procedure for effecting compliance.
51.12 Use reports.
51.13 Publication requirements.
51.14 Budget hearing.
51.15 Amendments or modification to enacted budget.
51.16 Participation by senior citizens.

Subpart C—Computation And Adjustment Of Allocations and Entitlements

51.20 Data.
51.21 Data affected by a major disaster.
51.22 Adjusted taxes.
51.23 Date for finalizing data.
51.24 Boundary changes, governmental reorganization, etc.
51.25 Waiver of entitlement; nondelivery of checks; insufficient data.
51.26 Reservation of funds; adjustment of entitlements and allocations.
51.27 State to maintain transfers to local governments.
51.28 Optional formula.
51.29 Notification and adjustment of data factors.
51.30 Adjustment to entitlements; application of adjustments.
51.31 Separate law enforcement officers.
51.32 Population.

Subpart D—Prohibitions And Restrictions On Use Of Funds

51.40 Wage rates and labor standards.
51.41 Lobbying.
51.42 Use of entitlement funds in accordance with State or local law.
51.43 Procedure for effecting compliance.

Subpart E—Nondiscrimination By States And Local Governments Receiving Entitlement Funds

51.50 Purpose.
51.51 Definitions.
51.52 Discrimination prohibited.
51.53 Employment discrimination.
51.54 Employment discrimination on the basis of sex.
51.55 Discrimination on the basis of handicap.
51.56 Discrimination on the basis of age.
51.57 Discrimination on the basis of national origin.
51.58 Discrimination on the basis of religion.
51.59 Assurances required.
51.60 Compliance information and reports.
51.61 Compliance reviews and affirmative action.
51.62 Administrative complaints and investigations.
51.63 Notification to the complainant.
51.64 Notification of noncompliance.
51.65 Determination by the Director.
51.66 Compliance agreements.
51.67 Resumption of suspended entitlement payments.
51.68 Exhaustion of administrative remedies.
51.69 Agreements between agencies.
51.70 Jurisdiction over property.

Subpart F—Fiscal Procedures And Auditing

51.100 Definitions.
51.101 Procedures applicable to the use of funds.
51.102 Auditing and evaluation.
51.103 Waiver of audit requirement.
51.104 Audits of secondary recipients.
51.105 Reliance upon audits under other Federal laws.
51.106 Audit opinions.
51.107 Scope of audits.
51.108 Public inspection, retention and submission of audit reports and workpapers.
51.109 Procedure for effecting compliance.

Subpart G—Proceedings For Reduction In Entitlement, Withholding, Or Suspension Of Funds

51.200 Scope of subpart.
51.201 Liberal construction.
51.202 Reasonable notice and opportunity for hearing.
51.203 Opportunity for compliance.
51.204 Institution of administrative hearing.
51.205 Complaint for administrative hearing.
51.206 Service of complaint and other papers.
51.207 Answer, referral to administrative law judge.
51.208 Proof; variance; amendment of pleadings.
51.209 Representation.
51.210 Administrative law judge; powers.
51.211 Administrative hearings.
51.212 Stipulations.
51.213 Evidence.
51.214 Depositions.
51.215 Stenographic record; oath of reporter; transcript.
51.216 Proposed findings and conclusions.
51.217 Preliminary finding (for hearings under Subpart E).
51.218 Initial decision of the administrative law judge.
51.219 Certification and transmittal of record and decision.
51.220 What constitutes the record?
51.221 Procedure for review of decision of administrative law judge.
51.222 Effect of absence of appeal on review of initial decision of administrative law judge.
51.223 Publicity of proceedings.
51.224 Judicial review.

Appendix A. Age Distinction and Explanatory Material

Authority: Revenue Sharing Act (31 U.S.C. 6701 through 6724; Treasury Department Order No. 224 dated January 26, 1973 (38 FR 3342) as amended by Treasury Department Order No. 103–1 dated March 18, 1982.

Subpart A—General Information

§ 51.0 Scope and application of regulations.

(a) *In general.* The rules and regulations in this subpart are prescribed for carrying into effect the Revenue Sharing Act (31 U.S.C. 6701–6724). Subpart A of this part sets forth general information and definitions of terms used in this part. Subpart B of this part prescribes the reporting, public hearing and publication requirements under this part. Subpart C of this part contains rules regarding the computation, allocation and adjustment of entitlements. Subpart D of this part prescribes prohibitions and restrictions of the use of funds. Subpart E of this part contains the nondiscrimination provisions and procedures applicable to programs funded by units of general local government which receive Revenue Sharing funds. Subpart F of this part prescribes fiscal procedures and auditing requirements. Subpart G of this part contains rules relating to procedure and practice requirements where a recipient government has failed to comply with any provision of this part. A reference to individuals in the feminine or masculine gender shall not be construed to exclude either gender.

(b) *Effect on pending cases.* The procedural provisions of the Revenue Sharing Act as amended by Pub. L. 98–185 and regulations promulgated thereunder, shall apply to all pending administrative proceedings, including cases commenced by complaints filed prior to October 1, 1983.

§ 51.1 Establishment of the Office of Revenue Sharing.

There is established, in the Office of the Secretary of the Treasury, the Office of Revenue Sharing. The Office shall be headed by a Director who shall be appointed by the Secretary of the Treasury. The Director shall perform the functions, exercise the powers and carry out the duties vested in the Secretary of the Treasury by the Revenue Sharing Act (31 U.S.C. 6701–6724).

§ 51.2 Definitions.

As used in this part (except where the context clearly indicates otherwise, or where the term is otherwise defined elsewhere in this part) the following definitions shall apply:

(a) "*Act*" means the Revenue Sharing Act (31 U.S.C. 6701–6724) as amended by the Local Government Fiscal Assistance Amendments of 1983 (Pub. L. 98–185 enacted November 30, 1983).

(b) "*Allocation*" means the amount determined by formula to be a State area or recipient government's portion of the Revenue Sharing appropriation for an entitlement period.

(c) "*Department*" means the Department of the Treasury.

(d) "*Director*" means the Director of the Office of Revenue Sharing.

(e) "*Entitlement*" means the amount a recipient government is scheduled to receive during the entitlement period, determined from adjustments made to the allocation for under or overpayments in prior periods.

(f) "*Entitlement funds*" means the amount of Revenue Sharing payments to which a unit of local government is entitled as determined by the Director pursuant to the allocation formula contained in the Act and as established by regulations under this part, including the interest earned on entitlement funds deposited in financial institutions prior to their use, obligation or appropriation.

(g) "*Entitlement period*" means one of the following periods of time:

(1) Entitlement Period One is the 6-month period beginning January 1, 1972, and ending June 30, 1972.

(2) Entitlement Period Two is the 6-month period beginning July 1, 1972, and ending December 31, 1972.

(3) Entitlement Period Three is the 6-month period beginning January 1, 1973, and ending June 30, 1973.

(4) Entitlement Period Four is the Federal fiscal year beginning July 1, 1973, and ending June 30, 1974.

(5) Entitlement Period Five is the Federal fiscal year beginning July 1, 1974, and ending June 30, 1975.

(6) Entitlement Period Six is the Federal fiscal year beginning July 1, 1975, and ending June 30, 1976.

(7) Entitlement Period Seven is the 6-month period beginning July 1, 1976, and ending December 31, 1976.

(8) Entitlement Period Eight is the 9-month period beginning January 1, 1977, and ending September 30, 1977.

(9) Entitlement Period Nine is the Federal fiscal year beginning October 1, 1977, and ending September 30, 1978.

(10) Entitlement Period Ten is the Federal fiscal year beginning October 1, 1978, and ending September 30, 1979.

(11) Entitlement Period Eleven is the Federal fiscal year beginning October 1, 1979, and ending September 30, 1980.

(12) Entitlement Period Twelve is the Federal fiscal year beginning October 1, 1980, and ending September 30, 1981.

(13) Entitlement Period Thirteen is the Federal fiscal year beginning October 1, 1981, and ending September 30, 1982.

(14) Entitlement Period Fourteen is the Federal fiscal year beginning October 1, 1982, and ending September 30, 1983.

(15) Entitlement Period Fifteen is the Federal fiscal year beginning October 1, 1983, and ending September 30, 1984.

(16) Entitlement Period Sixteen is the Federal fiscal year beginning October 1, 1984, and ending September 30, 1985.

(17) Entitlement Period Seventeen is the Federal fiscal year beginning October 1, 1985, and ending September 30, 1986.

(h) "*Funded*" means entitlement funds have been or are being made available for expenditure in or substantially benefited a program or activity of a recipient government or a secondary recipient.

(i) "*Governor*" means the Governor of any of the 50 State governments or the Mayor of the District of Columbia.

(j) "*Indian tribes or Alaskan native villages*" means an Indian tribe and Alaskan native village which has a recognized governing body and which performs substantial governmental functions. Certification to the Director by the Secretary of the Interior (or by the Governor of a State in the case of a State affiliated tribe) that an Indian tribe or an Alaskan native village has a recognized governing body and performs substantial governmental functions; shall constitute *prima facie* evidence of that fact.

(k) "*Lobbying*" means the personal solicitation of members of a legislative body by representatives of the recipient government or their agents for the purpose of influencing pending or proposed legislation regarding the provisions of the Act.

(l) "*Program or activity*" means the operations of the agency or organizational unit of a recipient government or the operations or organizational unit of a secondary recipient funded with entitlement funds (examples include, but are not limited to a police department, department of corrections, health department, or a division of a public or private corporation).

(m) "*Recipient government*" means a State government or unit of local government, the District of Columbia, Indian tribe, Alaskan native village, as defined in this section, or the office of the separate law enforcement officer for any parish in the State of Louisiana, other than the Parish of Orleans, which directly receives entitlement funds, except as otherwise provided.

(n) "*Secondary recipient*" means:

(1) Any State government, unit of local government, any political subdivision of any State or local government, any public or private agency, institution, organization or other entity which receives entitlement funds, in whole or in part, from a recipient government either:

(i) By a contract or other arrangement pursuant to which such other entity shall conduct, deliver or otherwise participate or assist in the conduct or delivery of a program or activity of the recipient government;

(ii) By a grant or other arrangement with the recipient government intended to provide financial assistance to such other entity under a program or activity.

(2) "Secondary recipient" shall not include a construction contractor or any other private or governmental entity from which a recipient government only acquires real or personal property (e.g. supplies, equipment and materials) by such means as purchasing, renting, leasing, or bartering. Secondary recipient also shall not include persons who are the ultimate beneficiaries of a recipient government's programs or activities.

(o) "*Secretary*" means the Secretary of the Treasury.

(p) "*Specific economic dislocation*" means economic distress in the area of a local government which causes the closing of places of employment, declines in assessed values or receipt of taxes from real property, declines in sales, income, or other tax collections of that local government. The decrease in tax collections must also reduce the allocation of that unit of local government by an amount equal to or greater than 20 percent of its allocation for the preceding entitlement period in order to justify the economic dislocation benefit for the local government.

(q) "*State government*" means the government of any of the 50 State governments or the District of Columbia.

(r) "*Unit of local government*" means the government of a county, municipality, or township which is a unit of general government as determined by the Bureau of the Census for general statistical purposes. The term "unit of local government" shall also include the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The District of Columbia, in addition to being treated as the sole unit of local government within its geographic area is considered a State.

§ 51.3 Procedures for effecting compliance for violations of provisions other than Subpart E.

(a) *Investigations.* (1) The Director shall establish procedures to reasonably assure that an investigation of a complaint, relating to possible violation of the provisions of this part (other than Subpart E) is completed and a decision is made as to whether the recipient government is in noncompliance with the Act. The procedures shall provide for the investigation and decision to be made within 180 days of receipt of the complaint.

(2) The scope of the investigation is not necessarily limited to the complaint, but may include any matters covered under the Act either discovered during the investigation or reasonably flowing from the complaint.

(b) *Compliance review of audit.* The Director may periodically conduct audits or reviews of compliance with the provisions of this part (other than Subpart E) based upon receipt of audit reports or other information, which shall be completed within one year after initiation.

(c) *Notice of Noncompliance.* After the completion of an investigation, compliance review or audit, the Director shall decide whether the recipient government has complied with the provisions of the Act. If the decision is that the recipient government has substantially failed to comply with the Act, the Director shall provide the appropriate notice(s) of noncompliance which inform the recipient government of the corrective action necessary to achieve compliance and take appropriate steps to secure compliance.

(d) *Opportunity for hearing.* Whenever a recipient government fails to enter into a compliance agreement after receipt of appropriate notice(s) of noncompliance, the Director shall initiate an administrative hearing and, if appropriate, issue a determination of noncompliance pursuant to the provisions of Subpart G of this part. If a violation is found after such administrative hearing, the administrative law judge shall issue an initial decision that the recipient government is in noncompliance with the provisions of the Act and the Director shall withhold the further payment of entitlement funds, unless corrective action is taken within sixty (60) days of the notification of the determination.

(e) *Delay and constructive waiver of entitlement payments.* (1) The failure of a recipient government to comply with the assurance and reporting requirements of Subparts B and F of this part which include submission of reports and assurances and response to specific requests for information concerning possible violation of the Act, may result in the delay of the further payment of entitlement funds until the assurance, report or information requested is received. A delay of the payment of entitlement funds shall not be subject to the procedures for effecting compliance set forth in subsections (a) through (d) of this section.

(2) The Director may, after the payment of entitlement funds have been delayed for one or more of the entitlement periods pursuant to subparagraph (e)(1), determine that the payments to the recipient government for a particular entitlement period are constructively waived pursuant to § 51.25(b) of this part. Entitlement payments constructively waived will no longer be available to the recipient government. The constructive waiver shall not be subject to the procedures for effecting compliance set forth in paragraph (a) of this section or in Subpart E of this part.

§ 51.4 Transfer of entitlement funds to secondary recipients.

(a) *Restrictions, prohibitions and requirements applicable to secondary recipients.* The prohibitions, restrictions and requirements set forth in Subparts D, E, and F of this part that are applicable to a recipient government's use and expenditure of entitlement funds are also applicable to the expenditure of entitlement funds transferred to a secondary recipient by the primary recipient government. Any failure by a secondary recipient to comply with any provision of Subparts D, E, and F shall constitute noncompliance with such subparts by the primary recipient government. The Director shall effect compliance by taking appropriate enforcement action against the primary recipient government pursuant to Subparts A, E or G of this part.

(b) *Responsibilities of the primary recipient government for compliance by secondary recipient.* It is the responsibility of the primary recipient government to inform the secondary recipient of the requirements of this part and monitor its compliance. If the secondary recipient fails or refuses to comply with the restrictions and prohibitions or requirements applicable to the expenditure of entitlement funds, the primary recipient government responsible for achieving compliance may be required to withdraw funding in order to achieve compliance.

§ 51.5 Effect of State or local law.

Any State or local law, ordinance or regulation that substantially impedes compliance by a recipient government with the provisions of this part, shall be inoperative to the extent necessary to achieve such compliance or remedy.

§ 51.6 Applicability of other Federal laws.

Except as otherwise provided in the Act or this part, entitlement funds are not subject to Federal civil laws applicable only to Federally assisted programs or to Federal grants, loans or contracts. The Criminal Code of the United States (title 18, U.S.C.) shall be applicable to all criminal offenses relating to the expenditure, accounting or reporting of entitlement funds by a recipient government or secondary recipient of such funds under the Act or this part.

Subpart B—Assurances, Reports, and Public Participation

§ 51.10 Definitions.

As used in this subpart (except where the context clearly indicates otherwise) the following definitions shall apply:

(a) "*Budget*" means a plan for the overall allocation of funds, including entitlement funds, by a recipient government to various purposes during a specified fiscal period in accordance with its State or local law and procedure. A recipient government that does not formally adopt or enact such a plan, shall be deemed to have adopted or enacted a budget for purposes of this subpart when it has adopted or enacted a resolution, ordinance, or appropriation act, or taken other action dedicating, setting aside, or otherwise designating entitlement funds for a particular purpose or use.

(b) "*Budget summary*" means categories of expenditures for entitlement funds and general funds classified by major function and activity in accordance with the recipient government's State or local laws and procedures. Where there is no State or local law or procedure prescribing the expenditure classifications, the recipient government shall use the classifications of the Bureau of the Census.

(c) "*Enacted*" means, in the budget context, the act of final adoption, ratification, confirmation or other action with respect to an approved budget that makes the budget the official expenditure authorization of the recipient government. Where a State board or agency has statutory authority to review or approve the budget of a unit of local government, enacted means the

final action of the unit of local government.

(d) *"Entitlement funds"* means the amount of revenue sharing payments to which a State government or unit of local government is entitled as determined by the Director pursuant to an allocation formula contained in the Act and as established by regulations under this part, including the interest earned on entitlement funds deposited in financial institutions prior to their use, obligation or appropriation.

(e) *"Executive authority"* means the chief executive officer or other elected or appointed official of the recipient government whose statutory responsibility is to assemble budget data and prepare the budget document for presentation to the legislative body for enactment or approval.

(f) *"Fiscal year"* means the 12-month period or other fiscal period on the basis of which the recipient government operates.

(g) *"Impractical"* means, with respect to the publication requirement, that a newspaper of general circulation is available to the citizens of a recipient government but is not generally subscribed to or read within the community.

(h) *"Infeasible"* means, with respect to the publication requirement, that a newspaper of general circulation is not available or does not serve the citizens of a recipient government.

(i) *"Legislative body"* means the elected officials of the recipient government who have the primary legal responsibility for enacting the budget. A quorum or the minimum number of legislative officials needed to legally transact business, as determined by State and local law shall constitute the legislative body.

(j) *"Presented"* means, in the budget context, the submission of a proposed budget to the legislative body having primary legal responsibility for enacting the budget of a recipient government.

(k) *"Public hearing"* means an open public meeting called by a recipient government to provide all residents (without regard to taxpaying, voting status or handicap) with an opportunity to offer written and oral comments regarding the subject to be discussed. A public hearing required under this subpart may be held concurrently with other meetings held by the recipient government for public purposes (such as town meetings, budget sessions and other regular meetings), provided that the recipient government complies with the public notice requirements of this subpart.

(l) *"Publication"* means giving notice, to the citizens of the recipient government, of the date of public hearing, availability of documents for public inspection or other information. Publication is to be effected by publishing the information in a newspaper of general circulation or an alternative method authorized by the Director.

(m) *"Report"* means written response by a recipient government to any request for information or supporting documentation by the Director.

(n) *"Use report"* means a report required by the Director from each recipient government showing the amounts and purposes for which entitlement funds have been used in relation to the relevant functional items in the recipient government's budget.

§ 51.11 Reports to the Director; assurances; procedure for effecting compliance.

(a) *In general.* The Director may require each recipient government to submit such annual and interim reports as may be necessary to provide a basis for evaluation and review of compliance with, and effectiveness of, the provisions of the Act and regulations of this part. Such reports requested by the Director shall include the documentation necessary to support the statements contained therein.

(b) *Retention of documentation concerning public participation requirements.* Documentation establishing compliance with the assurance, reporting and public hearing requirements of this subpart, such as the publication of notices, supplementary budget information, and other information required to be available for public inspection, shall be retained for a period of 3 years. These documents shall be made available to the Director upon request.

(c) *Requisite assurance for receipt of entitlement funds.* In order to qualify for entitlement funds for an entitlement period, the chief executive officer of each recipient government, when requested by the Director, shall file a Statement of Assurances on a form to be provided. The Statement of Assurances will state the recipient government's intention to comply with specified requirements, prohibitions and restrictions of the Act and Subparts B, D, E, and F of this part, with respect to the use of entitlement funds. The Governor of each State may upon written request to the Director, review and comment on the adequacy of the assurances by units of local government other than Indian tribes and Alaskan native villages, located within the State.

(d) *Procedure for effecting compliance.* (1) If a recipient government fails to comply with the public participation requirements of this subpart, the Director shall apply the procedures for effecting compliance set forth in § 51.3(a) through (d) of Subpart A and hearing procedures of Subpart C of this part.

(2) If the recipient government fails to comply with the assurance and reporting requirements of this part, the Director may implement the delay of payment and/or constructive waiver provisions of § 51.3(e) of subpart A and § 51.25(b) of Subpart C of this part.

(Information collection requirements in paragraph (a) approved by the Office of Management and Budget under control number 1505–0038, and in paragraph (b) under control numbers 1505–0038 and 1505–0086)

§ 51.12 Use reports.

(a) *In general.* Each recipient government shall submit a report to the Director (or to the Bureau of the Census or other agency that the Director may designate) setting forth the amounts and purposes for which entitlement funds have been appropriated, spent or obligated during its fiscal year. Such report shall also show the relationship of the entitlement funds to the relevant functional items in the recipient government's budget and shall identify differences between the actual use of entitlement funds and the use of such funds as planned in the enacted budget. The report shall be filed on the form prescribed and approved by the Director and shall be submitted within the requested time period. Failure to file the report as prescribed by the Director may jeopardize future entitlement payments pursuant to § 51.3(e) of this part.

(b) *Public inspection.* A copy of the use report and documentation necessary to support the statements contained therein shall be made available to any person for a period of three years. Within 30 days after the use report is filed, this information shall be placed at the principal office of the recipient government for public inspection during normal business hours. Where feasible, local public libraries and other public buildings should be used also. If the recipient government has no principal office, the report and supporting documentation shall be made available for public inspection at a public place or places within the boundaries of the recipient government.

(c) *Reports to the Bureau of the Census.* It shall be the obligation of each recipient government to comply promptly with requests by the Bureau of the Census (or by the Director) for data, information and reports relevant to the

determination of allocation and the appropriation or use of entitlement funds. Failure of any recipient government to comply may result in the withholding of entitlement payments pursuant to § 51.3(e) of subpart A and § 51.25(b) of Subpart C of this part.

(d) *Submission of use reports to Governor.* The Director (or such agency as the Director may designate) shall, upon written request, furnish the reports required under paragraph (a) of this section, except those reports relating to Indian tribes and Alaskan native villages, to the Governor of the State in which a recipient government is located, in the manner and form prescribed by the Director.

(Information collection requirements in paragraphs (a) and (b) approved by the Office of Management and Budget under control number 1505–0086)

§ 51.13 Publication requirements

(a) *Notice of availability of use reports.* The recipient government shall publish a notice which indicates that the use report required by § 51.12 of this subpart is available for public inspection within thirty (30) days of the filing of the report with the Director or other designated agency. Such notice shall specify the location(s) and hours during which the report and its supporting documentation are available to the public. Publication of the notice shall be made in a newspaper of general circulation serving the recipient government's geographic area.

(b) *Notice of availability of audit report.* A recipient government shall make the audit report available for public inspection and publish notice of the availability of the report within thirty (30) days of completion of the report as provided in § 51.108 (a) and (b) of this part.

(c) *Public notice of budget hearing.* (1) Notice of the budget hearing required by § 51.14 shall be published in a newspaper of general circulation serving the recipient government's geographic area no later than 10 days prior to the scheduled date of the hearing. The notice shall also be provided in a manner that reaches the visually impaired as provided in § 51.55(b)(1)(iv) of this part. The notice shall specify the date, place, and time of the public hearing, and that all citizens attending the hearing have the right to provide written and oral comments and ask questions concerning the entire budget and the relationship of entitlement funds to the entire budget. The notice shall state how, in the context of its proposed budget, the recipient government intends to use its entitlement funds, and shall require a budget summary of its entire proposed budget. In addition, the notice shall advise when and where the above information, together with a copy of the entire proposed budget, shall be made available for public inspection.

(2) Whenever State or local law provides for a specified time period within which a recipient government is required to publish notice of a budget hearing or to permit public inspection of its proposed budget for a specified time period, the recipient government shall comply with the time period for publication or public inspection required by its State and local law, provided that it is not less than seven (7) working days.

(d) *Published notice of availability of summary of enacted budget.* Public notice shall be published in a newspaper of general circulation serving the geographic area of the recipient government within thirty (30) days after enactment of the budget. The notice shall state where and when the summary of the enacted budget is available for public inspection.

(e) *Waiver of newspaper publication requirements.* (1) The publication requirements contained in this section may be waived by the Director upon receipt of a written request by the chief executive officer of the recipient government. The request shall include an itemized cost estimate verified by a newspaper, which shows how the cost of publication will exceed fifteen (15) percent of the amount of entitlement funds included in the proposed budget. In addition, the request shall propose an alternative method of publication which provides the citizens of the jurisdiction with adequate notice of the budget hearing and the opportunity to review the budget summary. Any alternative method of publication shall meet the notice and time requirements and include the information required by this section.

(2) When newspaper publication of the notice of the budget hearing and the budget summary is impractical or infeasible, the Director may waive the newspaper publication requirement upon receipt of a written request by the chief executive officer of the recipient government. The request shall indicate the circumstances which make publication in a newspaper impractical or infeasible and shall propose an alternative method of publication. The waiver must be requested and approved before the proposed appropriation of entitlement funds occurs.

(f) *Notification of news media.* Each recipient government shall advise the news media, including minority, bilingual and foreign language news media, serving its geographic area and shall provide the news media with copies of reports, notices, or budget information on request, at the same time that any public report, notice of hearing, or budget information is required to be published in a newspaper under this subpart.

(g) *Legal notice rules not applicable.* Whenever any section of this subpart requires the newspaper publication of a report, public notice, budget summary, or any other required information, the recipient government may publish the required information in a newspaper of general circulation serving its geographic area without regard to State or local statutory requirements for the publication of legal notices. Prominently displayed advertisement or news articles may be used to provide newspaper notice required by this subpart. Such article or advertisement must contain all of the required information.

(Information collection requirements in paragraph (e)(2) approved by the Office of Management and Budget under control number 1505–0086)

§ 51.14 Budget hearing.

(a) *Budget hearing requirement*—(1) *In general.* Each recipient government which expends entitlement funds in any fiscal year pursuant to a budget enacted on or after January 1, 1977 shall have at least one public hearing on the government's proposed uses of entitlement funds in relation to its entire budget (i.e., the general revenues and all other funds proposed for appropriation during the fiscal period). The budget hearing shall be conducted by the legislative body, or the appropriate committee thereof, prior to enactment of the budget. The number of representatives of the legislative body required to be present at the hearing is the same as that required for a budget hearing under State or local law. All citizens of the recipient government shall have a reasonable opportunity to provide written and oral comments, and to ask questions concerning the entire budget and the relationship of entitlement funds to the entire budget. The budget hearing required by the paragraph shall be held at a date, place, and time and in a manner that permits and encourages public attendance and particiation by all citizens.

(2) *Recipient government with bicameral legislature.* For those recipient governments which have a bicameral legislature, the hearing shall be held before the appropriate committee in each house of the legislature, or before an appropriate

joint committee of both houses of the legislature.

(3) *Scope of application.* The budget hearing requirement shall apply to all entitlement funds received under the Revenue Sharing Program and interest earned on these funds. Amounts received in excess of estimated allocations or amounts discussed and not apropriated at previous hearings are subject to the notice and hearing requirements of §§ 51.13 (b) and (c) and 51.14.

(b) *Alternative procedures for budget hearing.* A recipient government may use an alternative budget hearing process without obtaining prior approval from the Director if it complies with the public notice requirements contained in paragraph (c) of § 51.13 and if:

(1) The recipient government, pursuant to State or local law, governing the expenditure of its own revenues, is required to follow a budget procedure which requires a public hearing that provides all citizens the opportunity to provide oral and written comments and ask questions concerning the proposed use of all revenues to be budgeted by the recipient government, including the use of entitlement funds and their relationship to the entire budget; and

(2) Documentation that the recipient government's alternative budget hearing procedures comply with State or local law shall be made available for public inspection during normal business hours at the principal office of the recipient government and submitted to the Director upon request.

(c) *Public inspection.* At least ten (10) days prior to the revenue sharing budget hearing a recipient government shall make available for public inspection during normal business hours, at the principal office of such government, a statement of the government's proposed uses of entitlement funds in the context of its proposed budget, a summary of the entire proposed budget, which describes the uses proposed for entitlement funds, general revenues and other funds, and a copy of its entire proposed budget. If a recipient government has no principal office, then making the above materials available at a public place within the political boundaries of the recipient government shall satisfy the requirements of this paragraph. Where feasible, local public libraries and other public buildings should be used for the purpose of providing additional places for public inspection of these materials. Notice shall be provided of the availability of the information for public inspection in the manner provided in § 51.13 of this subpart.

(d) *Summary of enacted budget.* Within thirty (30) days after enactment of a budget as provided by State or local law, a summary of the enacted budget showing the intended uses of entitlement funds and information necessary to support the data in the summary shall be made available for public inspection during normal business hours at the principal office of the recipient government. If a recipient government has no principal office, the summary of the enacted budget and the enacted budget document shall be made available for public inspection at a public place within the boundaries of the recipient government to satisfy the requirements of this paragraph. Where feasible, local public libraries and other public buildings should be used for the purpose of providing additional places at which the public may inspect the budget summary and the enacted budget. Notice shall be provided of the availability of the budget summary and enacted budget for public inspection, in the manner provided in § 51.13 of this subpart.

§ 51.15 Amendments or modification to enacted budget.

(a) *Amendments or modification pursuant to State or local law.* Where applicable State or local law exists which governs amendments or modifications of existing budgets, and requires public notice, at least one public hearing, and the availability of the amendments or modifications for public inspection, the recipient government shall comply with the State or local law when making a major change to an enacted budget.

(b) *Amendments or modifications in absence of State or local law.* In the absence of applicable State or local law, the provisions of §§ 51.13 and 51.14 shall apply to any amendments, modification or revision of an enacted budget when a major change is proposed.

(c) *Major change defined.* For the purposes of this section, a major change is any change in the enacted budget which, on a cumulative basis, affects the use of the more than $2,000 of entitlement funds and affects twenty-five (25) percent or more of the entitlement funds as originally enacted in the budget of the recipient government. An amendment or modification that does not meet both criteria shall not be considered a major change.

§ 51.16 Participation by senior citizens.

A recipient government shall endeavor to provide senior citizens, and organizations representing the interests of senior citizens, with an opportunity to be heard and present their views regarding the use of entitlement funds, in any hearing or proceeding required under this subpart or under its own budget processes, prior to final allocation of such funds.

Subpart C—Computation and Adjustment of Allocations and Entitlements

§ 51.20 Data.

(a) *In general.* The data used in determination of allocations and adjustments to allocations, payable under this part, will be the latest and most complete data supplied by the Bureau of the Census, the Bureau of Indian Affairs, the Bureau of Economic Analysis and the Internal Revenue Service which are available prior to the allocations for an entitlement period unless, in the judgment of the Director, the data provided by those agencies are not current enough or are not comprehensive enough to provide for equitable allocations.

(b) *Computation and payment of entitlements.* (1) Allocations will not be made to any unit of local government if the available data is so inadequate as to frustrate the purpose of the Act. Such units of local government will receive an entitlement and payment when current and sufficient data become available to permit an equitable allocation.

(2) Payment to units of local government for which the Director has not received an address confirmation will be delayed until proper information is available to the Director.

(3) Where the Director determines that the data provided by the agencies listed in subsection (a) of this section are not sufficiently current or comprehensive enough to provide for equitable allocations, the Director may authorize the use of other data, including estimates. The Director's determination shall be final and such other additional data and estimates as are used, including the sources, shall be publicized by notice in the Federal Register.

(4) *Currency of tax collection.* Only that tax data, which is received in the most recent reporting year available from the appropriate agencies prior to the allocation for an entitlement period, shall be used in the determination of allocation for an entitlement period, except as provided in §§ 51.21 and 51.22 of this subpart.

(c) *Special rule for less than one year entitlement periods.* For entitlement periods which encompass less than one year, the adjusted taxes and intergovernmental transfers of any unit

of local government for the entire reporting year will be used. The limitation that the amount allocated to a recipient government shall not exceed fifty (50) percent of the sum of the recipient government's adjusted taxes and intergovernmental transfers of revenues shall be reduced proportionately for entitlement periods which are less than one year.

(d) *Units of local government located in more than one county area.* In cases where a unit of local government is located in more than one county in one or more States, each part of that unit in each county is treated for allocation purposes as a separate unit of local government, and the adjusted taxes and intergovernmental transfers of such parts are estimated on the basis of the ratio which the population of that part bears to the entire population of the local government. Parts of a unit with population below one hundred (100), however, need not be treated for allocation purposes as a separate unit of local government.

§ 51.21 Data affected by a major disaster.

(a) *In general.* Any change in data otherwise eligible for use in determining the allocation of a recipient government after April 1, 1974, shall be disregarded for a period of 60 months if that change:

(1) Resulted from a major disaster as determined by the President under section 301 of the Disaster Relief Act of 1974 (section 414 of Pub. L. 93–288) and

(2) Results in a data factor which is less beneficial to the recipient government than the pre-disaster data factor for purposes of the revenue sharing allocation process.

(b) *Pre-disaster data factor.* For the purposes of this section, a pre-disaster data factor is defined as a data factor of record for the final revenue sharing allocation which was calculated for a time period immediately preceding the data factor time period in which the disaster occurred and, therefore, could not have been affected by the disaster.

(c) *Eligibility requirements.* To be eligible for the data stabilization benefits of paragraph (a) of this section, a recipient government shall be:

(1) Located within a State designated by the President as a major disaster area, and

(2) Located within a geographical subdivision of the State certified to the Office of Revenue Sharing as a major disaster area by the Administrator of the Federal Emergency Management Agency.

(3) Each recipient government within the specific geographic area so designated will be notified, pursuant to the data improvement program provided for in section 51.29 of this subpart, of each of its data factors developed subsequent to the major disaster designation, which are less beneficial than the pre-disaster data factors. The chief executive officer of the recipient government must verify that the data was adversely affected by the major disaster. In addition, the Director may require that the verifications be accompanied by substantiating documentation which establishes the causal relationship between the major disaster and the current beneficial revenue sharing data factor of record. The Director, upon being satisfied that all of the requirements of this section have been met with respect to any post-disaster data factor, shall refrain from using the post-disaster data factor in the allocation process of an entitlement period, and shall continue to use the pre-disaster data factor in the allocation process for each entitlement period that begins during the 60-month period after the President's designation of the specific major disaster area unless:

(i) A data factor for a current entitlement period is more beneficial than the pre-disaster data factor, or

(ii) A post-disaster data factor of an entitlement period is not verified by the chief executive officer as having been adversely affected by the major disaster.

(iii) The Director determines that the data used for revenue sharing allocations in a State has been significantly affected by other causes subsequent to the disaster declaration by the President. In such cases, the Director will determine the entitlement of a recipient government affected by a major disaster by using current data of record, reasonably adjusted to account only for the effects of the disaster.

(d) *Multiple disasters.* Recipient governments may be in areas designated by the President as specific major disaster areas as the result of two or more disasters. Recipient governments in such areas will also be provided their appropriate pre-disaster data for verification. The 60-month period for which more beneficial pre-disaster data may be used for a government shall be determined by the most recent designation by the President of a specific major disaster area containing that government.

(e) *Effect on later entitlement periods of failure to verify.* A recipient government which does not verify that an adverse data change is caused by a disaster in an entitlement period when it was afforded an opportunity to do so does not lose the opportunity to verify in a later entitlement period that a disaster has affected the data factor for that later entitlement period.

(f) *Per capita income data.* Increases in per capita income data subsequent to disasters in designated disaster areas will not be considered adverse data changes resulting from a disaster for purposes of section 6713(c)(2) of the Act.

(g) *60-month period.* The post-disaster data factor shall be used for the first entitlement period beginning after the end of the sixty (60) months referred to in § 51.21(a).

§ 51.22 Adjusted taxes.

(a) *In general.* Tax revenues are compulsory contributions to a unit of local government exacted for public purposes, as such contributions are determined by the Bureau of the Census for general statistical purposes. The term "adjusted taxes" means the tax revenues adjusted by excluding an amount equal to that portion of the compulsory contributions which is properly allocable to school operations, debt service on school indebtedness, school capital outlays, and other educational purposes.

(b) *Procedure for exclusion of tax revenues for education.* The tax revenues exacted by a unit of local government shall be adjusted to exclude any such tax revenues used for financing education in a manner consistent with the following provisions:

(1) Where a unit of local government finances education from a specific fund and lists tax revenues to the fund or levies a separate tax for purposes of education, this amount will constitute the tax revenues for education.

(2) If tax revenues for purposes of education are not separately identifiable because education is financed by expenditure or transferring of moneys from a general fund (or similarly named fund) to a school fund or funds, then the ratio of tax revenues (as defined in paragraph (a) of this section) to the total revenues in the fund shall be calculated, and that ratio, multiplied by the expenditure or transfer of non-dedicated moneys from the fund to the school fund, shall be equated with the tax revenues properly allocable to expenses for education. The phrase "total revenues in the fund" means cash and securities on hand in the general fund (or similarly named fund) at the beginning of the fiscal year, plus all non-dedicated revenues to the fund (other than trust or agency revenues) less cash and securities on hand at the end of the fiscal year. Trust and agency funds are those held specifically for individuals or governments for which no discretion can be exercised as to the amounts to be paid to the recipient.

(3) If any instance where neither paragraph (b)(1) nor (2) of this section permits determination of school taxes, then any procedure deemed equitable by the Director shall be utilized to ascertain adjusted taxes.

(c) *Validity of adjusted tax data; economic dislocation.* (1) Allocation of funds under the Act will be based on data reported by States and units of local government to the Bureau of the Census and shall be in accordance with definitions established by the Bureau of the Census. No State or unit of local government shall report to the Department of the Treasury or the Bureau of the Census in a manner which attempts to circumvent or frustrate the intent of this section.

(2) The Director will disregard the reduction in the amount of adjusted taxes of a unit of general local government for one entitlement period if this reduction results from a specific economic dislocation as defined in § 51.2(p) of this part.

(d) *Definition of Massachusetts tax effort.* (1) The adjusted taxes of units of local government within the Commonwealth of Massachusetts for the entitlement period beginning October 1, 1983 shall include property taxes levied for the Commonwealth's 1982 fiscal year and recognized as fiscal year 1982 receipts pursuant to Massachusetts General Laws, chapter 59, sections 21 and 23, and chapter 44, sections 35 through 46.

(2) No tax collections credited to any unit of general local government under paragraph (d)(1) of this section for the Commonwealth's 1982 fiscal year shall be credited to that unit of general local government for any other fiscal year for use in determining its adjusted taxes.

(Information collection requirements in paragraph (c)(2) approved by the Office of Management and Budget under control number 1505-0082)

§ 51.23 Dates for finalizing data.

(a) *Data definitions.* Pursuant to the provisions of § 51.20 (a) and (b)(3), the determination of the data definitions upon which the allocations and entitlements for an entitlement period are to be calculated shall be made no later than the day immediately preceding the beginning of the entitlement period. The final data definitions published in the **Federal Register**, prior to each entitlement period, shall not be subject to change.

(b) *Effect of reauthorization upon data definition.* Whenever the Congress enacts reauthorization legislation for the Revenue Sharing Act after the beginning of an entitlement period that is within the scope of the reauthorization, appropriate data definitions, or partial amendments to definitions, for that entitlement period will be published as soon as practicable after the enactment of such legislation.

(c) *Initial allocation.* The date upon which initial allocations for an entitlement period are calculated for payment purposes shall be determined by the Director as soon as practicable and shall be publicized by notice in the **Federal Register.**

(d) *Adjusted taxes and intergovernmental transfers.* The date for determining the amount of adjusted taxes and intergovernmental transfers of a unit of local government will be the fiscal year that can be uniformly assembled for all units of local government prior to the beginning of the affected entitlement period.

§ 51.24 Boundary changes, governmental reorganization, etc.

(a) *In general.* A boundary change, governmental reorganization, or change in State statutes or constitution, relevant to the computation of entitlement of a unit of local government under the Act, which occurs during an entitlement period shall not result in a change to the entitlement of that government until the next entitlement period. However, payment(s) tendered to such government for the entitlement period may be redistributed pursuant to the provisions of paragraphs (b) and (c) of this section.

(b) *New units of local government.* A unit of local government which came into existence as an active government during an entitlement period shall first be eligible for an allocation for the next entitlement period. A new unit of local government must establish its eligibility for an entitlement period within one year after the end of that period by providing documentation of its boundaries, State certification and its activation date to the ORS or the Bureau of the Census. However, if such unit is a successor government, it shall be eligible to receive the entitlement payment of the unit or units of local government which it succeeded in accordance with the conditions of the succession.

(c) *Dissolution of units of local government.* A unit of local government which dissolved, was absorbed or ceased to exist as such during an entitlement period is eligible to receive an entitlement payment for that entitlement period; *Provided,* That such unit of local government is in the process of winding down its governmental affairs or a successor unit of local government has the legal capacity to accept and use such entitlement funds. Entitlement payments which are returned to the Director because of the cessation of existence of a unit of local government shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such times as they can be redistributed according to the conditions under which the unit of local government ceased to exist. An entitlement payment not used by a dissolved unit of local government or its successor government or governments shall be added to and shall become a part of the entitlement of the next higher eligible unit of government in that State. If that government cannot receive the entitlement funds, they shall be added to the appropriate State reserve.

(d) *Limitations on adjustment for annexations.* Annexations by units of local government shall not affect the entitlement of any unit of local government for an entitlement period, unless the Director determines that adjustments pursuant to such annexations would be equitable and would not be unnecessarily burdensome, expensive, or otherwise impracticable.

(e) *Certification.* Units of local government affected by a boundary change, governmental reorganization, or change in State statutes or constitution shall, before receiving an entitlement adjustment or payment redistribution pursuant to this section, obtain State certification that the change was accomplished in accordance with State law. The certifying official shall be designated by the Governor, and the certification shall be submitted to the Bureau of the Census.

§ 51.25 Waiver of entitlement; nondelivery of checks; insufficient data.

(a) *Waiver.* Any unit of local government or Indian tribe or Alaskan native village may waive its entitlement for any entitlement period; *Provided,* That the chief executive officer, with the consent of the governing body of the government, notifies the Director that the entitlement payments for a past, current, or next beginning entitlement period, or any combination thereof, are being waived. A waiver of entitlement for the next beginning entitlement period will only be given effect if the waiver notice is received during the 6-month period immediately preceding that entitlement period. In the event that an entitlement payment is returned or a notice of waiver is executed which is not in accordance with this procedure, the chief executive officer will be notified by the Director and, unless the attempted waiver is rescinded within thirty (30) days of the notice, it shall be

given effect. However, in no event will a notice of waiver be given effect for an entitlement period which follows the next beginning entitlement period. The entitlement waived, and any adjustments resulting from recalculation of earlier entitlements, shall be added to and shall become a part of the entitlement of the next higher unit of government eligible to receive entitlement funds in that State in which the unit of local government, Indian tribe or Alaskan native village waiving the entitlement is located. If that government cannot receive the entitlement funds, they shall be added to the appropriate State reserve. A waiver of entitlement by a unit of local government, Indian tribe or Alaskan native village shall be deemed irrevocable thirty (30) days prior to the first payment for the entitlement period to which it relates.

(b) *Constructive waiver.* Any recipient government which has not waived and is otherwise eligible to receive entitlement payments and which has failed to submit reports or assurances required pursuant to Subparts B, E or F, of this part is subject to having the Director constructively waive one or more of its entitlement payments for the applicable entitlement period. Prior to such a waiver, the Director shall, in two separate notices of not less than thirty (30) days each, notify nonresponsive recipient governments of their noncompliance and that their entitlement payment(s) for the affected entitlement period(s) are being temporarily withheld pursuant to §§ 51.3(c), 51.11(d), 51.43(b), 51.60(c), and 51.109(b) of this part. If compliance is not achieved by the end of each affected entitlement period, or a reasonable period thereafter as determined by the Director, the Director shall make a determination that the payments to the nonresponsive recipient governments will or are continued to be constructively waived. Entitlement funds constructively waived will be redistributed pursuant to the provisions of paragraph (a) of this section.

(c) *Nondelivery.* Entitlement payments for any entitlement period which are returned to the Department of the Treasury as being nondeliverable because of incorrect address information, or which are unclaimed for any reason, shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

(d) *Insufficient data.* Entitlement funds for any entitlement period which are withheld from payment because of insufficient data upon which to compute the entitlement, or for which payment cannot be made for any other reason, shall remain in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

§ 51.26 Reservation of funds; adjustment of entitlements and allocations.

(a) *Reservation for State adjustment reserves.* (1) The Director shall reserve in the State and Local Government Fiscal Assistance Trust Fund a percentage, not to exceed 0.5 percent of the total allocation for all units of local government within a State, except for the District of Columbia, for any entitlement period. The reserve funds shall be used to ensure that there will be sufficient funds available to pay adjustments due, as a result of insufficient or erroneous data or any other reason, after the final allocations of funds and for temporary uses of the reserve as provided in paragraphs (d) and (e) of this section. The reserves shall be known as State Adjustment Reserves.*

(2) Amounts remaining in the reserves shall accumulate until the liabilities of the Trust Funds to the recipient governments within each State are discharged or sufficiently diminished to permit an allocation to recipient governments within the State area. This distribution shall reflect the allocation of Revenue Sharing funds within the State for the most recently completed entitlement period.

(b) *Adjustment to entitlement payments.* (1) Payments shall be made on the basis of the initial allocation, for an entitlement period, subject to adjustment for underpayments and overpayments as reflected in the allocations for prior entitlement periods. Adjustments in the payments to a recipient government due to data corrections reflected in the allocations for an entitlement period will generally be effected through adjustment to subsequent entitlement payments to the recipient government unless circumstances exist as provided for by paragraph (c) of this section.

(2) The final allocation shall be calculated to reflect the most recent data brought to the attention of the Director not later than one year following the end of an entitlement period. Adjustments which reflect data changes pursuant to § 51.20 of this part, after an interim allocation shall be made to subsequent entitlement payments, except as provided for in paragraph (c) of this secion.

(3) The Director may demand increases and decreases in payments of governments as a result of the final allocation for an entitlement period pursuant to 31 U.S.C. 6702. The Director shall adjust the payments to each recipient government to reflect the final allocation for each entitlement period.

(c) *Substantial overpayments.* In the event that an overpayment is so substantial as to make repayment by downward adjustment to subsequent payments during the authorized term of the Revenue Sharing Program infeasible, the director may demand that the amount, that cannot be offset, be repaid immediately to the State and Local Government Fiscal Assistance Trust Fund. Appropriate action to seek collection will be taken in such cases should the recipient government decline to voluntarily repay the amount to the overpayment.

(d) *Allocation adjustments from state adjustment reserves.* (1) Permanent adjustments from the state adjustment reserves may be made only to cover those increases of decreases in allocations which result from data revisions of which the Director is notified in accordance with § 51.29 of this subpart and which were not included in the final allocation for the entitlement period, except as indicated in paragraph (e) of this section.

(2) Temporary allocation adjustments from the reserve will be limited by the amount in a State's Adjustment Reserve. Temporary allocation adjustment will be permitted from the reserve only pursuant to the following criteria:

(i) When a recipient government has not been notified of data factors, pursuant to § 51.29 of this part, prior to the initial allocation for a particular entitlement period; *or*

(ii) The recipient government notified the Director of data errors pursuant to § 51.29, but the correction was not made in time for the initial allocation of that period; *and*

(iii) The adjustment increase described in paragraphs (d)(2)(i) and (ii) of this section must represent thirty (30) percent of the recipient government's initial allocation, the error was caused by a Federal Agency and the request for the temporary adjustment is made in writing to the Director.

(e) *Accounts receivable and reserves.* Funds from the State Adjustment Reserves may be used to cover accounts receivable funds while they are being collected. The State Adjustment Reserves may also be used to cover uncollectible accounts receivable.

§ 51.27 State to maintain transfers to local governments.

(a) *General Rule for Entitlement Periods beginning before October 1,*

1983. The payment of Review Sharing funds to any State government for any entitlement period beginning before October 1, 1983 for which were appropriated for State governments, shall be reduced by the amount (if any) by which—

(1) One-half of the aggregate amounts transferred by the State government out of its own sources during the 24-month period ending the last day of the last fiscal year for which the Bureau of the Census has relevant data on the first day of such entitlement period, to all units of local government in such State is less than—

(2) One-half the similar aggregate amount for the 24-month period ending the day before the 24-month period described in paragraph (a)(1) of this section.

For purposes of paragraph (a)(1) of this section, the amount of any reduction in the entitlement of a State government under this section for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State (out of its own sources) government in such State. The phrase "own sources" means all sources of State revenue (including debt proceeds and State's revenue sharing entitlement funds) but excluding intergovernmental revenues received from the Federal government.

(b) *Measurement of maintenance of effort.* The following formula will be applied by the Director to establish the base year intergovernmental transfers to units of local government from the State's own sources and to generally monitor the level of effort in accordance with the maintenance provisions of paragraph (a) of this section during future entitlement periods:

(1) It shall be assumed that the ratio of a State's own source intergovernmental transfers to units of local government to that State's total intergovernmental transfers to units of local government is equal to the ratio of that State's own source revenues to its total revenues. Thus, for a State in which such formula may be applied, its base year own source intergovernmental transfers to units of local government shall be asssumed to equal its total intergovernmental transfers to units of local government in the base year multiplied by its own source revenue in the base year divided by its total revenues in the base year.

(2) In a State in which the formula is applied, the State's own source intergovernmental transfers to units of local government in a future entitlement period shall be assumed to equal the average of—

(i) The State's total intergovernmental transfers to units of local government during that period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by is own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year) and

(ii) The State's total intergovernmental transfers to units of local government during the preceding entitlement period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year).

(3) Therefore, in a State in which the formula is applied, maintenance (for a given entitlement period) of intergovernmental transfer effort to units of local government will be measured by the difference between that State's average aggregate intergovernmental transfers to units of local government (over the appropriate periods) as calculated by employing the method described in paragraph (b)(2) of this section and that State's own source intergovernmental transfers to units of local government in the base period as calculated by employing the method described in paragraph (b)(1) of this section.

(4) If the application of this formula during any entitlement period indicates that a State government has not maintained its intergovernmental transfer effort, i.e., should a State's intergovernmental transfers to units of local government, for a particular period, be less than transfers calculated for the base period, the difference (as defined in paragraph (b)(3) of this section) shall constitute the future indicated reduction in that State's entitlement unless such State can document to the Director that the fact or amount of nonmaintenance, as determined by application of the formula, is inaccurate.

(c) *Alternative procedure.* If the Director determines that the application of the formula set forth in paragraph (a) of this section in a particular case provides an inaccurate or unfair measurement of transfer effort, then any formula, procedure, or method deemed equitable by the Director may be utilized to measure such transfer effort for the purpose of implementing the maintenance provision.

(d) *Adjustment where State assumes responsibility for category of expenditures.* If the State government establishes to the satisfaction of the Director that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then the aggregate amount taken into account under paragraph (a)(2) of this section shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts, which for the period used for the purposes of this paragraph, it transferred to units of local government.

(e) *Adjustment where new taxing powers are conferred upon local governments.* If a State establishes to the satisfaction of the Director that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, the aggregate amount taken into account under paragraph (a)(2) shall be reduced to the extent of the larger of—

(1) The amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

(2) The amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments. No amount shall be taken into consideration under paragraph (e)(1) of this section if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Director to have decreased a related State tax.

(f) *Adjustment where Federal government assumes responsibility for category of expenditures.* If in an entitlement period beginning on or after January 1, 1977, a State government establishes to the satisfaction of the Director that the Federal government has assumed responsibility for a category of expenditures for which such State government transferred amounts, during all or a part of the period utilized for purposes of paragraph (a)(1) of this section, which (but for this paragraph) would be included in the aggregate amount taken into account under paragraph (a)(2), the aggregate amount shall be reduced to the extent that increased Federal government spending has replaced corresponding amounts which such State government had transferred to units of local government.

(g) *Computation by the Office of Revenue Sharing.* The Director shall make the computation required for the determination of maintenance of effort, based on data furnished by the Bureau of the Census. The Bureau of the Census shall provide to the Office of Revenue Sharing the following data pertaining to

a State's transfer of funds to units of local government for the State's appropriate fiscal year:

(1) The State's own source funds.

(2) The State's total funds.

(3) The State's own source transfers to units of local government.

(4) The State's total transfers to units of local government.

(h) *Reduction in entitlement.* If the Director has reason to believe that paragraph (a) of this section requires a reduction in the entitlement of any State government for any entitlement period, the Director shall give reasonable notice and opportunity for hearing to the State. If, after a hearing it is determined that a reduction is required, the Director shall determine the amount of the reduction, notify the Governor of the affected State of the determinations and withhold from subsequent payments to such State government under this part an amount equal to the reduction.

(i) *Transfer to general fund.* An amount equal to the reduction in the entitlement of any State government which results from the application of this section shall be transferred from the Secretary's Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

§ 51.28 Optional formula.

(a) *In general.* A State government may by law provide for the allocation of funds among the county areas, or among units of local government (other than county governments, Indian tribes, and Alaskan Native Villages):

(1) On the basis of the population multiplied by the general tax effort factors of such areas or units of local government; or,

(2) On the basis of the population multiplied by the relative income factors of such areas or units of local government; or,

(3) On the basis of a combination of those two factors.

(4) Any State which provides by law for such a variation in the allocation formula provided by section 6711 of the Act, shall notify the Director of the new law no later than 90 days before the beginning of the first entitlement period to which it is to apply. Any such law shall:

(i) Provide for allocating 100 percent of the aggregate amount to be allocated under subsections 108(a) or 108(b) (2) and (3) of the Act;

(ii) Apply uniformly throughout the State; and

(iii) Apply during the period beginning on the first day of the first entitlement period to which it applies and ending on September 30, 1983.

(b) *Single legislation required.* If a State government alters its county area allocation formula or its local government allocation formula, or both, such alteration may be made only once and is required to be made in the same legislative enactment.

(c) *Certification required.* Paragraph (a) of this section shall apply within a State only if the Director certifies that the State law complies with the requirements of the paragraph. The Director shall not certify any such law with respect to which notification is received later than thirty (30) days prior to the initial entitlement period during which it is to apply.

§ 51.29 Notification and adjustment of data factors.

(a) *Notification of data factors.* The data factors used in computing allocations of funds under the Act for any entitlement period will be made available to each State government and unit of local government as soon as practicable. Each such government will be given a reasonable opportunity to question its data factors in writing by providing factual documentation which demonstrates evidence of error in the data as defined in § 51.23(a) for that entitlement period, no later than one year from the end of the entitlement period for which the data are applicable.

(b) *Time limit for data changes.* If it is established to the satisfaction of the Federal agency responsible for providing the challenged data, by factual evidence and documentation that the data used in the computation of an allocation are erroneous, an adjustment will be made to the entitlement payment of such government. No adjustment shall be made unless evidence and documentation of the error in the data, as defined for that entitlement period, is provided to the Director for determination within one year of the end of the entitlement period with respect to which the allocation is made. Except for Indian tribes and Alaskan Native Villages, no adjustment of any kind, which is less than $200, shall be made to an entitlement if in the judgment of the Director such adjustment will be burdensome, expensive, or otherwise impracticable.

§ 51.30 Adjustment to entitlements; application of adjustments.

(a) *County area maximum and minimum per capita entitlement*—(1) *In general.* Pursuant to section 6708(b) of the Act, the per capita amount allocated to any county area shall be not less than twenty (20) percent, nor more than 145 percent, of the amount allocated to the State under section 6706 of the Act, divided by the population of that State.

(2) *One hundred forty-five percent rule.* If a county area allocation is greater than the 145 percent limit, its allocation shall be reduced to the 145 percent level and the resulting surplus shall be shared proportionately by all remaining unconstrained county areas.

(3) *Twenty percent rule.* If, after the application of subsection (a)(2) of this section, a county area allocation is less than the 20 percent limit, its allocation shall be increased to the 20 percent level and the resulting deficit shall be shared proportionately by all remaining unconstrained county areas.

(b) *Local governments (other than a county government, Indian tribe or Alaskan native villages—(1) In general.* Except as provided below, the per capita amount allocated to any unit of local government (other than a county government, Indian tribe or Alaskan native village) shall be not less than 20 percent, nor more than 145 percent, of the amount allocated to the State under section 6706 of the Act, divided by the population of that State.

(2) *One hundred forty-five percent rule.* If a unit of local government is allocated an amount greater than the 145 percent limit, its allocation shall be reduced to that level.

(3) *Twenty-percent rule.* If a unit of local government is allocated an amount less than the 20-percent limit, its allocation shall be increased to the lower of the 20 percent limit or 50 percent of the sum of that local government's adjusted taxes and transfers and intergovernmental transfers of revenue (other than entitlement funds).

(4) *Allocations less than $200.* If a unit of local government (except for Indian tribes and Alaskan Native Villages) below the level of a county government, is allocated an amount less than $200 for an entitlement period, the amount of the allocation of that local government for that entitlement period shall become a part of the allocation of the county government of the county area in which the local government is located.

(c) *Fifty percent limitation*—(1) *In general.* The amount of funds allocated to any unit of local government other than an Indian tribe or Alaskan Native Village under this section for any 12-month entitlement period shall not exceed 50 percent of the sum of that local government's adjusted taxes, plus its intergovernmental transfers of revenue (other than entitlement funds).

(2) *Reallocation of excess amounts due to the fifty percent limitation.* In any case in which the amount of funds

allocated to a unit of local government other than a county government is reduced pursuant to paragraphs (c)(1) of this section, the amount of the reduction shall be reallocated as follows—

(i) The amount shall be added to the county government in which the local government is located, to the extent that the county government may receive funds after application of the provisions of paragraphs (a) and (c) of this section.

(ii) If the county government cannot receive such funds, the provisions of paragraphs (d) and (e) of this section shall be applied.

(3) *Allocations less than $200.* If a unit of local government (except for Indian tribes and Alaskan Native Villages) below the level of a county governmemt, is allocated an amount less than $200 for an entitlement period, the amount of the allocation of the local government for that entitlement period shall become a part of the allocation of the county government of the county area in which the local government is located.

(d) *One hundred percent criterion.* If the amounts allocated to units of local government within a state do not total 100 percent of the amount allocated to that State, due to application of the adjustments set forth in paragraphs (a), (b) and (c) of this section, the amount to be allocated to county areas shall be adjusted appropriately, and the allocation process shall be repeated until the amounts allocated to such units of local government total 100 percent of the amount allocated to that State to the extent possible.

(e) *Distribution of funds in excess of allocation resulting from adjustments.* Funds which may not be distributed after application of paragraph (d) of this section to the allocation of a recipient government, shall be added on a pro rata basis to all units for local government within the State.

§ 51.31 Separate law enforcement officers.

(a) *Entitlement of separate law enforcement officers.* (1) The office of the seperate law enforcement officer within any parish area in the State of Louisiana, other than the parishes of East Baton Rouge and Orleans, shall be allocated 13.5 percent of the allocation of the governments of the Parish government.

(2) The office of the separate law enforcement officer within the area of the government of the Parish of East Baton Rouge, shall be allocated for each entitlement period, beginning on or after January 1, 1977, 6.75 percent of the allocation of the governments of Baton Rouge, Baker and Zachary, Louisiana for each such entitlement period.

(b) *Reduction of allocation of parish government.* (1) The governments of each parish (other than East Baton Rouge and Orleans, Louisiana) shall receive for an entitlement period allocations reduced by 13.5 percent, the full amount due the separate law enforcement officer for such parish.

(2) The governments of Baton Rouge, Baker and Zachary, Louisiana shall receive, for an entitlement period, allocations reduced by an amount equal to 6.75 percent, the full amount due to the separate law enforcement officer for the parish of East Baton Rouge.

(c) *Allocation of the Parish of Orleans.* The provisions of paragraphs (a) and (b) of this section shall not apply to the allocations of the Parish of Orleans.

§ 51.32 Population.

(a) *Population generally.* Population shall be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(b) *Undercount adjustment.* To adjust for any possible undercount during the 1980 census, the Director shall—

(1) As soon as practicable, request the Bureau of the Census to adjust the population data provided to include a reasonable estimate of the number of resident persons not counted in the 1980 census or subsequent revisions thereof.

(2) Estimates received from the Bureau of the Census shall be used to calculate the allocations for entitlement periods beginning after receipt of such estimates.

(c) *Adjustment as result of legal immigrants.* The determination of population shall reflect any adjustments made pursuant to section 118 of Pub. L. 96–369 conducted due to a major population change resulting from the movement of a large number of Cuban or Haitian legal immigrants into a jurisdiction within 6 months after the 1980 census. The adjustments to such population figures shall be reflected in entitlement periods beginning with fiscal year 1981 and shall continue to be used until the Bureau of the Census makes available 1981 population estimates.

(d) *Population of Indian tribes and Alaskan native villages.* (1) The population of an Indian tribe or Alaskan native villages is the resident population as of April, 1980, defined as—

(i) For Indian tribes, American Indians living on a reservation plus the number of American Indians living in adjacent tribally owned trust lands of the tribe. The adjacent tribal trust lands may not conform exactly to their actual boundaries, since the boundaries used extend to the nearest physical or natural feature bordering the trust lands. Resident non-Indian members of families with an American Indian householder or spouse are also included in the population data.

(ii) The lands in each Oklahoma county which were part of one or more Indian reservations at the time of allotment will be treated jointly as the land of all the reservations located in that county. Therefore, within a given county, an Indian identified with a tribe whose historic reservation includes a portion of that county will be enumerated with that tribe regardless of whether they reside within their tribe's own historic reservation area or that of one of the other tribes. Areas inside cities and towns will be subtracted from the land of the tribes. Only an Indian identified with the tribe of the Indian governing body and their spouses and children living within the boundaries of the tribal area described above are to be included in the population data of Oklahoma Indian governments. The population of the Osage Tribal Council of Oklahoma is as defined in paragraph (d)(1)(i) of this section since this tribe has its own current reservation.

(iii) For Alaskan native villages, the number of American Indians, Eskimos and Aleuts living in the village on the April 1, 1980, Census date. Resident non-Alaskan native members of families with an Alaskan native householder or spouse are also included in the population data.

(2) The Director will request the Bureau of the Census to provide updated population estimates for Indian tribes and Alaskan native villages when such estimates are provided for other local governments in the Revenue Sharing Program.

Subpart D—Prohibitions and Restrictions on Use of Funds

§ 51.40 Wage rates and labor standards.

(a) *Construction laborers and mechanics.* A recipient government shall require that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project costing in excess of $2,000 and of which 25 percent or more of the cost is paid out of its entitlement funds:

(1) Will be paid 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); and

(2) Will be covered by labor standards specified by the Secretary of Labor pursuant to 29 CFR parts 1, 3, 5, and 7.

(b) *Wage rates.* In projects to which the Davis-Bacon Act standards are applicable, the recipient government must ascertain the U.S. Department of Labor's wage rate determination for each intended project and insure that such wage rates are incorporated in the contract specifications. Wage rate determinations may be obtained by filing a Standard Form 308 with the Employment Standards Administration of the applicable regional Office of the U.S. Department of Labor at least thirty (30) days before the invitation for bids, or in the case of construction covered by general wage rate determination, the appropriate rate may be obtained from the **Federal Register.**

(c) *Government Employees.* A recipient government which employs individuals whose wages are paid in whole or in part from entitlement funds must pay wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer. However, this subsection shall apply with respect to employees in any category only if 25 percent or more of the wages of all employees of the recipient government in such category are paid from the trust fund established by it under § 51.101(a) of this part.

§ 51.41 Lobbying.

(a) *In general.* Entitlement funds may not be used by any State or unit of local government for the purpose of lobbying (as defined in § 51.2(j) of this part) concerning the provisions of the Act.

(b) *Activities prohibited.* Prohibited lobbying activities include, but are not limited, to the following:

(1) Personal solicitation of individual members of a legislative body to influence legislation regarding the Revenue Sharing Program by personal interview, letter, financial contributions, and other means.

(2) Employment of a lobbyist to engage in proscribed activities.

(c) *Activities permitted.* Without violation of this section, a recipient government may:

(1) Use Revenue Sharing funds to pay dues to national or State organizations.

(2) Use Revenue Sharing funds to attempt to influence public opinion or to convey opinions and judgments to the public regarding provisions of the Act, by publication, distribution of books, pamphlets and other writings.

§ 51.42 Use of entitlement funds in accordance with State or local law.

A recipient government shall expend its entitlement funds only in accordance with the laws and procedures applicable to the expenditure of its own revenues to the extent that those laws and procedures do not conflict with the provisions of the Act or regulations promulgated thereunder.

§ 51.43 Procedure for effecting compliance.

(a) *Compliance with substantive provisions.* If a recipient government fails to comply with the requirements of this subpart, the Director may implement the procedures for effecting compliance contained in § 51.3 (a) through (d) of Subpart A.

(b) *Compliance with reporting requirements.* If a recipient government fails to comply with the reporting requirements of this subpart, the Director may implement the delay of payment and/or constructive waiver provisions of § 51.3 (e) of Subpart A and § 51.25(b) of Subpart C of this part.

Subpart E—Nondiscrimination by States and Local Governments Receiving Entitlement Funds

§ 51.50 Purpose.

The purpose of this subpart is to effectuate section 6716 of the Act which provides that no person in the United States shall, on the grounds of 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 of a recipient government. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to a qualified handicapped individual, as provided in section 504 of the Rehabilitation Act of 1973, or any prohibition against discrimination on the basis of religion (as modified by the exemptions and exclusions contained in the Civil Rights Act of 1964, as amended or the Civil Rights Act of 1968), shall also apply to any such program or activity.

§ 51.51 Definitions.

Unless the context provides otherwise, as used in the subpart, the term:

(a) *Attorney General* means the Attorney General of the United States, or a designate.

(b) *Complaint* means an allegation submitted in writing to the ORS which sets forth the nature of the discrimination alleged and the specific facts upon which the allegation is based. The complaint may be filed by an individual or organization which believes that a recipient government has or is committing discrimination prohibited by the provisions of this subpart.

(c) *Compliance review* means a review, initiated at the discretion of the Director, of a recipient government's employment practices, facilities, or delivery of services for the purpose of ascertaining compliance with the provisions of this subpart.

(d) *Determination* means the decision by the Director following a notification of noncompliance as to whether a recipient government is in compliance or in noncompliance with the provisions of this subpart.

(e) *Facility* means all or any portion of a building, structure, parking lot, road, walk, equipment or other real or personal property or interests therein.

(f) *Finding* means the decision by the Director, after the completion of an investigation or compliance review, that it is more likely than not that a recipient government or secondary recipient is in noncompliance with the provisions of this subpart.

(g) *Funded* means entitlement funds have been or are being made available for expenditure in, or substantially benefit, a program or activity.

(h) *Holding* means any finding of fact or conclusion of law by a Federal court, State court, or a Federal administrative law judge (after notice and opportunity for a hearing), which has been litigated, identifies the recipient government or part thereof which is in noncompliance and is the effect that there has been exclusion, denial, or discrimination on the grounds of race, color, national origin, sex, age (other than in employment), handicapped status or religion as prohibited under section 6716 of the Act. Except as otherwise provided in § 51.67, a holding is conclusive as to the issue of discrimination.

(i) *Investigation* means fact-finding efforts by the Office of Revenue Sharing or other agency undertaken after receiving a complaint, or other information, that a recipient government has failed to comply with the provisions of this subpart.

(j) *Noncompliance* means that the Director of an administrative law judge has found or determined that a recipient government has violated the provisions of this subpart.

(k) *Notification of noncompliance* means the notification given to a recipient government of a finding or receipt by the Director of a holding.

(l) *Program or activity* means the operations of an agency or organizational unit of a recipient government, or the operations or organizational unit of a secondary recipient, funded with entitlement funds (examples include, but are not limited to

a police department, department of corrections, health department).

§ 51.52 Discrimination prohibited.

(a) *In general.* No person in the United States shall, or the ground of race, color, national origin, or sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity of a recipient government or a secondary recipient. Also prohibited is discrimination:

(1) On the basis of age under the Age Discrimination Act of 1975, effective July 1, 1979 (hereinafter referred to as discrimination on the basis of age);

(2) With respect to a qualified handicapped individual, as provided in section 504 of the Rehabilitation Act of 1973, as amended, (hereafter referred to as discrimination on the basis of handicapped status); or

(3) On the basis of religion, as modified by exemptions and exclusions contained in the Civil Rights Act of 1964, as amended or the Civil Rights Act of 1968, (hereinafter referred to as discrimination on the basis of religion).

(b) *Specific discriminatory actions prohibited.* (1) Except as otherwise provided in § 51.55(c)(1) and other sections in this subpart with respect to services, a recipient government shall not on the ground of race, color, national origin, sex, handicapped status or age:

(i) Deny any service or other benefit provided.

(ii) Provide any service or other benefit, which is not equal to, or is provided in a different form, than that provided to others.

(iii) Subject any person to segregated or separate treatment in any facility or in any matter or process related to receipt of any service or benefit.

(iv) Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.

(v) Treat an individual differently from others in determining whether the individual satisfies any admission enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or other benefit.

(vi) Determine the types of services, or other benefits or facilities which will be provided or the class of individuals to whom, or the situation in which, such services or other benefits or facilities will be provided by utilizing criteria or methods of administration which have the effect of:

(A) Subjecting individuals to discrimination;

(B) Perpetuating the results of past discrimination; or

(C) Defeating or substantially impairing the accomplishment of the objectives of the programs or activities with respect to individuals of a particular race, color, national origin, and sex, handicapped status or age.

(2) With respect to planning and advisory boards, a recipient government shall not on the ground of race, color, national origin, sex, handicapped status, or religion, deny any person an equal opportunity to participate as an appointed member of planning or advisory bodies.

(3) With respect to employment, a recipient government shall not utilize criteria or methods or administration that have the effect of:

(i) Subjecting individuals to discrimination on the basis of race, color, national origin, sex, handicapped status, or religion in any program or activity.

(ii) Perpetuating the results of past discriminatory practices.

(iii) Defeating or substantially impairing the accomplishment of the objectives of the program or activities with respect to individuals of a particular race, color, national origin, sex, handicapped status, or religion.

(4) With respect to facilities, a recipient government shall not on the grounds of race, color, national origin, sex, age, or handicapped status, except as otherwise provided in Section 51.55 and other sections of this subpart, make selections of site or location of facilities which have the effect of:

(i) Excluding individuals from such facilities.

(ii) Denying the individuals the benefits of such facilities.

(iii) Subjecting individuals using the facilities to discrimination.

(5) A recipient government shall not intimidate, threaten, coerce, or in any way retaliate against any person who files a complaint against that government alleging discrimination which is covered by the provisions of this subpart, who assists the ORS in an investigation, or any other proceedings under this subpart or who opposes a practice made unlawful by this subpart.

(6) A recipient government shall not use any unvalidated selection device, including, but not limited to, a minimum height or weight requirement or physical agility test which operates to disproportionately exclude members of a protected class. Use of such a selection device is a violation of this subpart; the device must either be validated or replaced with a selection device that has less severe impact pursuant to the Uniform Guidelines on Employee Selection Procedures.

(7) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section and should not be considered all-inclusive.

(c) *Exemptions.* The provisions of paragraphs (a) and (b) of this section concerning prohibited discrimination shall not apply:

(1) Where a recipient government demonstrates by clear and convincing evidence that a program or activity, with respect to which discrimination is alleged, is not funded in whole or in part with entitlement funds.

(2) To construction projects commenced prior to January 1, 1977, with respect to discrimination on the basis of handicapped status, except as provided in § 51.55(k)(11). A construction project shall be deemed to have commenced when the recipient government has obligated itself by contract for the physical construction of the project or of any substantial portion of the project.

§ 51.53 Employment discrimination.

(a) *Employment practices.* In general a recipient government shall not discriminate on the grounds of race, color, national origin, sex or religion in the following specific activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Setting rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Granting leaves of absence, sick leave, or other leave;

(6) Providing fringe benefits available by virtue of employment, whether or not administered by the recipient government;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social recreational programs; and

(9) Any other term, condition, or privilege of employment.

(b) *Uniform Guidelines on Employee Selection Procedures.* The Equal Employment Opportunity Commission (EEOC), the Office of Personnel

Management, the Department of Justice, the Department of Labor and the Department of the Treasury, in carrying out their responsibilities in ensuring compliance with Federal equal employment opportunity law, have adopted Uniform Guidelines on Employee Selection Procedures to assist in establishing and maintaining equal employment opportunities. These Guidelines are in 29 CFR Part 1607; 5 CFR 300.103(c); 990–1 (Book 3) of the Federal Personnel Manual; 28 CFR 50.14, and 41 CFR 60.3. These Guidelines, among other things, recognize the unlawfulness of the use of any employee selection procedures (including tests and minimum education levels) which disqualify a disproportionate number of persons on grounds of race, color, religion, sex or national origin and which have not been validated or otherwise justified in accordance with Federal law. Discrimination on the basis of handicapped status and age are not covered by the Guidelines. Recipient governments shall use selection procedures that comply with the provisions of the Guidelines, and a violation of the Guidelines shall constitute a violation of this subpart.

(c) *Preemployment inquiries.* A recipient may make inquiries of an applicant for employment concerning the applicant's race, color, national origin, sex, or religion only for purposes permissible under the Uniform Guidelines on Employee Selection Procedures.

(d) *Self-review.* Recipient governments may conduct continuing reviews of their programs or activities, in accordance with sections 4, 15 and the appendix of the Uniform Guidelines on Employee Selection Procedures, to determine whether their employment practices have the effect of denying equal employment opportunity on the basis of race, color, national origin, sex or religion. Whenever a self-review indicates that an employment practice is not is compliance with the Guidelines or this subpart, the recipient government is encouraged to take appropriate remedial action.

§ 51.54 Employment discrimination on the basis of sex.

The EEOC has adopted guidelines on employment discrimination on the basis of sex (29 CFR Part 1604). These guidelines provide practical assistance to enable recipient governments to bring themselves into compliance with Federal law. Recipient governments shall comply with the provisions of these Guidelines, which are adopted by the ORS. A violation of these Guidelines shall constitute a violation of this subpart.

§ 51.55 Discrimination on the basis of handicap.

(a) *Definitions.* As used in this section the phrase:

(1) *Handicapped individual* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(2) *Physical or mental impairment* means: (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; disgestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(3) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(5) *Is regarded as having an impairment* means: (i) Has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a recipient government as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (iii) has none of the impairments defined in paragraph (a)(1) of this section but is treated by a recipient government as having such impairment.

(6) *Qualified handicapped individual* means: (i) With respect to employment, a handicapped individual who, with reasonable accommodation, can perform the essential functions of the job in question; and (ii) with respect to services, a handicapped individual who meets the essential eligibility requirements for the receipt of such services.

(b) *General prohibitions with respect to discrimination against a qualified handicapped individual.* (1) Those general prohibitions described in § 51.52(b) of this subpart, also apply to discrimination against a handicapped individual, with the exception of § 51.52(b)(1) (ii), (iii) and (iv) of this subpart which are covered by the provisions of this subsection. In addition, a recipient government shall:

(i) Not exclude a qualified handicapped individual from participation in programs or activities open to the general public, regardless of the availability of permissibly separate or different programs or activities designed especially for the handicapped;

(ii) Administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped individuals;

(iii) Take appropriate steps to ensure that communications with applicants, employees, beneficiaries, and the general public are available to persons with impaired vision or hearing, through means such as brailled or taped material, telecommunication devices, televised information or other media;

(iv) Take the appropriate steps to ensure that the public hearing required under § 51.14 of this part is accessible to qualified handicapped individuals and that notice of such hearings described in § 51.13 of this part is made available to individuals with impaired vision and hearing, through means such as telecommunication devices, brailled or taped material, televised information, qualified sign language interpreters or other media;

(v) Provide a qualified handicapped individual with an aid, benefit, or service that is as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(vi) Not provide a different or separate aid, benefit, or service to qualified handicapped individuals or to any class of qualified handicapped individuals than is provided to others unless such action is necessary to provide qualified handicapped individuals with aid, benefits, or services that are as effective as those provided to others;

(vii) Not aid or perpetuate discrimination against a qualified handicapped individual by funding an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service

to beneficiaries of the program or activity;

(viii) A recipient government shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration that:

(A) Have the effect of subjecting qualified handicapped individuals to discrimination on the basis of their handicaps;

(B) Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient government's program with respect to handicapped individuals; or

(C) Perpetuate the discrimination of another department of the recipient government if both departments are subject to common administrative control or are agencies of the same recipient government; and,

(2) The exclusion of persons that are not handicapped individuals from the benefits of a program limited by Federal statute or executive order to handicapped individuals, or the exclusion of a specific class of handicapped individuals from a program limited by Federal statute or executive order to a different class of handicapped individuals, is not prohibited by this section.

(3) For purposes of this section, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped individuals. They must, however, afford qualified handicapped individuals equal opportunity to obtain the identical result, or achievement in the most integrated setting appropriate to the individual's needs.

(4) A recipient government which government receives $25,000 or more entitlement funds in each entitlement period, shall, at the request of, and in consultation with such individual, provide appropriate auxiliary aids to individuals with impaired sensory, manual or speaking skills, where necessary to prevent a qualified handicapped individual from being denied the benefits of, excluded from participation in or subjected to discrimination under a program or activity. Such auxiliary aids may include brailled or typed material, the provision of qualified sign language interpreters, the provision of telecommunication devices, captioned films, video tapes, televised information or other media. The Director may require recipient governments which receive less than $25,000 is entitlement funds in any entitlement period to provide appropriate auxiliary aids when the Director finds that such aids are appropriate to remedy a violation of the provisions of this section.

(5) The enforcement provisions contained in this subpart are applicable to violations of the provisions of this section.

(c) *Self-evaluation.* (1) A recipient government shall, within one year of the effective date of this section, with the assistance of interested individuals, including handicapped individuals and organizations representing them:

(i) Evaluate its current policies and practices and their effects which do not meet the requirements of this section;

(ii) Modify any policies and practices that do not meet the requirements of this section, and take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these discriminatory policies and practices, except as otherwise provided where structural changes may be required pursuant to paragraph (k) of this section.

(2) Self-evaluations already prepared (or under preparation) to comply with the section 504 requirements imposed by other Federal departments or agencies, may be used as part of the self-evaluation required pursuant to this section.

(3) The self-evaluation may include but is not limited to an examination of: A recipient government's policies and practices concerning employment decisions; the extent to which its programs and activities are readily accessible to and usable by the handicapped; whether its policies and practices concerning the delivery of aids, benefits and services to beneficiaries are free from discriminatory effects on the handicapped; and, whether it is engaging in contractual arrangements which have the effect of subjecting handicapped persons to discrimination.

(4) A recipient government, which government receives $25,000 or more entitlement funds in each entitlement period, shall, for at least three years following completion of the evaluation required under paragraph (c)(l) of this section, maintain on file, make available for public inspection, and provide to the Director upon request: (i) A list of the interested individuals consulted, (ii) a description of policies and practices examined and problems identified, and (iii) a description of modifications made and remedial steps taken.

(d) *Designation of responsible employee and adoption of grievance procedures.* (1) A recipient government, which government receives $25,000 or more entitlement funds in each entitlement period, shall designate at least one person to coordinate its efforts to comply with this section. Where designation of such a person has already been made to comply with the section 504 requirements of other Federal departments or agencies, that person may also be used to comply with the requirements of this section.

(2) A recipient government, which government receives $25,000 or more entitlement funds for one or more entitlement periods, shall adopt a grievance procedure that incorporates appropriate due process standards and that provides for the prompt and equitable resolution of complaints alleging any action prohibited by this section. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to post-secondary educational institutions. Existing grievance procedures may be used to meet the requirements of this subsection.

(e) *Notice.* (1) A recipient government, which government receives $25,000 or more entitlement funds in each entitlement period, shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient government, that it does not discriminate on the basis of handicapped status in violation of this section. The notification shall state, where appropriate, that the recipient government does not discriminate on the basis of handicapped status in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 51.55(d). A recipient government, shall make the initial notification required by this paragraph within ninety (90) days of the effective date of this section. Methods of initial and continuing notification shall ensure that the information is communicated to the visually or hearing impaired. Such methods may include the use of public service radio and television announcements, and telecommunications devices, the posting of notices, the publications of notices in newspapers and magazines, the placement of notices in recipient governments' publications, and the distribution of memoranda or other written and taped communications.

(2) Whenever a recipient government publishes or uses recruitment materials or publications containing general

information that it makes available to participants, beneficiaries, applicants, or employees, or the general public, it shall include in those materials or publications a statement that it is the policy of the recipient government not to discriminate against the handicapped in employment or the provisions of services. A recipient government may meet the requirements of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

(f) *Administrative requirements of small recipient governments.* The Director may require any recipient government, which government receives less than $25,000 in entitlement funds in each entitlement period, to comply with the provisions of § 51.55(c)(4), (d) and (e), in whole or in part, when the Director finds that such requirements are appropriate to remedy a violation of provisions of this section.

(g) *Employment discrimination against a qualified handicapped individual.* (1) A recipient government shall:

(i) Not discriminate against a qualified handicapped individual in employment in any program or activity;

(ii) Not participate in a contractual or other relationship that has the effect of subjecting a qualified handicapped applicant or employee to discrimination prohibited by this section. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient government, and with organizations providing training and apprenticeship program;

(iii) Make all decisions concerning employment under any program or activity in a manner which ensures that discrimination on the basis of handicap does not occur and not limit, segregate, nor classify applicants or employees in any way that adversely affects their opportunities or status beause of handicap;

(iv) Take appropriate steps to ensure that communications with its applicants and employees are available to persons with impaired vision and hearing as described in § 51.55 (b)(1)(iii) and (b)(4);

(v) Not discriminate against a qualified handicapped individual in the following specific activities:

(A) Recruitment, advertising, and the processing of applications for employment;

(B) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(C) Setting rates of pay or any other form of compensation and changes in compensation;

(D) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(E) Granting leaves of absence, sick leave, or any other leave;

(F) Providing fringe benefits available by virtue of employment, whether or not administered by the recipient government;

(G) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(H) Employer sponsored activities, including social or recreational programs; and

(I) Any other term, condition, or privilege of employment.

(2) A recipient government's obligation to comply with this section is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(3) A recipient government's obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are more limited for handicapped individuals than for nonhandicapped individuals.

(h) *Reasonable accommodation.* (1) A recipient government shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee unless the recipient government can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(2) Reasonable accommodation may include:

(i) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices (e.g., telecommunications devices and other telephone devices), the provision of readers or qualified sign language interpreters, and other similar actions. Accommodations shall be made in consultation with the handicapped individual.

(3) The determination of whether an accommodation would impose an undue hardship on the operation of a recipient government's program or activity shall be made on a case-by-case basis upon consideration of the following factors:

(i) The overall size of the recipient government's operations with respect to number of employees, number and types of facilities, and size of budget;

(ii) The type, composition and structure of the specific program or activity and the structure of the workforce required; and

(iii) The nature and cost of the accommodation needed. Such reasonable accommodation may require a recipient government to undertake more than an insignificant economic cost in making allowance for the handicap of a qualified applicant or employee and to accept minor inconvenience which does not bear on the ability of the handicapped individual to perform the essential functions of the job in question.

(4) A recipient government may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(i) *Employment criteria and policies.* (1) A recipient government may not use any employment test, selection criterion or policy, that screens out, or tends to screen out from consideration for employment, a handicapped individual or any class of handicapped individuals unless:

(i) The test, selection criterion or policy as used by the recipient, is shown to be directly related to the essential functions of the position in question, and

(ii) Alternative job-related tests, criteria or policies that do not screen out, or tend to screen out as many handicapped individuals are shown to be not available.

(2) A recipient government shall select and administer tests using procedures (e.g. auxiliary aids such as readers for visually-impaired individuals or qualified sign language interpreters for hearing-impaired individuals) that accommodate the special problems of handicapped individuals to the fullest extent consistent with the objectives of the test. The test results shall accurately reflect the applicant's or employee's ability to perform the essential functions of the job in question, rather than the applicant's or employee's impaired sensory, manual or speaking skills, except where such skills are essential requirements of the job.

(3) If a recipient government has established a test, selection criterion or policy that explicitly or implicitly screens out, or tends to screen out, a class of handicapped individuals from a particular job, and cannot establish that

the class as a whole is unqualified to perform the job, the recipient government shall evaluate each such individual who applies for the job to determine whether the applicant can perform the essential functions of the job in question despite the handicap. As part of the determination, the recipient government shall also decide whether such applicant would be qualified to perform the essential functions of the job in question through reasonable accommodation without undue hardship, as provided in § 51.55(h).

(j) *Preemployment inquiries.* (1) Except as provided in paragraphs (j) (2) and (3) of this subsection, a recipient government may not conduct a preemployment medical examination or make preemployment inquiry of an applicant as to whether the applicant is a handicapped individual or as to the nature or the severity of a handicap. A recipient government may, however, make preemployment inquiry into an applicant's ability to perform the essential functions of the job.

(2) When a recipient government is taking remedial action to correct the effects of past discrimination; when a recipient government is taking voluntary action to overcome the effects of conditions that resulted in limited participation in a program or activity, or when a recipient government is taking affirmative action, the recipient government may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(i) The recipient government states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requestd is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(ii) The recipient government states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (j)(4) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this section.

(3) Nothing in this section shall prohibit a recipient government from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that: (i) All entering employees are subjected to such an examination regardless of handicap, and (ii) the results of such an examination are used only in accordance with the requirements of this section.

(4) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms and shall be accorded confidentiality as used for medical records, except that:

(i) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped individuals and regarding necessary accommodations;

(ii) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(iii) Government officials investigating compliance with the Act shall be provided relevant information upon request.

(k) *Program accessibility*—(1) *Discrimination prohibited.* No qualified handicapped individual shall, because the facilities owned or leased by a recipient government are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity of a recipient government, which government receives entitlement funds.

(2) *Existing facilities*— (i) *Program accessibility.* A recipient government shall operate each program or activity in existing facilities owned or leased by it, so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped individuals. Recipient governments are not necessarily required to make each existing facility, or every part of an existing facility accessible to and usable by handicapped individuals. Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this regulation except as otherwise provided in this section. Recipient governments shall not be required to revoke leases on which lessors refuse to make the structural changes needed if no more accessible facility is available, but shall use the provisions of paragraph (k)(2)(ii) of this section to ensure that the maximum possible accessibility is achieved.

(ii) *Methods of compliance.* A recipient government may comply with the requirements of paragraph (k)(1) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aids to benficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of paragraph (k)(7) of this section, or any other methods that result in making its programs or activities accessible to handicapped individuals. A recipient government is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with subsection (k)(1) of this section. In choosing among available methods for meeting the requirements of paragraph (k)(1) of this section, a recipient government shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program.

(3) *Exception for small recipient governments.* If a recipient government, which government receives less than $25,000 in entitlement funds, in any entitlement period, determines, after consultation with a handicapped individual seeking a health, welfare or social service, that there is no method of complying with paragraph (k)(1) of this section other than making a significant alteration in its existing facilities, that government may, as an alternative, refer the handicapped individual to other providers of those services that are accessible at no additional cost to the handicapped individual. Examples of other provides of those services are States, counties or other larger units of local government.

(4) *Time periods*—(i) *Nonstructural changes for accessibility.* Where a recipient government has determined that certain nonstructural changes are necessary to make its programs and activities readily accessible to and usable by the handicapped, after evaluating its policies and practices during the self-evaluation required pursuant to paragraph (c) of this section, these changes shall be made, with other modifications determined to be needed, within the one year period for completion of the self-evaluation.

(ii) *Structural changes for accessibility.* Excepts as otherwise provided in subparagraph (k)((4)(iii) of this section, where a recipient government has determined that structural changes in facilities are necessary to make its programs and activities readily accessible to and usable by the handicapped, after evaluating its policies and practices during the self-evaluation required pursuant to paragraph (c) of this section, those changs shall be made as soon as

possible, but not later than three years from the effective date of this section.

(iii) *Transportation systems.* Transportation systems shall be made accessible to qualified handicapped individuals as provided in paragraph (k)(1) of this section in the same manner and within the time periods prescribed in regulations issued by the Department of Transportation (49 CFR Part 27).

(5) *Transition plan.* In the event that structural changes to facilities are necessary to comply with requirements of paragraph (k)(1) of this section, a recipient government shall develop, within one year the effective date of this section, a transition plan setting forth the steps necessary to complete such changes within the time periods in paragraph (k)(4) of this section. The plan shall be prepared as part of the self-evaluation required under § 51.55(c) and developed with the assistance of interested individuals, including handicapped individuals or organizations representing handicapped individuals. Transition plans already prepared (or under preparation) to comply with the section 504 requirements imposed by other Federal agencies, may be used as part of the transition plan required pursuant to this section. A recipient government which government receives $25,000 or more in entitlement funds shall make a copy of the transition plan available for public inspection for a period of three years and furnish it to the Director upon request. The plan shall, at a minimum:

(i) Identify physical obstacles in the recipient government's facilities that limit the accessibility of its program or activity to handicapped individuals;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period for the transition is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the person responsible for implementation of the plan.

(6) *Notice.* The recipient government shall adopt and implement procedures to require that interested individuals, including individuals with impaired vision or hearing, can obtain information as to the existence and location of particular services, activities, and facilities that are accessible to and usable by handicapped individuals.

(7) *New construction.* The construction of facilities by a recipient government financed in whole or in part with entitlement funds or the construction of a facility pursuant to a contract for the recipient government to lease the building facility in its entirety, on or after January 1, 1977, shall be accomplished so as to be readily accessible to and usable by handicapped individuals.

(8) *Alterations.* Alterations to existing facilities owned, or leased by a recipient government, which alterations are funded with entitlement funds and commenced on or after January 1, 1977, shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped individuals.

(9) *American National Standards Institute Accessibility Standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A 117.1–1961 (1971)),[1] which is incorporated by reference, shall constitute compliance with paragraphs (k) (1) and (2) of this section. A recipient government also may use the revised ANSI standards issued in May of 1980, which are also incorporated by reference and are obtainable at the same address. A recipient government may use standards other than the 1961 or 1980 standards or other methods, if the government establishes that it is clearly evident that equivalent or better access to the facility or part of the facility is provided.

(10) *Exception for construction projects commenced prior to January 1, 1977.* The provisions of this subsection do not apply to buildings or construction projects, including those funded with revenue sharing funds, commenced prior to January 1, 1977, unless it is determined that programs or activities funded in whole or in part with revenue sharing funds are conducted within or make use of such facilities, in which case, those programs and activities must be readily accessible to and usable by handicapped individuals as described in paragraphs (k)(2) (i) and (ii) of this section.

(11) *"Commencement of construction" defined.* A construction project shall be deemed to have commenced when the recipient government has obligated itself by contract for the physical construction of the project or any substantial portion of the project.

(l) *Coordination of unresolved legal issues.* Whenever the Director receives a complaint which alleges a violation of the provisions of this section and involves a legal issue that has not been resolved judicially or administratively, the Director shall request guidance from the Department of Justice which was designated by Executive Order 12250 to coordinate section 504, within one week of receipt of such complaint. The Director may defer action on the complaint pending receipt of the guidance if it is determined that such guidance will be received within one month from the issuance of the request. Thereafter, the Director shall then act in accordance with the guidance. If the Director determines that the Department of Justice cannot provide guidance concerning the proper course of action within a period of one month (thirty (30) days), the Director shall proceed to initiate fact-finding activities with respect to the complaint. During that process, the Director shall continue to keep the Department of Justice advised of the actions taken, pending receipt of the guidance requested.

(Information collection requirements in paragraph (c)(4) approved by the Office of Management and Budget under control number 1505–0036)

[1] Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018—(212) 354–3300. Copies are also on file with the **Federal Register**.

§ 51.56 Discrimination on the basis of age.

(a) *Purpose.* This regulation sets forth the prohibition against discrimination on the basis of age in programs or activities of recipient governments as required by the Age Discrimination Act of 1985. Recipient governments may, however, continue to use certain age distinctions and factors other than age which meet the requirements set forth in this section.

(b) *Definitions*—(1) *Age Discrimination Act* means the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101, Title II of Pub. L. 94–135).

(2) *Action* means any act, activity, policy rule, standard or method of administration.

(3) *Age* means how old a person is or the number of elapsed years from the date of a person's birth.

(4) *Age distinction* means any action using age or an age-related term.

(5) *Age-related term* means a word or words which necessarily implies a particular age or range of ages (example, "children," "adult," "older persons," but not "student").

(6) *Claim* means a written statement, alleging discrimination on the basis of age by a recipient government, that is referred to mediation.

(7) *FMCS* means the Federal Mediation and Conciliation Service.

(8) *Mediation* means the process by which an impartial mediator through the

FMCS attempts to resolve a claim of discrimination on the basis of age, on which a complaint is based.

(c) *Discrimination prohibited*— (1) *General rule.* Those general prohibitions described in section 51.52 of this subpart also apply to discrimination on the basis of age, except that § 51.52(b)(3) containing general prohibitions against employment discrimination shall not apply.

(2) *Specific rules.* A recipient government may not, in any program or activity, use age distinctions or take any other actions, which have the effect of causing age discrimination prohibited under § 51.52 (other than § 51.52(b)(3)).

(3) *Prohibition against intimidation or retaliation.* A recipient government may not in any program or activity engage in acts of intimidation or retaliation against any person who attempts to assert a right protected by this section or cooperates in any mediation, investigation, hearing, or other part of the investigation or enforcement process described in this subpart.

(4) *Employment discrimination not covered.* The prohibitions contained in this section shall not apply to the employment practices of recipient governments or their secondary recipients.

(d) *Exceptions to the rules against age discrimination*—(1) *Definitions.* For purposes of this subsection, the terms "normal operation" and "statutory objective" shall have the following meaning:

(i) *Normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(ii) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected general purpose legislative body.

(2) *Normal operation or statutory objective of any program or activity.* A recipient government is permitted to take action, otherwise prohibited by paragraphs (c) (1) and (2) of this section, if the action reasonably takes into account age as a factor necessary to the normal operation of the achievement of any statutory objective of a program or activity, thereby, complying with the following four-part test:

(i) Age is used as a measure or approximation of one or more non-age characteristic; and

(ii) The other non-age characteristic(s) are measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(iii) The other non-age characteristic(s) can be reasonably measured or approximated by the use of age; and

(iv) The other non-age characteristic(s) are impractical to measure directly on an individual basis.

(3) *Reasonable factors other than age.* A recipient government may take an action otherwise prohibited by paragraphs (c) (1) and (2), which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages, provided that the other factor bears a direct and program or activity or to the achievement of a statutory objective.

(4) *Affirmative action.* If a recipient government or a secondary recipient operates a program or activity which serves the elderly or children in addition to persons of other ages, and provides special benefits to the elderly or to children, the provision of these benefits shall be presumed to be voluntary affirmative action, and necessary to the normal operation of the program notwithstanding the provisions of paragraph (d) of this section.

(5) *Age distinction contained in Federal, State, or local statute or ordinance.* The provisions of this section shall not apply to an age distinction contained in that part of a Federal, State or local statute or ordinance adopted by an elected general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(e) *Burden of proof.* The burden of proving that an age distinction or other action falls within the exceptions outlined in subsections 51.56(d) (2) and (3) is on the recipient government.

(f) *Self-evaluation.* (1) A recipient government receiving more than $25,000 in Revenue Sharing funds per entitlement period may as part of a compliance review under § 51.61 of this part or an investigation under § 51.62 of this part be required to complete a written self-evaluation in a manner specified by the Director.

(2) In the self-evaluation, the recipient government shall identify all age distinctions it uses, and justify age distinctions it imposes in programs or activities.

(3) A recipient government shall take corrective action whenever a self-evaluation indicates noncompliance with the regulations.

(g) *Enforcement generally.* Except as otherwise provided in this section, the enforcement provisions contained in this subpart shall be used to effectuate compliance with the provisions of this section.

(h) *Mediation alternative.* (1) Any individual who believes that anyone has been subjected to discrimination on the basis of age may file an administrative compliant with the Director as provided in § 51.62(a) of this subpart. However, such individual may, as an alternative, elect to have the claim(s) of discrimination on which the complaint is based referred by the Director for mediation by the Federal Mediation and Conciliation Service (FMCS).

(2) Within five (5) days of receipt of a claim of age discrimination, the Director shall notify the claimant of the alternative of mediation and request the claimant to notify the ORS whether mediation of the claim of age discrimination is elected.

(3) If mediation is elected, the claimant shall personally or by representative notify the Director of the ORS is writing of such election. The notice shall set forth the facts upon which the claim of age discrimination by a recipient government is based. The Director shall refer the claim to FMCS within five (5) days of receipt of the notification of the election of mediation, provided that it has been determined that the claim is within the jurisdiction of this section and contains all information necessary for referral to FMCS.

(4) The Director shall advise the chief executive officer of the recipient government of any referral to the FMCS. Both the individual filing the claim and the recipient government against whom discrimination is alleged shall participate in the mediation process to the extent necessary to reach an agreement if possible. There must be at least one meeting with the mediator before the Director will accept a judgment that an agreement is not possible. However, the recipient government and the claimant need not meet with the mediator at the same time.

(5) If the claimant and the recipient government reach an agreement, the mediator shall prepare a written statement of the agreement for the signature of the claimant and the chief executive officer of the recipient government. The mediator shall send a signed copy of the agreement to the Director. The Director will take no further action of the claim, unless she is notified that the agreement has been breached, in which case the claim will be treated as a complaint pursuant to § 51.61 of this subpart.

(6) The mediation process shall be limited to a maximum of sixty (60) days after the claimant notifies the Director of the election of the mediation process. Mediation ends if:

(i) Sixty (60) days elapse from the time the Director receives notice from the claimant;

(ii) Prior to the end of the 60-day period, an agreement is reached; or

(iii) Prior to the end of the 60-day period, the mediator determines that an agreement cannot be reached.

(7) The mediator shall return unresolved claims to the Director, who shall upon receipt, consider such unresolved claims to be administrative complaints to be processed in accordance with the procedures set forth in § 51.61(a) of this subpart.

(8) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the FMCS.

(9) Age discrimination claims which also allege other bases of discrimination, such as sex or race, will at the election of the complainant, and at the discretion of the Director, FMCS, be mediated. All bases or allegation of discrimination will be submitted to mediation. If the mediation process fails, the entire claim will be processed as a complaint under § 51.61 of this subpart.

§ 51.57 Discrimination on the basis of national origin.

The EEOC has adopted Guidelines on discrimination of the basis of national origin (29 CFR Part 1606). These Guidelines provide practical assistance to enable recipient governments to bring themselves into compliance with Federal law. Recipient governments shall comply with the provisions of these Guidelines, which are adopted by the ORS. A violation of these Guidelines shall constitute a violation of this subpart.

§ 51.58 Discrimination on the basis of religion.

(a) *In general.* Any prohibition against discrimination on the basis of religion, or any exclusion or exemption from such discrimination, as provided in the Civil Rights Act of 1964 or title VIII of the Act of April, 1968, (hereafter referred to as the Civil Rights Act of 1968), shall apply to any program or activity of a recipient government which government receives entitlement funds under the Act.

(b) *EEOC Guidelines.* The EEOC has adopted Guidelines on discrimination on the basis of religion (29 CFR Part 1605). These Guidelines provide practical assistance to enable recipient governments to bring themselves into compliance with Federal law. Recipient governments shall comply with the provisions of these Guidelines, which are adopted by the ORS. A violation of these Guidelines shall constitute a violation of this subpart.

§ 51.59 Assurances required.

(a) *General.* In order to qualify for any payment of entitlement funds for any entitlement period, each Governor of a State or each chief executive officer of a unit of local government shall execute to the satisfaction of the Director an assurance that all programs and activities of a recipient government will be conducted in compliance with the requirements of this subpart. The chief executive officer is also required to assure that in the event a Federal or State court or Federal administrative law judge makes a holding as defined in subsection 51.51(h) of this subpart against the recipient government, such recipient government will forward a copy of the holding to the Director within ten (10) days of receipt by the recipient government. Assurances required under this paragraph shall be in such form and detail as prescribed by the Director.

(b) *Delay and constructive waiver of entitlement payments.* (1) The failure of a recipient government to comply with the assurance and reporting requirements of subpart E of this part which include submission of assurances and requests for information concerning compliance with the provisions of this subpart, may result in the delay of the further payment of entitlement funds until the assurance, report or information requested is received. A delay of the payment of entitlement funds shall not be subject to the procedures for affecting compliance set forth in this subpart.

(2) The Director may, after the payment of entitlement funds have been delayed for one or more of the entitlement periods pursuant to paragraph (b)(1) of this section, constructively waive such funds pursuant to § 51.25(b) of this part. Entitlement payments constructively waived shall not be paid to the recipient government.

§ 51.60 Compliance information and reports.

(a) *Access to sources of information.* Each recipient government shall permit access by authorized representatives of the Office of Revenue Sharing and the Department of Justice during normal business hours to such facilities, books, records, accounts, personnel, and other sources of information as may be relevant to a determination of whether the recipient government is complying with the provisions of this subpart. Where any information required of a recipient government is in the exclusive possession of any other agency, institution, or person, and such agency, institution, or person fails or refuses to furnish this information to the ORS or its authorized representatives, the responsibility for providing such information shall remain with the recipient government.

(b) *Compliance reports.* Each recipient government shall submit on request of the Director timely, complete and accurate compliance reports at such times, in such form, and containing such information, as the Director may determine to be necessary or useful to ascertain whether the recipient government has complied or is complying with the requirements of the subpart. Recipient governments shall make available on request of Office of Revenue Sharing officials, racial, ethnic, male/female, and national origin data showing the extent to which minorities and females will be beneficiaries of entitlement funds. The recipient government shall also make available on request similar data concerning age distinctions and handicapped status. In the case of any program under which a primary recipient government extends or will extend entitlement funds to any secondary recipient, the secondary recipient shall submit such compliance reports to the primary recipient government as may be necessary or useful to enable the primary recipient to carry out its obligations as a recipient government under this subpart. Each recipient government shall identify, on request of the Office of Revenue Sharing, any State or local agency which has been legally authorized to monitor its civil rights compliance activities.

(c) *Delay and constructive waiver of entitlement payments.* (1) The failure of a recipient government to comply with the assurance and reporting requirements of subpart E of this part which include submission of reports and response to specific requests for information concerning possible violation of this subpart, may result in the delay of the further payment of entitlement funds until the assurance, report or information requested is received. A delay of the payment of entitlement funds shall not be subject to the procedures for affecting compliance set forth in this subpart.

(2) The Director may, after the payment of entitlement funds have been delayed for one or more of the entitlement periods pursuant to paragraph (c)(1), determine that the payments to the recipient government for a particular entitlement period are constructively waived pursuant to § 51.25(b) of this part. Entitlement payments constructively waived will no longer be available to the recipient government.

§ 51.61 Compliance reviews and affirmative action

(a) *Compliance reviews.* (1) The Director may periodically conduct compliance reviews of selected recipient governments.

(2) Selection for review shall be made on the basis of any of the following considerations:

(i) The relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women, employed by the recipient government;

(ii) The percentage of women and minorities in the population receiving benefits from a program or activity;

(iii) The number and nature of discrimination complaints filed against a recipient with ORS or other Federal agencies;

(iv) The scope of the problems revealed by any investigation of allegations of noncompliance against a recipient government; and

(v) The amount of entitlement funds provided to the recipient government.

(3) Within ninety (90) days after selection of a recipient government for review, the Director shall inform the recipient government that it has been selected and will initiate the review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient government of:

(i) The practice(s) to be reviewed;

(ii) The program or activities affected by the review;

(iii) The opportunity to make, at any time prior to the receipt of the Director's findings, a documentary submission responding to the Director, explaining, validating, or otherwise addressing the practices under review; and

(iv) the schedule under which the review will be conducted and a finding made.

(4) Within one hundred eighty (180) days after the initiation of the review, the Director shall advise the chief executive officer of the appropriate recipient government of:

(i) The results of the review; and

(ii) Where appropriate, a recommendation for corrective action.

(5) If within thirty (30) days after the recipient government has been notified of corrective actions required pursuant to paragraph (a)(4), of this section, a compliance agreement is not secured, the Director shall institute administrative proceedings pursuant to § 51.64, *et seq.* and Subpart G of this part.

(b) *Affirmative action.* The EEOC has adopted Guidelines for affirmative action (29 CFR Part 1608). These Guidelines indicate when voluntary affirmative action is appropriate and are adopted by the ORS.

§ 51.62 Administrative complaints and investigations.

(a) *Administrative complaints.* Any person who believes that he or she has been subjected to discrimination prohibited by this subpart, may personally or by a representative, file a complaint with the Director of the Office of Revenue Sharing (Treasury Department, Washington, D.C. 20226). A person who has not personally been subjected to discrimination may also file a complaint. The complaint must be a written statement setting forth the natue of the discrimination alleged and the facts upon which the allegation is based.

(b) *Investigations.* (1) The Director shall advise the chief executive officer of the recipient government of any administrative complaint received pursuant to paragraph (a) within thirty (30) days of the receipt of such complaint.

(2) The Office of Revenue Sharing shall investigate administrative complaints described in paragraph (a). Information contained within the files of the Office of Revenue Sharing or other information which suggests discrimination prohibited by this subpart may become part of an ongoing or future investigation.

(3) Such investigations will be made with the assistance of the complainant(s) and of the recipient government to the maximum extent feasible.

(4) In appropriate cases the Director may defer to the Attorney General as provided for in an agreement with the Department of Justice.

(5) The scope of such investigations may not be limited to the administrative complaint or other information, but may include any matters either discovered during the investigation or reasonably flowing from said administrative complaint or other information.

(6) The Director shall to the maximum extent feasible, make a finding within ninety (90) days of receipt of an administrative complaint or State administrative agency determination where there is sufficient evidence of noncompliance.

(7) To the maximum extent feasible, the Director will make use of the agreements between agencies as provided for in § 51.69 of this subpart in order to facilitate compliance with the provisions of this subpart.

§ 51.63 Notification to the complainant.

Upon written request, the complainant shall be advised of the status of the investigation or other proceeding undertaken in response to the complaint. Within ten (10) days after the Director issues a finding or determination, or receives a holding, the Director shall notify the complainant or the complainant's counsel.

§ 51.64 Notification of noncompliance.

(a) *Notification of noncompliance after a finding by the Director.* The Director shall issue a notice of noncompliance in writing to the chief executive officer of the recipient government (and in the case of a unit of local government, also the Governor of the State in which the recipient government is located) within ten (10) days of making a finding. The notice shall be to the effect that it is more likely than not that the recipient government has failed to comply with the provisions of this subpart. The notice shall further state that a determination will be made within thirty (30) days after receipt of this notice, and that within this period, the recipient government may enter into a compliance agreement with the Director, present additional evidence that demonstrates compliance with this subpart and/or proves by clear and convincing evidence that the program or activity complained of was not funded with entitlement funds. The Assistant Attorney General for Civil Rights shall also be notified of the finding.

(b) *Notification of noncompliance by the Director after receipt of a holding.* (1) Within ten (10) days of receipt of a holding, the Director shall issue a notice of noncompliance to the chief executive officer of the recipient government in writing (and in the case of a unit of local government, to the Governor of the State in which the recipient government is located).

(2) The notice shall state that the Office of Revenue Sharing is required to adopt the holding as conclusive on the issue of discrimination and that the recipient government is in noncompliance with the provisions of this subpart. The notice may include the issues beyond those contained in the holding. The notice shall state that

unless within thirty (30) days after receipt of this notice the recipient government enters into a compliance agreement or proves by clear and convincing evidence that the program or activity complained of was not funded with entitlement funds, the Director shall issue a determination that the recipient government has failed to comply with the provisions of this subpart. The Assistant Attorney General for Civil Rights shall also be notified of the holding.

(c) *Effect of a Stay.* An administrative proceeding based on a holding shall be suspended to the extend that a stay is issued by a court of competent jurisdiction with respect to the holding. The suspension shall only affect those issues covered by the stay.

§ 51.56 Determination by the Director.

(a) *Determination by the Director after a finding of discrimination.* (1) The Director shall, within thirty (30) days after the recipient government's receipt of the notice of noncompliance, issue a determination as to whether the recipient government has failed to comply with this subpart to the chief executive officer of the recipient government (and in the case of a unit of local government, the Governor of the State in which the recipient government is located shall also be notified). The Assistant Attorney General for Civil Rights shall also be notified of the determination.

(2) Once a determination of noncompliance is received, a recipient government shall have ten (10) days in which to enter into a compliance agreement or request an administrative hearing. If a recipient government fails to take either action within the 10 day period, the Director shall immediately suspend the further payment of entitlement funds to such recipient government. The suspension in effect shall remain suspended until the recipient government enters into a compliance agreement.

(b) *Determination by the Director after notice of a holding.* (1) The Director shall, within thirty (30) days after the recipient government's receipt of notifiction of noncompliance based on a holding, issue a determination as to whether the recipient government is in compliance with this subpart to the chief executive officer of the recipient government (and in the case of a unit of local government, the Governor of the State in which the recipient government is located shall also be notified). The Assistant Attorney General for Civil Rights shall also be notified of the determination.

(2) The determination of noncompliance shall adopt the holding of the Federal or State Court or Federal administrative law judge as conslusive on the issue of discrimination and give the recipient government ten (10) days from receipt of the notification of the determination to enter into a compliance agreement or request an administrative hearing. The sole issue at the administrative hearing shall be whether the program or activity complained of was funded by entitlement funds. If the recipient government fails to take either action within the 10-day period, the Director shall immediately suspend the further payment of entitlement funds to such government.

(3) If the holding on which the determination is based is reversed by an appellate tribunal, or by agency review in the case of the holding of a Federal administrative law judge, the Director shall discontinue the administrative action begun as a result of the holding. Any suspension of entitlement funds resulting from the determination shall also be discontinued and those funds paid to the recipient government as quickly as possible.

§ 51.66 Compliance agreements.

(a) *In matters where the ORS was not a party to the proceeding.* For purposes of this subpart a compliance agreement includes an agreement in writing between the Federal or State agency or official responsible for prosecuting the claim (including the Attorney General of the United States) and the chief executive officer of the recipient government against whom the noncompliance with this subpart is alleged. Such compliance agreement may take the form of a consent decree to be entered in the proceedings before a court of record or to be entered by a Federal administrative law judge having jurisdiction over the proceedings. Counsel of record representing the chief executive officer of the recipient government may initiate or negotiate the compliance agreement on behalf of the chief executive officer of the recipient government. However, in each case the Director shall, through counsel or representative, approve or reject the compliance agreement. The Director may reject the compliance agreement if it is determined that the agreement has not adequately remedied the discrimination.

(b) *In matters involving a holding.* Where the Director acts on the basis of a holding, the remedial order of the Court or Federal administrative law judge shall constitute the basis of the compliance agreement to be entered into with the Director: *Provided, however,* That the lack of a remedial order does not affect the requirement that a recipient government enter into a compliance agreement with the Director within the time limits set forth in section 6717(b) of the Act and §§ 51.64 and 51.65 of this subpart. Any agreement entered into prior to issuance of such remedial order may be appropriately modified when the order is entered.

(c) *In matters between the Director and a recipient government.* In those instances where a compliance agreement is negotiated between the Director and the chief executive officer of the recipient government, the agreement shall be one document signed by the parties containing the following:

(1) A statement of all matters that constitute the failure of the recipient government to comply with the requirements of this subpart;

(2) The terms and conditions with which the recipient government has agreed to comply in order to achieve compliance with the requirements of this subpart. Such terms and conditions may include the payment of restitution to persons injured by the failure of the recipient government to comply with any provisions of this subpart; and

(3) The signatures of the Director and the chief executive officer of the recipient government concerned.

(d) *Monitoring of compliance agreement.* The Director shall monitor compliance by recipient governments with the compliance agreement. As part of the monitoring process, the Director may require from recipient governments periodic reports which demonstrate continued compliance.

(e) *Effect of violation of compliance agreement.* (1) If the recipient government fails to comply with the obligations stipulated in this agreement, the Director shall issue a determination of noncompliance under section 6717(c) of the Act.

(2) The Director shall suspend the payment of entitlement funds to a recipient government ten (10) days after its receipt of the determination of noncompliance, unless such government either achieves compliance with the provisions of the compliance agreement or requests an administrative hearing. At any such hearing, the issues shall be limited to whether or not the recipient government has acted in compliance with the agreement.

(f) *Notification to complainants of compliance agreement.* Within fifteen (15) days after the execution of a compliance agreement (or, in the case of an agreement executed under paragraph (a) of this section, upon the approval of the Director if later than fifteen (15)

days) the Director shall submit a copy of such agreement to the complainant(s). The submission of a copy of the compliance agreement to counsel of record (if any) for the complainants shall meet the requirements of this paragraph.

§ 51.67 Resumption of suspended entitlement payments.

The payment of entitlement funds, to a recipient government to which such payment has been suspended, shall be resumed when:

(a) The recipient government enters into a compliance agreement that satisfies the Director that the recipient government will comply with the provisions in this subpart.

(b) The administrative law judge, who made a preliminary finding under section 6717(d) of the Act, holds that the recipient government is in compliance with the provisions of this subpart; or

(c) The recipient government complies fully with the remedial order of a court or a Federal administrative law judge if the order covers all matters raised by the Director in the notice of noncompliance based on a holding to the recipient government; or

(d) After a rehearing or similar adjudicative proceedings a court or an administrative law judge which originally held that the recipient government had failed to comply with the provisions of this subpart, subsequently holds that the recipient government did not so fail to comply; or

(e) An appellate court reverses the findings of discrimination by a lower court or administrative law judge upon the basis of which the Director suspended the payment of entitlement funds.

§ 51.68 Exhaustion of administrative remedies.

For purposes of bringing a private civil action pursuant to section 6721 of the Act a complainant shall be deemed to have exhausted the administrative remedies upon the expiration of ninety (90) days from the date the administrative complaint was filed with the Director, where the Director:

(a) Issues a determination that the recipient government against whom the complaint was filed is in compliance with the provisions of this subpart; or

(b) Fails to make a determination on such complaint.

§ 51.69 Agreements between agencies.

(a) *Purpose of cooperative agreements.* The Director shall endeavor to enter into cooperative agreements with officials of other departments and agencies of the Federal government, or officials of State agencies (which have concurrent jurisdiction) to effectuate the purposes of this subpart, including the achievement of effective coordination within the executive branch in the implementation of Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d, 2000e), the Civil Rights Act of 1968, the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(b) *Content of cooperative agreements.* The agreements between the Director and other agencies or officials shall describe the cooperative efforts to be undertaken, which may include, but need not be limited to:

(1) Sharing of resources during investigations and compliance reviews (either by having joint investigations or having one agency do an investigation for both);

(2) Cooperation during compliance activities including the issuance of findings or determinations (including the adopting of other agency's findings or determinations where practical);

(3) Cooperation during administrative hearings including joint participation and sharing of resources.

(4) Deferral of agency action where one agency has begun compliance activities on the same complaint or set of circumstances and provision for resumption of action where the agency deferred to does not act in a timely manner;

(5) Sharing of information, including data, records and investigative and other files, computer printouts, lists and status reports on complaints received;

(6) Identification of liaison personnel and the establishment of periodic meetings to discuss common substantive and procedural problems;

(7) Protecting the confidentiality of information shared;

(8) Providing for notification of formal administrative actions instituted against jointly covered recipients and of the results of such actions, particularly those that may be classified as holdings; and

(9) The establishment of lead agencies (in those areas in which lead agencies have not already been designated by statute or executive order) so that the designated lead agency will provide policy guidance in the area where two or more agencies share concurrent jurisdiction.

§ 51.70 Jurisdiction over property.

(a) *In general.* The Director shall have jurisdiction over any recipient government for purposes of this subpart for as long as that recipient government retains ownership or possession of any real or personal property or any interest therein, which was purchased in whole or in part with entitlement funds. Further, if such property is transferred to a secondary recipient or other party, the Director will retain jurisdiction over the recipient government for purposes of this subpart for as long as the property is used to provide benefits similar to those which were provided by the property before the transfer.

(b) *Definitions.* For the purposes of this section:

(1) Real property includes land, structures upon land and fixtures attached to land, and buildings or structures which cannot be removed without damage to the fixtures, buildings or structures.

(2) Personal property includes, at the least, non-expandable tangible property having a useful life of more than one year and an acquisition cost of $1,000 or more per unit of property.

(3) The transfer of property means the passage of the property to a secondary recipient, or to any other person, firm or agency.

(c) *Use of property to provide similar benefits.* For the purposes of this section the clause in paragraph (a) of this section "so long as the property is used to provide benefits similar to those provided by the property before the transfer" means the primary use or function of the property and not the specific or particular use of the property in the program or activity for which originally acquired.

(d) *Record keeping requirements.* Recipient governments shall maintain a separate record of real property and of tangible personal property having a value in excess of $1,000. Such records shall set forth the date of purchase, date of disposal or transfer and the transferee of the property. Upon outright sale, discard, or trade of such property the provisions of this section shall no longer be applicable.

(Approved by the Office of Management and Budget under control number 1505-0038)

Subpart F—Fiscal Procedures and Auditing

§ 51.100 Definitions.

Unless the context requires otherwise, as used in this subpart, the term:

(a) *Compliance audit* means the review of the documentation concerning a recipient government's expenditure of entitlement funds to determine that those funds have been expended in compliance with the provisions of the Act and regulations.

(b) *Auditor's report on the study and evaluation of the internal accounting control* means the report as required by the "Examination and Evaluation (Field

Work) and Reporting Standards for Financial and Compliance Audits" as set forth in the *Standards For Audit of Governmental Organizations, Programs, Activities, and Functions* issued by the Comptroller General of the United States.

(c) *Financial audit* means the examination of the financial statements of all funds of a recipient government in accordance with generally accepted government auditing standards.

(d) *Financial statements* means those statements which:

(1) Show the financial operations for a specific period of time, and

(2) If appropriate, present the financial position as of the end of that fiscal period, and

(3) Present the footnotes required for adequate disclosure.

(e) *Generally accepted government auditing standards* means those auditing standards set forth in the financial and compliance element of the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions,* issued in 1981 by the Comptroller General of the United States, or a subsequent edition of the publication. Reference should be made to the above mentioned publication for additional standards and requirements over the generally accepted auditing standards as pronounced by the American Institute of Certified Public Accountants in its *Statement on Auditing Standards.*

(f) *Independent audit* means an audit conducted in a manner consistent with the independence requirements specified in the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions,* issued by the Comptroller General of the United States.

§ 51.101 Procedures applicable to the use of funds.

A recipient government which receives entitlement funds under the Act shall:

(a) Establish a trust fund and deposit all entitlement funds received and all interest earned thereon in that trust fund. The trust fund may be established on the books and records as a separate set of accounts, or a separate bank account may be established.

(b) Use, obligate, or appropriate entitlement funds within twenty-four (24) months from the end of the entitlement period to which the entitlement payment is applicable. The use, obligation or appropriation of entitlement funds shall be consistent with State of local law requiring a legislative enactment in ordinance or resolution form. Any interest earned on such funds while in the trust fund shall be used, obligated, or appropriated within twenty-four (24) months from the end of the entitlement period during which the interest was received or credited. An extension of time in which to act on the funds, or interest accrued, shall be obtained by application to the Director. The application will set forth the facts and circumstances supporting the need for more time and the amount of additional time requested. The Director may grant such extensions of time which appear necessary or appropriate.

(c) Maintain its fiscal accounts in a manner sufficient to:

(1) Permit the reports required by the Director to be prepared therefrom, and

(2) Permit the tracing of entitlement funds to a level of expenditure adequate to establish that the funds have not been used in violation of the restrictions and prohibitions of this part. Tracing requires that vouchers in support of expenditures funded by the Act shall be identified. Identification can be made in any one of three ways as follows:

(i) Maintain a separate set of fund accounts; or

(ii) Maintain a separate bank account; or

(iii) Keep a memorandum record of the voucher numbers and amounts of the expenditures funded by entitlements received under the Act.

The accounting for entitlement funds shall, at a minimum, employ the same fiscal accounting and internal audit procedures as are used with respect to the expenditures from revenues derived from the recipient government's own sources.

(d) Provide to the Director and to the Comptroller General of the United States, on reasonable notice, access to and the right to examine such books, documents, papers or records as the Director may reasonably require for the purpose of reviewing compliance with the Act and the regulations of this part, or, in the case of the Comptroller General, as the Comptroller General may reasonably require for the purpose of reviewing compliance and operations under the Act.

(Information collection requirements in paragraphs (c)(2)(iii) and (d) approved by the Office of Management and Budget under control number 1505–0038)

§ 51.102 Auditing and evaluation.

(a) *Audit requirement.* (1) Each unit of local government which receives entitlement funds beginning after October 1, 1983, shall have an independent audit of its financial statements conducted for the purpose of determining compliance with the provisions of the Act, in accordance with generally accepted government auditing standards as issued by the Comptroller General of the United States. The audit shall be conducted at least as often as indicated in paragraph (a)(2) of this section. The compliance aspects of the audit and the report of auditor's study and evaluation of the internal accounting controls must be performed for the same year in which the financial audit is performed on the funds into which Revenue Sharing entitlement payments are deposited.

(2) A government which receives at least $25,000, but not more than $100,000 in each of three consecutive fiscal years, shall have an audit made in accordance with paragraph (a)(1) of this section not less often than once every three years. The required audit would be conducted for any one of three consecutive years in which the entitlement funds were received. A government which receives more than $100,000 of entitlement funds in a fiscal year shall have an audit made in accordance with paragraph (a)(1) of this section for each such fiscal year, except that, if the government establishes to the satisfaction of the Director that it operates on a biennial fiscal period under applicable State and local law, such audit may be made biennially, but shall cover the financial statement or statements for, and compliance with the requirements of this part during, both years.

(3) Audits conducted to comply with the provisions of this section shall be submitted to the Director within eight months from the end of the fiscal year audited.

(4) Where applicable, recipient governments shall employ the provisions of the Office of Management and Budget's Circular A–102, Attachment P in meeting the requirements of this section. The General Accounting Office publication *Guidelines for Financial and Compliance Audits of Federally Assisted Programs* and the OMB Compliance Supplement shall be used by auditors in the performance of these examinations.

(b) *Election by recipient government.* A recipient government may elect to have the requirements of paragraph (a) of this section not applicable to that government upon filing notice to the Director that the audits are conducted in compliance with State or local law and meet the following requirements:

(1) The performance of the audits of the financial statements are independent as defined in § 51.100(f) of this subpart;

(2) The audits of the recipient governments are conducted in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States; and

(3) The audits will be conducted at least as often as would be required by subsection (a)(2) of this section; and

(4) A compliance audit and an auditor's report on the study and evaluation of the internal accounting controls, as well as a financial audit are conducted.

(c) *Series of audits.* (1) For local governments which receive at least $25,000 of entitlement funds, but not more than $100,000, in each of three consecutive fiscal years, a series of independent audits may be used as an alternative to the provisions of paragraph (a) of this section if they are conducted in accordance with generally accepted government auditing standards, over a period not to exceed three fiscal years, and cover, in the aggregate, all of the accounts of such recipient governments. When electing a series of audits, a recipient government must perform the compliance audit and the auditor's report on the study and evaluation of the internal accounting controls for the same fiscal year in which the financial audit is performed on the funds into which entitlement funds are deposited. The financial audit reports will be considered in an aggregate as one report for the purpose of determining whether the recipient government has complied with th provisions of this part.

(2) For local governments which receive more than $100,000 of entitlement funds annually and are required to have an audit for each such year, the series may be comprised of several separate financial reports which in aggregate will cover all of the accounts of the recipient government.

(d) *Series of audits.* A series of independent audits may be used as an alternative to the provisions of paragraph (a) of this section if they are conducted in accordance with generally accepted auditing standards, over a period not to exceed three fiscal years, and cover, in the aggregate, all of the accounts of a recipient government. When electing a series of audits, a recipient government must perform the compliance audit for the same fiscal year in which the financial audit is performed on the fund into which entitlement funds are deposited. The reports will be considered in an aggregate as one report for the purpose of determining whether the recipient government has complied with the provisions of this part.

(Information collection requirements in paragraph (b)(4) approved by the Office of Management and Budget under control number 1505-0066)

§ 51.103 Waiver of audit requirements.

(a) *Basis for granting waiver.* The Director may waive the provisions of § 51.102 of this subpart in whole or in part, for any recipient government which makes application for such a waiver, for any fiscal period upon determining that:

(1) The accounts of such government are not auditable and the government is making substantial progress towards making its accounts auditable; or

(2) The government has been audited by a State audit agency which does not follow generally accepted auditing standards or which is not independent as defined in § 51.100 (d) and (e) respectively, and which is demonstrating progress toward taking the necessary corrective action.

(b) *Procedure for requesting waiver.* (1) The chief executive officer of the recipient government shall apply to the Director in writing for the waiver and provide the following information:

(i) If the waiver is requested due to unaudibility of government financial accounts, an assurance that in the course of determining compliance with § 51.102, the independent auditor rendered an opinion that part or all of the financial accounts are not auditable. The waiver request shall further clearly set forth the arrangements which have been made or steps taken toward making such financial accounts auditable.

(ii) If the waiver is requested pursuant to paragraph (a)(2), an assurance that the State audit agency is demonstrating progress toward performing audits in accordance with generally accepted auditing standards or becoming independent. The waiver request shall further clearly set forth the arrangements which have been made or steps taken toward establishing the use of generally accepted auditing standards or achieving independence.

(2) The Director shall determine whether the recipient government or the State audit agency is making substantial progress towards taking the necessary corrective action.

(Information collection requirements in paragraph (b)(1)(ii) approved by the Office of Management and Budget under control number 1505-0066)

§ 51.104 Audits of secondary recipients.

A recipient government shall be responsible for an audit of the entitlement funds transferred to any secondary recipient, where the aggregate of the entitlement funds transferred to such secondary recipient during the fiscal year is $25,000 or more. Such audit shall be conducted pursuant to § 51.102(a), and the commentary on the audit requirements of the 1983 Amendments to the Act as published by the ORS and available to each recipient government. Audits performed for secondary recipients shall be performed in the same year as such are performed for the applicable primary recipient governments.

§ 51.105 Reliance upon audits under other Federal laws.

The Director may rely upon audits of the financial statements of recipient governments conducted in accordance with other Federal laws, for any fiscal period, provided that such audits substantially satisfy the requirements for audits contained in § 51.102(a) of this part. Audits and reports prepared in accordance with the procedures prescribed by OMB Circular A-102, Attachment P, will be acceptable to the Director as meeting the audit requirements of the Act, providing the OMB approved compliance supplement is used, and all funds of the recipient are examined.

§ 51.106 Audit opinions.

(a) *In general.* Opinions made with respect to audits must be rendered as a part of the audit report and shall be in accordance with the opinion in general use for attesting to financial statements, as defined in § 51.100(c).

(b) *Nature of opinions.* Audit opinions may be unqualified, qualified, or adverse. Disclaimers of opinion will be considered on an individual case-by-case basis to determine acceptability. Appropriate opinions for special reports should be expressed where cash basis statements have been prepared.

§ 51.107 Scope of audits.

(a) *In general.* (1) Audits made pursuant to § 51.102(a) shall include all financial statements prepared from accounts which the recipient government is required to maintain pursuant to State or local law.

(2) Audits of such financial statements made pursuant to §51.102(a) are required whether the funds being audited belong to the recipient government or whether the recipient government is holding such funds in a trust fund or other account which belongs to another political entity.

(3) Audits pursuant to § 51.102(a) are also required (even if the financial statements are prepared from accounts maintained by a political entity other than the recipient government, such as a

quasi-independent board, commission, authority) if the Bureau of the Census has classified the political entity as being dependent for general statistical purposes upon the recipient government. The classification of governments is contained in "The Census of Governments, Governmental Organization (Vol. 1)," published by the Bureau of the Census every five years and updated on a current basis to reflect significant changes occurring between censuses.

(4) The audit shall be of the financial and compliance type described in the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions* as issued by the Comptroller General of the United States.

(b) *Verification of fiscal data reported to the Bureau of the Census.* The scope of the audit shall also include a verification of the recipient government's fiscal data as reported by it to the Bureau of the Census.

§ 51.108 Public inspection, retention and submission of audit reports and workpapers.

(a) *Public inspection.* A copy of the audit report, shall be made available to any person for a period of three years. Within thirty (30) days after the audit is completed, the report shall be placed at the principal office of the recipient government for public inspection during normal business hours. Where feasible, local public libraries and other public buildings should be used also. If the recipient government has no principal office, the audit report shall be made available for public inspection at a public place or places within the political boundaries of the recipient government to satisfy the requirements of this subsection.

(b) *Notice of availability of audit report.* The recipient government shall publish a notice which indicates that the audit report is available for public inspection within thirty (30) days of completion of the audit. Such notice shall specify the location(s) and hours during which the audit report is available to the public. Publication of the notice shall be made in a newspaper of general circulation serving the recipient government's geographic area. Where newspaper publication is impractical or infeasible, alternative methods of publication shall be used as provided in § 51.13 of this part.

(c) *Submission of audit reports.* The Director may require the chief executive officer of a recipient government to submit a copy of its audit report and other information as may be requested by the Director to determine compliance with the provisions of this subpart.

(d) *Retention of audit workpapers.* Audit workpapers and related reports shall be retained for three years after the issuance of the audit report, and shall be made available upon request to the Director and the Comptroller General or to their representatives.

(Information collection requirements in paragraphs (a) and (b) approved by the Office of Management and Budget under control number 1505–0086, and in paragraphs (c) and (d) under control number 1505–0038)

§ 51.109 Procedures for effecting compliance.

(a) *Compliance with substantive provisions.* If a recipient government fails to comply with the requirements of this subpart, the Director may implement the procedures for effecting compliance contained in § 51.3 (a) through (d) of Subpart A.

(b) *Compliance with reporting requirements.* If a recipient government fails to comply with the reporting requirements of this subpart, the Director may implement the delay of payment and/or constructive waiver provisions of § 51.3(e) of Subpart A and § 51.25(b) of Subpart C of this part.

Subpart G—Proceeding for Reduction in Entitlement, Withholding, or Suspension of Funds

§ 51.200 Scope of subpart.

The regulations of this subpart govern the procedure and practice requirements involving adjudication where the Act requires reasonable notice and opportunity for a hearing. The adjudications covered in this subpart include administrative hearings concerning violations of all provisions of this part. Unless otherwise specified, the procedures described herein apply to both hearings concerning the violation of the provisions contained in Subpart E and hearing concerning the violation of the provisions contained in Subparts, B, D and F.

§ 51.201 Liberal construction.

The regulations in this subpart shall be liberally construed to secure just, expeditious, and efficient determination of the issues presented. The Federal Rules of Civil Procedure for the District Courts of the United States, where applicable, shall be a guide in any situation not provided for or controlled by this subpart, but shall be liberally construed or relaxed when necessary.

§ 51.202 Reasonable notice and opportunity for hearing.

Whenever the Director has reason to believe that a recipient government has failed to comply with any provision of the Act or the regulations contained in this part, the Director shall give reasonable notice and opportunity for a hearing to such government as required by the pertinent procedural provisions of Subparts A, E or G prior to the invocation of any sanction available under the Act. The sanctions for violation of the provisions of the Act include: repayment, withholding, or reduction in the amount of an entitlement of a recipient government which is required for a violation of the provisions of Subparts B, D and F, or suspension or termination of the entitlement payments for violations of the provisions of Subpart E.

§ 51.203 Opportunity for compliance.

(a) *In general.* Except in proceedings involving willfulness or those in which the public interest requires otherwise, an administrative hearing under this part will not be instituted until such facts or conduct which may warrant such action have been called to the attention of the chief executive officer of the recipient government in writing and an opportunity has been given to demonstrate or achieve compliance with the requirements of the Act and the regulations of this part.

(b) *Opportunity for compliance, under provisions other than Subpart E.* The opportunity for compliance will be given in accordance with the procedures for effecting compliance contained in § 51.3 for violations of Subparts B, D and F. If the recipient government fails to meet the requirements of the Act and regulations within such reasonable time as specified by the Director pursuant to § 51.3 of this part, an administrative hearing may be initiated by the Director.

(c) *Opportunity for compliance under Subpart E.* For violations of the provisions of Subpart E, entitlement funds shall be immediately suspended after notification of a determination of noncompliance pursuant to § 51.65, unless a recipient government specifically and timely requests an administrative hearing pursuant to § 51.65. If the recipient government is a unit of local government, a copy of the finding and determination letters shall be transmitted by the Director to the Governor of the State in which the unit of local government is located.

§ 51.204 Institution of administrative hearing.

(a) *Institution of an administrative hearing other than under Subpart E.* An administrative hearing to require repayment of funds to the Director, or to withhold funds from subsequent entitlement payments, or to reduce the entitlement of a recipient government

for violations of the provisions of Subparts B, D, or F, shall be instituted by the Director through a complaint which names the recipient government as the respondent.

(b) *Institution of an administrative hearing under Subpart E.* An administrative hearing under Subpart E of this part shall be instituted at the timely request of the recipient government, pursuant to § 51.65 of Subpart E, within thirty (30) days of receipt of that request by the Director. After receiving the request for a hearing, the Director shall file a complaint which names the recipient government as the respondent.

§ 51.205 Complaint for administrative hearing.

Administrative complaints shall include the following:

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against it.

(b) *Demand for answer.* Notification shall be given in the complaint of the time and place within which the recipient government shall file its answer, which time shall be not less than thirty (30) days from the date of service of the complaint for hearings concerning provisions other than Subpart E. Where the hearing concerns provisions under Subpart E, the answer shall be required to be filed within ten (10) days of the date of service of the complaint. The complaint shall also contain notice that a decision by default will be rendered against the recipient government in the event it fails to file its answer as required.

§ 51.206 Service of complaint and other papers.

(a) *Service of complaint.* The complaint or a true copy thereof may be served upon the recipient government by first-class mail or by certified mail, return receipt requested; or it may be served in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return Postal Service receipt duly signed on behalf of the respondent shall be proof of service. Where the hearing concerns the provisions of Subpart E, the complaint shall be served upon the recipient government within seven days of receipt of the request for a hearing from the recipient government.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon a party or upon its attorney of record by first-class mail. Such mailing shall constitute complete service.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with an administrative hearing under this subpart, and the place of filing is not specified in this subpart or by rule or order of the administrative law judge, the paper shall be filed with the Director, Office of Revenue Sharing, Treasury Department, Washington, D.C. 20226. All papers shall be filed in duplicate.

(d) *Motions and requests.* Motions and requests may be filed with the designated administrative law judge, except that an application to extend the time for filing an answer shall be filed with the Director, Office of Revenue Sharing, pursuant to § 51.207(a).

§ 51.207 Answer; referral to administrative law judge.

(a) *Filing.* The recipient government's answer shall be filed in writing within the time specified in the complaint, unless a recipient government's request for an extension of time is granted by the Director. The recipient government's answer shall be filed in duplicate with the Director, Office of Revenue Sharing.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the recipient government shall not deny a material allegation in the complaint which it knows to be true, nor shall a recipient government state that it is without sufficient information to form a belief when in fact it possessses such information. The recipient government may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegation in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need to be adduced at a hearing.

(d) *Failure to file answer.* Failure to file an answer within the time prescribed in the complaint, except where the time for answer is extended under paragraph (a) of this section, may constitute an admission of the allegations of the complaint and a waiver of hearing, and the administrative law judge may make his findings and decision by default without a hearing or further procedure.

(e) *Reply to answer.* No reply to the recipient government's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Director may file a reply in her discretion and shall file one if the administrative law judge so requests.

(f) *Referral to administrative law judge.* Upon receipt of the answer by the Director, or upon filing a reply if one is deemed necessary, or upon failure of the recipient government to file an answer within the time prescribed in the complaint or as extended under paragraph (a) of this section, the complaint (and answer, if one is filed) shall be referred to the administrative law judge who shall then proceed to set a time and place for hearing and shall serve notice thereof upon the parties at least fifteen (15) days in advance of the hearing date.

§ 51.208 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading, and the evidence adduced in support of the pleadings, the administrative law judge may order or authorize amendment of a pleading to conform to the evidence; *Provided that*, the party that would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations contained in the pleading as amended. The administrative law judge shall make findings on any issue presented by the pleadings as so amended.

§ 51.209 Representation.

A recipient government may appear in person through its chief executive officer or it may be represented by counsel or other duly authorized representative. The Director shall be represented by the General Counsel of the Treasury, or a person or persons designated by the General Counsel.

§ 51.210 Administrative law judge; powers.

(a) *Appointment.* An administrative law judge, appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105), shall conduct proceedings upon complaints filed under this subpart.

(b) *Powers of administrative law judge.* Among other powers provided by law, the administrative law judge shall have authority, in connection with any proceeding under this subpart, to do the following things:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests. Prior to the close of the hearing, no appeal shall be made from any such ruling except, at the discretion of the administrative law judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct. In determining the place of

hearing, the administrative law judge may take into consideration the requests and convenience of the respondent or its counsel;

(4) Adopt and modify rules of procedure from time-to-time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written arguments on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform the acts and take the measures necessary or appropriate to promote the efficient conduct of any proceeding; and

(10) Make initial findings of fact and conclusions of law and issue a decision.

§ 51.211 Administrative hearings.

(a) *Administrative hearing for violations other than Subpart E.* The administrative law judge shall preside at the hearing on a complaint. Testimony of witnesses shall be given under oath or affirmation. The hearing shall be stenographically recorded and transcribed. Hearings will be conducted pursuant to section 7 of the Administrative Procedure Act (5 U.S.C. 556).

(b) *Administrative hearing under Subpart E.* A hearing requested by a recipient government under Subpart E pursuant to § 51.65 shall be commenced by the Director within thirty (30) days of receipt of such request and shall be held before an administrative law judge. Testimony shall be given under oath or affirmation and shall consist of two proceedings as follows:

(1) The first proceeding shall be in the nature of a summary hearing conducted in accordance with the provisions of this subpart, similar to a judicial hearing on a preliminary injunction. All parties shall have an opportunity to present their respective positions. The administrative law judge shall issue a preliminary finding as to whether the recipient government is likely to prevail, which finding shall be based upon the record developed throughout this proceeding, and shall be issued within thirty (30) days after commencement of the summary hearing.

(2) The second proceeding, if necessary, shall be a full hearing on the merits conducted in accordance with the provisions of this subpart and shall result in the initial decision of the administrative law judge. The initial decision of the administrative law judge shall be based upon the complete record of all the evidence developed throughout the hearing.

(c) *Failure to appear.* If a recipient government fails to appear at a hearing, after due notice thereof has been served upon it or upon its counsel of record, it shall be deemed to have waived the right to a hearing and the administrative law judge may make appropriate findings and issue a decision against the respondent by default.

(d) *Waiver of hearing.* A recipient government may waive the hearing by informing the administrative law judge, in writing, on or before the date set for hearing, that it desires to waive a hearing. In such event, the administrative law judge may make appropriate findings and issue a decision based upon pleadings and the record before her, together with such documentary evidence properly submitted. The decision shall plainly show that the respondent waived the hearing.

§ 51.212 Stipulations.

The administrative law judge shall, prior to or at the beginning of a hearing, require the parties to arrive at such stipulations as will eliminate the necessity of taking evidence with repect to allegations of facts concerning which there is no genuine issue of material fact. The administrative law judge shall take similar action, where it appears appropriate, throughout the hearing and shall call and conduct any conferences which she deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved.

§ 51.213 Evidence.

(a) *General.* Any evidence which would be admissible under the rules of evidence governing proceedings in matters not involving trial by jury in the Courts of the United States, shall be admissible and controlling as far as possible; *Provided that* the administrative law judge may relax such rules in any hearing when in her judgment such relaxation would not impair the rights of either party and would more speedily conclude the hearing, or would better serve the ends of justice. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded by the administrative law judge.

(b) *Depositions.* The deposition of any witness may be taken pursuant to § 51.214 and the deposition may be admitted as evidence.

(c) *Proof of documents.* Official documents, records, and papers of a respondent shall be admissible as evidence without the production of the original, provided that such documents, records and papers are proven to represent the original by a copy attested or identified by the chief executive officer of the respondent or the custodian of the document, and contained the seal of the respondent.

(d) *Exhibits.* If any document, record, paper, or other tangible or material thing is introduced in evidence as an exhibit, the administrative law judge may authorize the withdrawal of the exhibit subject to any conditions she deems proper. An original document, paper or record need not be introduced, and a copy duly certified (pursuant to paragraph (c) of this section) shall be deemed sufficient.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as permitted by the administrative law judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the right of either party to the proceeding.

§ 51.214 Depositions.

(a) *In general.* Depositions for use at a hearing may, with the written approval of the administrative law judge, be taken by either the Director or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than fifteen (15) days written notice to the other party, before any officer duly authorized to administer an oath for general purposes, except in proceedings under Subpart E in which case depositions may be taken upon not less than ten (10) days written notice. Such written notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of written notice may be waived by the parties in writing, or may be modified by the administrative law judge. Depositions may be taken from the persons and at times and places mutually agreed to by the parties.

(b) *Written interrogatories.* When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogatories shall be mailed by first class mail or delivered to the opposing party at least seven (7) calendar days before the date on which such interrogatories or cross-interrogatories are scheduled to be

answered, unless the parties mutually agree or the administrative law judge rules otherwise. A party upon whose behalf a deposition is taken must file it with the administrative law judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose request the deposition is taken.

§ 51.215 Stenographic record; oath of reporter; transcript.

(a) *In general.* A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact in all proceedings. A transcript of the proceedings and evidence at a hearing shall be made in all cases.

(b) *Oath of reporter.* The reporter making the stenographic record shall subscribe an oath before the administrative law judge, to be filed in the record of the case, that said reporter will truly and correctly report the oral testimony and proceedings at such hearing and accurately transcribe the same to the best of her ability.

(c) *Transcript.* In cases where the hearing is stenographically reported by a government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the government and the reporter. Where the hearing is stenographically reported by a regular employee of the Department of the Treasury, a copy thereof will be supplied to the respondent or its counsel at actual cost of duplication. Copies of exhibits introduced at the hearing or at the taking of the deposition will be supplied to the parties upon the payment of a reasonable fee (31 U.S.C. 483(a)).

§ 51.216 Proposed findings and conclusions.

Except in cases where a recipient government has failed to answer the complaint, has failed to appear at the hearing, or has waived the hearing, the administrative law judge shall, prior to making the preliminary finding under § 51.217 for hearings under Subpart E or the initial decision, give the parties a reasonable opportunity to submit proposed findings of fact and conclusions of law and any supporting reasons.

§ 51.217 Preliminary finding (for hearings under Subpart E).

(a) *Suspension of funding or termination of payment by administrative law judge.* (1) Within thirty (30) days after the commencement of a summary hearing under § 51.211(b)(1), the administrative law judge conducting the hearing shall, on the record of evidence presented, issue a preliminary finding as to whether the recipient government has failed to comply with the provisions of this part. If the preliminary finding of the administrative law judge is to the effect that the recipient government is not likely to prevail on the issues to which the hearing pertained, the Director shall immediately suspend the further payment of entitlement funds to the recipient government.

(2) Such suspension shall remain in effect until a compliance agreement is entered into by the recipient government and the Director. A preliminary finding by the administrative law judge is not appealable by the recipient government. After the completion of the full hearing on the merits, the administrative law judge shall make findings and a decision based upon the complete record of the evidence. If the administrative law judge issues a decision that the recipient government has failed to comply with the provisions of this part, then the recipient government must enter into a compliance agreement with the Director before the 31st day after the decision. If no compliance agreement is entered into, the Director shall, upon the initial decision of the administrative law judge, indefinitely suspend the payment of entitlement funds to the recipient government, continue the suspension invoked under paragraph (a)(1) of this section, or terminate the payment of entitlement funds if ordered to terminate by the administrative law judge.

(b) *Resumption of funding; finding of compliance by administrative law judge.* A determination by the administrative law judge that the recipient government has complied with the provisions of this part, will terminate a suspension or termination of entitlement funds by the Director pursuant to paragraph (a) of this section. The Director shall, as promptly as feasible, pay over to the recipient government all entitlement funds the payment of which were suspended.

§ 51.218 Initial decision of the administrative law judge.

(a) *In general.* As soon as practicable after the conclusion of a full hearing on the merits under § 51.211(b)(2) and the receipt of any proposed findings of fact and conclusions of law timely submitted by the parties, but in no event later than 30 days after the conclusion of the hearing, the administrative law judge shall, in accordance with 5 U.S.C. section 557, make the initial decision in the case. The initial decision shall include a statement of the findings of fact and the conclusions of law reached upon all the material issues of fact, law or discretion presented on the record, as well as the reasons or basis for them. The decision shall not, however, order any particular remedy for the noncompliance, but shall only state whether the recipient government has failed to comply with the provisions of the statute. The nature of the remedy shall be within the discretion of the Director, based upon the findings of fact and conclusions of law of the administrative law judge. The initial decision shall further provide for one or more of the following:

(1) With respect to proceedings under Subpart E—

(i) A determination that the recipient government has failed to comply with the provisions of Subpart E. This determination shall result in the immediate suspension of the further payment of entitlement funds by the Director of continued suspension of such funds if they had been previously suspended pursuant to a preliminary finding by the administrative law judge as described in § 51.217 of this subpart.

(ii) An order pursuant to paragraph (1) of this section, and the payment of entitlement funds to the recipient government is terminated.

(iii) A determination that the recipient government has proven compliance with the provisions of Subpart E. This determination should cause the Director to immediately resume payments, if they had been suspended pursuant to § 51.217.

(2) With respect to proceedings other than under Subpart E—

(i) That the Director withhold subsequent entitlement payments to the respondent until appropriate corrective action (as determined by the Director) is taken; and

(ii) That the entitlement of a recipient government be reduced and the amount of such reduction to be withheld from subsequent entitlement payments.

(3) That the proceedings be dismissed.

(b) *Suspension of funding.* For violations of the provisions of Subpart E, if the intitial decision is against the recipient government, the Director shall suspend the payment of entitlement funds (or continued suspension of funds suspended after a preliminary finding of the administrative law judge). The entitlement payment to the recipient government shall be suspended by the Director until the recipient government enters into a compliance agreement which satisfies the Director that appropriate corrective action has been taken and there is full compliance with the provisions of Subpart E.

(c) *Order of termination of funding.* For violations of the provisions of Subpart E, if the order of the administrative law judge against the recipient government is for termination of entitlement funds, the entitlement payment to the recipient government shall be terminated by the Director. The recipient government may resume participation in the program in the future if it enters into a compliance agreement which satisfies the Director that appropriate corrective action has been taken and there is full compliance with the provisions of Subpart E. Entitlement funds terminated shall be returned to the general fund of the Department and will not be available to the recipient government, unless the order of termination is reversed by an appellate tribunal.

(d) *Withholding of funding.* For violations of provisions other than Subpart E, if the initial decision of the administrative law judge or the Secretary is against the recipient government the Director shall withhold the further payment of entitlement funds to the recipient government. The amounts shall be withheld by the Director after notice to the chief executive officer of the recipient government. The notice shall state that if the recipient government fails to take corrective action within sixty (60) days after receipt of the notice, the further payment of entitlement payments will be withheld until the Director is satisfied that appropriate corrective action has been taken and there is full compliance with the Act and regulations of this part.

§ 51.219 Certification and transmittal of record and decision.

After reaching the initial decision, the administrative law judge shall certify the complete record and immediately forward the certified record, together with a certified copy of the initial decision, to the Director. The administrative law judge shall also serve a copy of the initial decision by certified mail upon the chief executive officer of the recipient government or upon its attorney of record.

§ 51.220 What constitutes the record?

The transcript of testimony, pleadings and exhibits, all papers and requests filed in the proceeding, together with all findings, decisions and orders, shall constitute the exclusive record in the matter.

§ 51.221 Procedure on review of decision of administrative law judge.

(a) *Appeal to the Secretary*—(1) *By the recipient government.* In all proceedings, within thirty (30) days from the date of the initial decision and order of the administrative law judge, the recipient government may appeal to the Secretary by filing its exceptions to the initial decision and the reasons for the exceptions. The recipient government shall transmit a copy of its appeal and reasons therefor to the Director of the Office of Revenue Sharing, who may, within thirty (30) days from receipt of the recipient government's appeal, file a reply brief in opposition to the appeal. A copy of the reply brief, if one is filed, shall be transmitted to the recipient government or its counsel of record. Upon the filing of an appeal and a reply brief, if any, the Secretary shall make the final agency decision on the record of the administrative law judge within ninety (90) days from the date of the last filing.

(2) *By the Director of the Office of Revenue Sharing.* In all proceedings, the Director may, on her own motion, within forty-five (45) days after the initial decision, serve on the recipient government by certified mail a notice that the decision will be appealed to the Secretary. Within thirty (30) days from such notice, the Director through counsel shall file with the Secretary exceptions to the initial decision and supporting reasons therefor. A copy of the exceptions shall be transmitted to the recipient government or its counsel of record, who, within thirty (30) days after receipt thereof, may file a reply brief thereto with the Secretary and submit a copy to the Director of the Office of Revenue Sharing or counsel for ORS. Upon the filing of a reply brief, if any, the Secretary shall make the final agency decision on the record of the administrative law judge within ninety (90) days from the date of the last filing.

(b) *Review by Secretary.* In all proceedings, in the absence of appeal by either party, the Secretary may elect to review the initial decision of the administrative law judge. Within forty-five (45) days of the initial decision, the Secretary shall serve on the recipient government by certified mail, a notice that an election has been made to review the decision. As part of the review, the Secretary may request briefs from each party within thirty (30) days of the date of notice of the review. Upon filing of the briefs, the Secretary shall make the final agency decision on the record of the administrative law judge within ninety (90) days from the date of the last filing.

(c) *Decision of the Secretary.* On appeal or review of the initial decision of the administrative law judge, the Secretary shall make the final agency decision, after review of the record or such portions thereof as may be cited by the parties, to permit limiting of the issues. The Secretary may affirm, modify, or revoke the findings and initial decision of the adminstrative law judge. A copy of the Secretary's decision shall be transmitted immediately to the chief executive officer of the recipient government or its counsel of record.

§ 51.222 Effect of absence of appeal or review of initial decision of administrative law judge.

In the absence of either exceptions by the recipient government, a notice of appeal by the Director or review by the Secretary (where appropriate) within the time periods set forth in paragraphs (a), (b) or (c) of § 51.221, the initial decision of the administrative law judge shall become the final decision of the Department.

§ 51.223 Publicity of proceedings.

(a) *In general.* A proceeding conducted under this subpart shall be open to the public and to elements of the news media provided that, in the judgment of the administrative law judge, the presence of the media does not detract from the decorum and dignity of the proceeding.

(b) *Availability of record.* The record established in any proceeding conducted under this subpart shall be made available for inspection by the public as provided for in accordance with regulations of the Department of the Treasury pursuant to 31 CFR Part 1.

(c) *Decisions of the administrative law judge.* The statement of findings and the initial decision of the administrative law judge in any proceedings, whether or not on appeal or review, shall be indexed and maintained by the Director and made available for inspection by the public at the public documents room of the Department. If practicable, the statement of findings and the decisions of the administrative law judge shall be published periodically by the Department and offered for sale through the Superintendent of Documents.

§ 51.224 Judicial review.

(a) *In general.* Actions taken as a result of administrative hearings pursuant to this subpart shall be subject to judicial review pursuant to section 6722 of the Act.

(b) *Appeal by the respondent.* A respondent may appeal the initial decision of the administrative law judge which has become final, or a final order of the Secretary pursuant to §§ 51.221(c) or 51.222, to the U.S. Court of Appeals, as provided by law.

(c) *Cross-appeal by the Director.* In the event a recipient government

appeals, the Director may cross-appeal any issues decided adversely to the ORS by the administrative law judge. Issues decided adversely to the ORS by the Secretary may not be appealed by the Director.

(d) *The record.* The Secretary, upon prior notification of the filing of the petition for review, shall have prepared in triplicate, a complete transcript of the record of the proceeding, and shall certify to the correctness of the record. The original record shall then be filed with the Court of Appeals which has jurisdiction.

Appendix A—Age Distinction and Explanatory Material

Age Distinction in Revenue Sharing Act

There is only one age distinction contained in the Revenue Sharing Act. 31 U.S.C. 6714 (a)(3) provides that a "State government or unit of general local government holding a hearing requried under this subsection or by the budget process of the government shall try to provide senior citizens and senior citizen organizations with an opportunity to present views at the hearing before the government makes a final decisions on the use of the payment." The corresponding regulation is § 51.16 "Participation by senior citizens" (31 CFR 51.16).

Critical Issues Concerning Age Discrimination Prohibition

The following discussion of the critical issues concerning the Age Discrimination prohibition is reprinted from the final government-wide regulations (31 CFR Part 90):

1. What Ages Does the Act Cover?

Section 303 of the Act prohibits discrimination on the basis of age in federally funded programs or activities. Although the legislative history indicates Congressional concern for the problems of the elderly in particular, the Congress made it clear in its Conference Committee report that the Act is intended to apply to persons of all ages.

When the Act was originally passed in 1975, Congress directed the United States Commission on Civil Rights to conduct a study of age discrimination in federally funded programs, and required each affected Federal agency to respond to the Commission's study. After reviewing the Commission's report and Federal agency responses to it, Congress considered amendments to the Act. Nowhere in the amendment process was there any discussion of limiting or changing the coverage of the Act. It continues to extend protection to persons of all ages.

Various advocacy groups for older persons have suggested that HEW construe these general implementing regulations to protect only the elderly or to provide greater protection for older persons than for other age groups. This construction is not legally supportable in view of the legislative history and the plain language of the Act.

However, the Congress has consistently made clear its support for the concerns of older persons. It is therefore unlikely that Congress intended the Act to call into question the generally accepted special benefits which are provided to older persons in programs that are otherwise available to a wider age range of the population. Public comment on the regulations was almost unanimously supportive of these benefits, which often take the form of special discounts. Similarly, no one has suggested that similar benefits for children should be questioned under the Act.

HEW supports the continuation of special benefits for children and older persons. Therefore, these regulations permit special benefits for the elderly persons and for children that are extended by recipients so long as they do not result in the exclusion from the program of otherwise eligible persons. [§ 90.49(c)].

2. Does the Act Require Proportional Allocation of Services and Funds by Age?

Commenters also asked whether the Act requires proportional allocation by age of the services and the benefits of federally assisted programs. Some believe that certain groups, especially the elderly, do not get their "fair share" of funds in certain programs or that certain program participation rates among age groups like the elderly are disproportionately low.

The final regulations do not require proportional program participation by age or the proportional allocation of funds by age. Discrimination has not been defined in this way in other nondiscrimination regulations. However, disproportionate allocation of funds or program participation may be one of the elements which triggers an examination of whether age discrimination exists in the federally funded program or activity. If further inquiry is necessary, the recipient may show that the disparity in rates of participation, fund allocation, or services has nondiscriminatory causes. Comments on the NPRM suggested that there may be nondiscriminatory reasons which adequately explain the disproportionately low participation of the elderly in some programs.

3. What Programs or Activities Are "Established Under Authority of Any Law?"

The Age Discrimination Act exempts from coverage age distinctions contained in a program or activity "established under authority of any law" which provides benefits on the basis of age or in age-related terms. Congress did not expressly indicate anywhere in the legislative history of the Act what it meant by the term "any law." The regulations must, nevertheless, define the phrase "established under authority of any law" in order to determine which age distinctions are exempted by this provision of the Act.

The NPRM presented four options for interpreting the phrase "any law" and asked for comments on those or any other reasonable interpretations. The NPRM cited two overriding issues to be considered in determining the meaning of "any law" (a) whether to include age distinctions contained in regulations; and (b) whether to include age distinctions enacted by State and local legislative bodies.

The narrowest option interpreted "any law" to mean only Federal statutes. The broadest option interpreted "any law" to include Federal, State and local statutes and Federal, State and local regulations. Supporters of defining "any law" to mean only Federal statutes argued that any other interpretation seriously weakens the Act. Congress could not have intended to give discretion to State or local legislative bodies to exempt any age distinction from the coverage of the Act. To do so would be an abdication of Federal responsibility which defeats the purpose of the Act.

Those who argued the "any law" should mean Federal and State statutes argued that the Act should permit the State to use age in exercising their traditional power in such areas as defining the age of majority, controlling access to a driver's license, and regulating compulsory school attendance. On the other hand, extending this exemption to local statutes and ordinances would permit thousands of local jurisdictions to introduce age distinctions into the administration of Federal programs which would fatally weaken the Act.

Supporters of defining "any law" to mean Federal, State and local statutes and ordinances argued that there is no clear basis for limiting the interpretation of "any law" to Federal statutes. Congress rejected an amendment to the Act in 1978 which would have defined "any law" to mean Federal statutes. Furthermore, there is no basis for excluding local statutes and ordinances if State statutes are included in the definition. They argued that no case has been made that age discrimination occurs as a result of age distinctions in State and local statutes and ordinances and the beneficial age distinctions are enacted by State and local legislative bodies.

Defining "any law" to include all regulations had relatively little support. Some suggested defining "any law" to mean Federal statutes and regulations in the definition argued that regulations have the force and effect of law and should be included in the "any law" exemption. This position has been rejected on the grounds that it would permit administrators of federally funded programs to impose age distinctions which are not authorized by a legislative body. In addition, HEW does not believe that the language "established under authority of any law" necessarily includes regulations having the force and effect of law.

The final regulations define "any law" to mean Federal, State and local statutes and ordinances. The language of the statute, and the general lack of legislative history to justify any narrower interpretation of that language support the conclusion that Federal and State statutes, and statutes or ordinances enacted by general purposes, elected local governments should be exempt from coverage of the Act. This is particularly appropriate in the absence of any clear indication that age discrimination occurs as a result of State and local statutes. This definition of "any law" recognizes the authority of State and general purpose, elected local governments to enact statutes

which condition benefits or participation on the basis of age.

Examples: "Established Under Authority of Any Law"

1. *Federal statutes.* The Adult Education Act (20 U.S.C. 1201–1213) is statutorily designed to prove services or instruction below college level for adults. The Act defines adults as individuals who have attained the age of 16. This limitation of participation in adult education programs is not covered by the Act. The Runaway Youth Program (42 U.S.C. 5701) authorized under the Juvenile Justice and Delinquency Prevention Act, awards grants for the development and/or strengthening of local facilities to address the immediate needs of runaway youth in a manner which is outside of the law enforcement and juvenile justice systems. The terms "runaway youth," "juveniles," and without further definition. Reasonable definitions of these terms would not be covered by the Act.

2. *Local statutes or ordinances.* Age limitations on consuming alcoholic beverages of possessing firearms are not covered by the Act as long as these are adopted by an elected general purposes legislative body.

Note.—Any age distinction not exempted from coverage by the "any law" provision may still qualify for an exception under another provision of the Act or these regulations.

4. What Are the Rules Against Age Discrimination?

Many commenters asked for clarification of the rules against age discrimination contained in § 90.12 of the regulations. § 90.12 sets forth a general rule against age discrimination which is based on section 303 of the Act, and then presents specific rules against age discrimination. These rules are limited by the exceptions contained in the Act and these regulations.

The general rule in § 90.12 reflects the language of the Act: Except as provided in the Act and these regulations, " * * * no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits or, or be subjected to discrimination under, any program or activity receiving Federal financial assistance." It means that, unless sanctioned by one of the exceptions, recipients of Federal financial assistance may not, either directly or indirectly, do anything to exclude persons from their programs or activities on the basis of age. Nor may recipients do anything not sanctioned by one of the exceptions to deny or limit persons in their efforts to participate in federally funded programs or activities on the basis of their age. For example, a medical school may not exclude persons from admission solely because of their age.

The prohibition against age discrimination does not include an absolute prohibition against separate or different treatment on the basis of age. As a general rule, separate or different treatment which denies or limits services from, or participation in, a program receiving Federal financial assistance would be prohibited by these regulations. On the other hand, these regulations do not automatically invalidate the provision of services through separate or different treatment on the basis of age. Separate or different treatment necessary to normal operations or to the achievement of a statutory objective would qualify for any exception under these regulations contains language which affects the rules against discrimination in two important ways: a recipient may voluntarily act to overcome the effects of conditions which, in the past, have limited participation in a federally assisted program on the basis of age; and, a recipient may provide special benefits for children or the elderly if, by so doing, the recipient does not exclude others who are eligible from participating in the federally assisted program. As mentioned earlier, HEW does not believe that Congress meant to disturb the practices of recipients which provide special benefits to children or the elderly. For example, reduced fares for children and for senior citizens on public transportation or on railways or airlines would qualify as a special benefit under § 90.49 of these regulations. The definition of who qualifies as "children" or "elderly" for purposes of receiving a special benefit will be left to the reasonable discretion of the recipients who voluntarily provide the benefit.

5. What Are the Statutory Exceptions to the Rules Against Age Discrimination?

a. *Definition of Statutory Objective and Normal Operation.* Many commenters questioned the meaning, clarity, and interpretation of the statutory exceptions to the prohibition against age discrimination contained in the proposed rules §§ 90.14 and 90.15.

Two phrases, "normal operations" and "statutory objective" are used in these regulations in interpreting the Act's exceptions for explicit age distinctions (§ 90.14) and for the use of factors other than age (§ 90.15). Critical to an understanding of these "statutory objective" and the definition of "normal operation."

The NPRM stated that statutory objective would mean either: (1) Any purpose of a program or activity expressly stated in a statute, or (2) any purpose of a program or activity expressly stated in a statute or reasonably inferred from its provisions or legislative history. Because legislative history is a broad concept and because statutory objectives will be used to justify the use of administratively imposed age distinctions or factors other than age which have a disproportionate effect, HEW believes that the term "statutory objective" should be construed to mean only expressly stated objectives.

The NPRM was silent about whether the term "statutory objective" referred to Federal statutes, or State statutes, or local statutes, or all statutes. HEW believes the definition of "statutory objective" in § 90.13 should be parallel. Therefore, the final regulations define "statutory objective" to mean"any purpose of a program or activity expressly stated in any Federal statute, State, statute or local statute or ordinance adopted by an elected, general purpose legislative body."

The final regulations have not changed the definition of "normal operation." "Normal operation" continues to mean "the operation of a program or activity without significant changes that would impair its ability to meet its objectives." This definition of "normal operation" means that a recipient of Federal funds may not use the statutory exceptions to justify refusing to make changes in program operation because those changes disturb administrative routine or are inconvenient.

b. *The four-part test for determining when an explicit age distinction is necessary to normal program operations or necessary to achieve a statutory objective.* Section 90.14 establishes a four-part test for explicit age claimed to be necessary to the normal operation of program or activity.

The NPRM provided that an action reasonably takes age into accounts as a factor necessary to the normal operation of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics (e.g., maturity);

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are difficult, costly, or otherwise impractical to measure directly.

The final regulations retain the four-part test, with some changes. The word "and" has been added after part (a) and (b) to clarify the intent that an age distinction must meet all four parts in order to qualify for an exception. The reference to "maturity" has been deleted as an example of a characteristic for which age may be an approximation, because commenters felt that the term was too vague and did not illustrate what was meant in the test. The first part of the test in section 90.14 refers to a situation in which a program uses an age distinction as an indicator of some other characteristic, such as susceptibility to disease.

The third change occurs in part (d) of the test. The final regulations no longer contain a reference to cost or difficulty; however, part (d) now requires that the characteristics for which age is an approximation must be impractical to measure directly on an individual basis.

Thus, to qualify for an exception under § 90.14, all four of the following conditions must be met: (a) The age distinction in question must be used as an indicator or measure of some other (non-age) characteristic; (b) the other recipient's program because it does not meet the requirement of section 90.14(b).

Age of the applicant may be a reasonable measure of a non-age characteristic (longevity of practice). This characteristic may be impractical to measure directly on an individual basis. Nevertheless, achieving a high average longevity of practice for its graduates cannot be considered a program objective for a medical school within the meaning of the Act. The "normal operation" exception is not intended to permit a recipient to use broad notions of efficiency or cost-benefit analysis to justify exclusion from

a program on the basis of age. The basic objectives of the medical school involve training competent and qualified medical school graduates. Those objectives are not impaired if the average length its graduates practice medicine is lowered by a fraction of a year (or more) by the admission of qualified applicants over thirty-five (35) years of age.

Examples: "Necessary to the Achievement of a Statutory Objective"

1. Applications for grants for disease control programs under the Public Health Service Act can only be approved if they "(B) contain assurances satisfactory to the Secretary that * * * the applicant will conduct such programs as may be necessary (i) to develop an awareness in those persons in the area served by the applicant who are most susceptible to the disease or conditions * * * of appropriate preventive behavior and measures (including immunization) and diagnostic procedures for such disease, and (ii) to facilitate their access to such measures and procedures." (42 U.S.C. 247b).

Under the test of § 90.14, it is necessary to the achievement of this explicit statutory objective to give priority in immunization to age categories most at risk to the disease in question because:

(a) Age is being used as a measure of susceptibility to a disease; and

(b) Susceptibility to disease must be measured for the statutory objective to be met; and

(c) Age is a reasonable measure of susceptibility to the particular disease; and

(d) Susceptibility to the disease is impractical to measure directly on an individual basis.

2. The purpose of the Adult Education Act (20 U.S.C. 1201 et seq.) is to provide education that will "enable all adults to continue their education * * * and * * * enable them to become more employable, productive, and responsible citizens." (20 U.S.C. 1201(a).)

A recipient limits participation in its adult education program to adults under thirty-five (35) on the grounds that this is necessary to achieve the explicit Adult Education Act objective of increasing employability, productivity, and responsibility.

It is not necessary to the achievement of this statutory objective to limit participation of those under thirty-five (35). This age limitation fails at least two elements of the four-part test set out in § 90.14. Employability, productivity and responsibility need not be measured in order to meet the statutory objective of making adults more employable, productive or responsible because the objective is comparative rather than absolute. The statute only requires an effort to improve these characteristics in an individual, not to maximize the degree of improvement.

These characteristics have no demonstrable correlation with age and cannot be reasonably measured by the use of age (§ 90.14(c)).

Whether or not these characteristics can practically be measured directly on an individual basis need not be considered, since the characteristics do not have to be measured in order to meet the statutory objective.

c. *Use of Reasonable Factors Other than Age.* Section 90.15 of the NPRM set out four options to characterize the relationship between a factor other than age that may have discriminatory effect and the normal operation of a program or the achievement of a statutory objective. Those four options were rational, direct, substantial, and necessary. Commenters disagreed about what relationship a factor other than age should bear to the normal operation or the statutory objective of a program or activity.

The final regulations require that the factor other than age bear a direct and substantial relationship to the normal operation of the statutory objective of a program or activity. The "rationale" option, which was equated in the NPRM with the rational basis test used under the equal protection clause of the Fourteenth Amendment, has been rejected on the grounds that many serious discriminatory effects created by factors other than age would be likely to survive a rational basis level of scrutiny.

The "necessary" option has been rejected because it requires a test which is not sufficiently flexible to deal with the variety of factors other than age and the variation in facts and circumstances that contribute to whether those factors other than age are "reasonable."

The regulations adopt the "direct and substantial" standard because it provides the appropriate flexibility and, at the same time, avoids the weaknesses inherent in the "rational" standard.

Use of the "direct and substantial" standard means that use factors other than age must be carefully examined in light of the individual facts and circumstances surrounding their use. This examination will determine whether use of the factor other than age is a sufficiently effective method of achieving a worthwhile program purpose to justify limiting or denying services or participation to adversely affected persons.

Examples: "Reasonable Factors Other Than Age."

1. A federally assisted training program uses a physical fitness test as a factor for selecting participants to train for a certain job. The job involves frequent heavy lifting and other demands for physical strength and stamina. Even though older persons might fail the test more frequently than younger persons, the physical fitness test measures a characteric that is directly and substantially related to the job for which persons are being trained and is, therefore, permissible under the Act.

2. The same program referred to in (1) above uses the same physical fitness test to select participants for a training program for clerical work. It claims that persons who pass the test are likely to do better work than those who are unable to pass the test. Even if this were true, the relationship between the requirements of the test and the requirements of the type of job for which training is being offered is not direct and substantial. It is so tenuous and limited that it will not justify the test's age discriminatory effect. In this situation, use of the test would violate the Act.

6. Cost/Benefit Analysis

The NPRM raised the issue of whether cost-benefit considerations can justify the use of age distinctions or factors other than age. A majority of commenters expressed support for the NPRM position that a cost-benefit consideration by itself cannot be the sole justification for an exception under §§ 90.14 and 90.15. Others however, opposed any use of cost-benefit analysis in the administration of federally assisted programs.

The use of an explicit age distinction in the operation of a federally assisted program will have to be justified as necessary to the normal operation of the program or to the achievement of a statutory objective. That is, the explicit age distinction will have to meet the four part test of § 90.14 and cannot be disqualified or justified because it reflects a cost-benefit consideration. Use of a factor other than age will have to meet the test established in § 90.15 and cannot be disqualified or justified because it reflects a cost-benefit consideration. The scrutiny afforded age distinctions and factors other than age under these regulations should have the effect of screening out discriminatory cost-benefit considerations.

7. Relationship Between General and Age-Targeted Programs

Another major issue in the NPRM concerned similar services provided by both general and age-targeted programs. The question was whether the existence of an age-targeted program in any way relieved a general program of its obligation to serve the age group eligible for the age-targeted program.

Many commenters expressed the view that the general program was not relieved in any way of its obligation to serve everyone regardless of age. They reasoned that: The age targeted program was intended to supplement service for the eligible population, not to replace the services provided by the general program; an age-targeted program recognizes the special or additional needs of an age group, so that any restriction on the availability of services in a general program based solely on the existence of an age-targeted program would be discriminatory; administrators should not be given discretion to limit participation on the basis of age in a general program which Congress created to serve all ages.

Some commenters did say, however, that there are occasions when a general program should be permitted to deny services to an age group which is served elsewhere. They reasoned that the general programs can then focus on those in need who are not being served elsewhere; services offered in a general program should be based on the needs of the community as a whole and should take into account what is offered elsewhere; to require a general program to spread its limited resources to all age groups, regardless of the availability of similar services, would weaken the quality of the services provided. There was no support for the services provided. There was no support for the view that the general program's obligation was unconditionally lessened by the existence of the age targeted program.

The final regulations continue the policy expressed in the NPRM that, for a general program any deviation from a policy of serving all eligible persons regardless of age that results in a denial or limitation of service on the basis of age is only permissible if it meets one of the statutory exceptions under §§ 90.14 or 90.15.

A general program can focus its services by referring persons to existing age targeted programs only if those actions do not result in the denial of services to the individual or in the provision of lesser or different services. However, HEW is persuaded that there are situations when referral to an age targeted program does not result in a denial or limitation of services. For example, a program which serves all ages may be aware of an age targeted program which, because of its specialization, offer better services to that age group. A general program may have a waiting list of applicants while a similar age targeted program has space available. In situations like these, a general program could refer an applicant to the age targeted program provided that it had sufficiently well established relationship with the age targeted program to assure that the person referred actually received the service sought.

8. Mediation of Age Discrimination Complaints

The NPRM proposed that complaints of age discrimination be subject to mediation after initial screening by the Federal agency. The NPRM also proposed that participation in mediation be mandatory for both complainant and recipient and that administration of the mediation process be centralized in one government agency, the Federal Mediation and Conciliation Service (FMCS). These provisions of the NPRM have been kept in the final regulations.

While most commenters supported the proposed use of mediation, some commenters questioned the appropriateness of requiring mediation as the first step in resolving an age discrimination complaint. They argued that mediation promotes inappropriate bargaining over civil rights, that mediation may jeopardize the rights of complainants, that not every complaint is suitable for mediation, that mediation introduces a new and different step in the complaint resolution process which will be unnecessarily confusing to complainants and recipients.

HEW continues to believe that the mediation process is an important innovation in resolution of age discrimination complaints. Mediation is an effort to provide faster and more creative resolution of complaints through informal methods of dispute resolution. Attempts to reach a mediated settlement of the complaint must be completed in the first sixty (60) days after the complaint is received. While mediation does represent a new step in the complaint resolution process, the experience in resolving complaints under other civil rights statutes has been that the 60 days set aside for mediation will not significantly delay the enforcement process.

Experience with mediation in other areas indicates that even the most intransigent parties can arrive at a mutually satisfactory resolution of their dispute. Consequently, HEW believes it is desirable to require that mediation be attempted in all complaints. Mediation does not necessarily mean that the two parties to the dispute must meet face to face; each may meet separately with the mediator. Since the mediated settlement must be satisfactory to both parties neither the complainant nor the recipient is compelled to settle the complaint. Since the cost of the mediator will be paid by the Federal Government, the financial burden on complainants and recipients will be minimal. HEW believes that the ADA offers a unique opportunity to try this innovative approach to the resolution of disputes.

These regulations require that the management of the mediation process be centralized in one agency, designated by the Secretary of HEW. The FMCS will be that agency. Commenters critical of this decision questioned the wisdom of introducing a new agency into the civil rights enforcement process. Some suggested that each agency should manage its own mediation process, to permit the use of staff who would be more familiar with the program and problems of the Federal agency receiving the complaint.

HEW believes that the benefits to be realized by centralizing the management of the mediation process are substantial and that the FMCS is the appropriate agency for the job. The use of a single agency to manage the mediation process assures that uniform standard will be used in the recruitment and training of mediators, that the training will be centralized, that consistent procedures will be followed in the mediation, and that there can be a comprehensive and coherent evaluation of the process as part of the 30 month review of the effectiveness of these regulations. While the use of the FMCS does introduce a new agency into civil rights enforcement, one of the key elements in mediation is that both sides have confidence that the mediator is an independent third party. HEW believes that mediation of age discrimination complaints has a better chance to succeed if the mediator is not part of the staff of a Federal agency responsible for enforcing the Age Discrimination Act. The FMCS, which has an established reputation for mediating disputes, will draw on some of its experienced staff and will recruit and train a cadre of community based mediators who will work on age discrimination complaints.

Appendix—Section-by-Section Analysis

[This appendix will not appear in the CFR.]

Subpart A—General Information

Section 51.0 Scope and Application of Regulations.

Subsection (a) of this section described among other things the statutes the final regulations implemented. This description is not deemed to be necessary and was eliminated. Subsection (b) updates the reference to the effect of renewal on pending cases.

Section 51.1 Establishment of Office of Revenue Sharing.

This section reflects the establishment of the Office of Revenue Sharing (hereinafter referred to as the "ORS") and cites the implementing legislation. The final rule would update the cite with a reference to the 1983 Amendments.

Section 51.2 Definitions.

Subsection (a) of the final rule amends the definition of "Act" to reflect the 1983 Amendments.

Subsection (b) provides a new definition of the term "allocation" used primarily in Subpart C. This definition, as well as the definition of "entitlement" is added as part of the effort to clarify the proper usage of these terms which in the past have been used interchangeably and in some cases incorrectly.

The final rule redesignates the definitions of the terms "department" and "director" as paragraphs (c) and (d) respectively. A new paragraph defines "entitlement" for the reasons described above with respect to the definition of allocation. The final rule amends the definition of entitlement period to reflect the reauthorization of the Revenue Sharing Program through fiscal year 1986.

The final rule redesignates the definitions of "funded," "Governor," "Indian tribes and Alaskan native villages," "lobbying," and "program" and "activity" as subsections (g), (h), (i), (j), and (k) respectively.

The final rule amends the definition of recipient government to eliminate the reference to the States which were not authorized to be Revenue Sharing recipients by the 1983 Amendments.

The final rule adds a new subsection (p) to define "Specific economic dislocation." Section 5 of Local Government Fiscal Assistance Amendments of 1983 (Pub. L. 98-185) provides relief to local governments which suffer reduced tax receipts and reduced Revenue Sharing allocations due to economic dislocations such as plant closings. Subsection (p) defines economic dislocation and § 51.22(e), discussed below, describes the relief provided.

The final rule redesignates the definition of State government as subsection (q). The definition of unit of local government is redesignated subsection (r) and amended to reflect the technical change to the definition of District of Columbia.

Subpart B—Assurances, Reports and Public Participation

Section 51.10 Definitions.

The final rule amends this section to expand subsection (l) "publication" for clarification purposes. New definitions of the terms "report" and "use report" also added.

Section 51.11 Reports to the Director; assurances; procedures for effecting compliance.

Subsection (b) of this section is amended to require the retention of documentation concerning publication requirements for a three year period rather than a one year period. One commenter expressed concern that this change was an excessive paperwork requirement for local governments audited on an annual basis. She recommended that the three year requirement apply only to jurisdictions audited once every three years. The amendment makes this record-keeping requirement consistent with similar requirements in the Revenue Sharing regulations. Also, the requirement for retention documentation of the public participation requirements has been approved by OMB pursuant to the Paperwork Reduction Act of 1980. Further, it is unrelated to the audit requirement. The Director therefore declines to accept that comment.

With respect to subsection (c), one commenter suggested that it was inappropriate to use the term Governor in describing the entity permitted to review and comment upon local governments' Statements of Assurance. This comment is not accepted because the Revenue Sharing Act at 31 U.S.C. 6714 specifically references the Governor. Further, it is ORS policy to deal directly in these matters with the chief executive officer of the government in question. The amendment makes this record-keeping requirement consistent with similar Revenue Sharing requirements. Subsection (c) of this section is revised to give the Governor of each State the responsibility to contact the Director if he or she wishes to review and comment on the adequacy of the assurances made by local governments within the State.

Section 51.12 Use Reports; reports to Bureau of the Census.

The final rule amends current § 51.12, as part of an overall reorganization of this subpart. Previous section 51.12(c) would become part of a new § 51.13, "Publication requirements." Previous § 51.19 is added to § 51.12 as a new subsection (c). Section 51.12(d) is clarified to conform to administrative practice. The revisions do not change the substance of the requirements.

Section 51.13 Publication requirements.

Previous section 51.13, "Proposed use hearing" is eliminated because the 1983 amendments repealed that requirement in the Revenue Sharing Act. As of October 1, 1983, units of local government were no longer required to conduct proposed use hearings. Only the budget hearing, described in § 51.14 is required.

The final rule adds a new § 51.13 which does not add new requirements, but is a reorganization of existing requirements. Previous §§ 51.12(c), 51.14 (c)(1), (d), (e), and (h) and §§ 51.17 and 51.18 are now part of § 51.13. All provisions requiring or pertaining to the publication of information in newspapers and other media are now contained in one section.

Section 51.13(c)(2) also amends the provision authorizing local governments to follow local law concerning time periods for publication of notice for budget hearings and public inspection. Previously, the minimum notice provided for by local law was three working days. This was deemed not to provide sufficient notice and was changed to seven working days. One commenter suggested that seven working days was too long and the change would in effect prevent local governments from using their own law to meet the publication requirements. The need for providing adequate notice is considered to be too important to allow significant reduction in the statutory time limit, the Director will therefore maintain the seven working day requirement.

One commenter suggested that provisions such as paragraphs (c)(2) and (g) which limit the requirement to follow State law impermissibly impinge on State authority and should be eliminated. This comment is not accepted because for the most part the Revenue Sharing Act and regulations require recipient governments to comply with State and local law in the expenditure of Revenue Sharing funds (31 U.S.C. 6704(a)(3) and 31 CFR 51.45). Only when State law conflicts with and is less restrictive than the Revenue Sharing Act is a recipient government required to refrain from following the State law. The Supremacy clause of the Constitution requires that the Director take this position.

One commenter pointed out that the notice of the budget hearing should also be communicated by a method which ensures that the visually handicapped can receive it. Section 51.55(b)(1)(iv) of the handicapped discrimination regulations so requires. Accordingly, a cross-reference to that provision is added to § 51.13 to remind recipient governments of the obligation to inform the visually impaired of the budget hearing. Public service radio announcements or contacting organizations representing the visually handicapped would suffice.

Section 51.14 Budget hearing.

The proposed rule amends this section as described above with respect to § 51.13 above. Further, previous subsection (a) amended to remove the reference to the proposed use hearing and add a new paragraph (3) to describe what funds are subject to the budget hearing process. Previous subsection (c)(2) is redesignated subsection (c). Previous subsection (f) would be eliminated because the provision is no longer applicable. Previous subsection (g) is redesignated subsection (d).

Section 51.15 Modifications to enacted budget.

The final rule amends this section to reference § 51.13 "publication requirements."

Subpart C—Computation and Adjustment of and Entitlements

Section 51.20 Data.

The final rule revises subsection (a)(4) to clarify that the most recent tax data will be used to determine allocations of Revenue Sharing funds rather than entitlements of Revenue Sharing funds as those terms are defined in § 51.2 (b) and (e) respectively. This section is also amended to reference a revised § 51.22 to describe handling of data affected by economic dislocation.

This section is also amended to eliminate subsection (c) because it is obsolete and redesignate current subsection (d) as (c).

Section 51.21 Data affected by a major disaster.

The final rule revises subsection (a) to refer to determination of allocations rather than entitlements.

Section 51.22 Adjusted taxes.

The final rule amends subsection (c) to add a new subparagraph (c)(2) to provide that the reduction in adjusted taxes resulting from economic dislocations will be disregarded for the purpose of determining the allocation of Revenue Sharing funds provided that the required conditions are met.

A new subsection (d) is added to implement the special provision concerning adjusted taxes for units of

local government within the State of Massachusetts added by the 1983 Amendments.

Section 51.23 Dates for finalizing data.

The final rule amends subsection (b) of this section to add a new provision to provide for renewal of the Revenue Sharing Program after the beginning of an entitlement period. Generally, data definitions are to be provided to units of local government by at least the day before the beginning of each entitlement period. This cannot be accomplished, however, if the program has technically expired and had not yet been reauthorized. Subsection (b) provides that in such a circumstance the definitions will be published in the **Federal Register** within 90 days of enactment of reauthorization legislation.

Section 51.26 Reservation of Funds: adjustment of entitlements and allocations.

The final rule revises this section to clarify ORS policy concerning when Revenue Sharing funds will be reserved, and how adjustments will be made to the allocation of entitlement funds. Considerably smaller reserves will be maintained under the new policy. Permanent withdrawals from the reserves will be restricted to those necessary to cover allocation adjustments resulting from data revisions of which the Director was notified within the statutory time period but which were not processed soon enough to be included in the final allocation adjustments for the entitlement period. Temporary withdrawals from the reserves will also be restricted for the purposes of making allocation adjustments prior to a final allocation for an entitlement period to those which meet a set of criteria established by the Director for such adjustments. Adjustments that do not meet the criteria for withdrawal from the reserve will be made in the next scheduled reallocation for the period. It is expected that this revision will provide for more equitable distribution of Revenue Sharing funds.

Section 51.27 States to maintain transfers to local governments.

This section is amended to reflect the fact that State governments will not receive Revenue Sharing funds for the current reauthorization of the Revenue Sharing Program and that this section will be inoperative for entitlement periods beginning October 1, 1983.

Section 51.28 Optional formula.

This section is amended to change the reference from "entitlement" to "allocation" and clarify the proper usage of the terms.

Section 51.29 Notification to adjustment of data factors.

This section is amended to specifically point out that data challenges must be made in writing. This section is also amended to remove the reference to "allocations of entitlement funds" to provide proper usage of the terms "allocation" and "entitlement payments."

Section 51.30 Adjustment to allocation; application of adjustments.

The final rule amends this section to reference "allocations," to provide proper usage of the terms, "allocation" and "entitlement payment."

Section 51.31 Separate law enforcement officer.

The final rule provides the correct references to allocations of Revenue Sharing funds and removes references to the State share of Revenue Sharing funds.

Subpart D—Prohibitions and Restrictions on Use of Funds

This subpart has been revised by the elimination of three obsolete sections: § 51.40, Matching funds and § 51.41, Permissible expenditures for local governments and § 51.44, Use of entitlement funds for debt retirement. These provisions were repealed by the 1976 Amendments to the Act. The subpart is also amended by the redesignation of § 51.42 as § 51.40, § 51.43 as § 51.41, § 51.45 as § 51.42 and § 51.46 as § 51.43. Section 51.41, Lobbying, removes the reference to "General Revenue Sharing Program" as the term "Revenue Sharing Program" is currently in use.

Subpart E—Nondiscrimination by States and Local Governments Receiving Entitlement Funds

Section 51.56 Discrimination on the basis of age.

Only minor modifications have been made to this section as a result of comments by HHS and to conform to the changes made to corresponding provisions of the HHS final regulations for its own recipients.

Subsection (a) sets forth the purpose of § 51.56. Subsection (b) defines the terms used in § 56.56.

Subsection (c) describes the action prohibited by § 51.56. A new subsection (a)(3) is added by the final rule to specifically prohibit intimidation of a retaliation against anyone who complains about discrimination prohibited by this section or aids in the enforcement of this provision.

Subsection (d) describes the exceptions to the prohibition against age discrimination. Appendix B describes this provision in detail and provides examples. Subsection (d)(4) was revised to the revision of the HHS final regulation (45 CFR 91.17). The section is designed to make it clear that a recipient government may provide special benefits for the elderly or children to remedy disadvantages. A presumption is created that such age distinctions are valid, is created by this provision.

Subsection (e) is revised to eliminate the reference to subsection (d)(4). It is not appropriate to put the burden of proof on the recipient government to justify an age distinction that provides a special benefit.

Subsection (f), self-evaluation is revised to conform with the self-evaluation requirement for the final HHS regulations for their own recipients (31 CFR 91.33(b)). That provision represents a compromise between HHS and OMB which had not approved the self-evaluation requirement contained in the final government-wide regulation (45 CFR 90.43(b)). Under this provision are no longer automatically required to perform a self-evaluation. It will only be required after a complaint has been filed and case has been opened concerning a specific recipient governments. The self-evaluation would be required as part of efforts to determine whether the particular government is in noncompliance with the provisions of this section.

Section 51.56(b)(1) is amended to correct the reference to the administrative complaint provision of the Revenue Sharing nondiscimination regulations. Subsection (h) describes the mediation process that a complainant may use. The provision is voluntary because the Revenue Sharing Act provides strict time limits within which complainants must be investigated. These time limits are for the benefit of and protection of the complainant, however, and can be delayed by that person if he or she wants to try mediation. Subsection (h)(9) is amended to reflect that the FMCS may not be able to handle all mixed complaints.

Subpart F—Fiscal Procedures and Auditing

Section 51.100 Definitions.

The final rule amends this section by the addition of a new subsection (b) which defines the term "Auditors report on the study and evaluation of the internal accounting control." The

definitions of "financial audit," "financial statements," "generally accepted auditing standards" and "independent audit" are amended to provide greater clarity.

Section 51.102 Auditing and evaluation.

This section is amended to reflect the changes made to the audit requirement by the 1983 Amendments. Principally, local governments which receive more than $100,000 must conduct annual independent audits. Those receiving at least $25,000 but not more than $100,000 would continue to conduct an independent audit once every three years. Subsection (c), the provision concerning inapplicability of audit requirement is eliminated as the parallel provision was repealed by the 1983 Amendments to the Revenue Sharing Act. Similarly, subsection (d) is eliminated because the provision is now obsolete.

One commenter suggested that § 51.102(a) was confusing because no distinction is made between the compliance and financial audits, particularly that the compliance audit only concerns Revenue Sharing funds. Also, Attachment A-102P should be incorporated into the Revenue Sharing Act. This comment is declined because the regulations make it sufficiently clear that the compliance audit only concerns Revenue Sharing funds. Further, generally accepted government auditing standards are to be employed in both the financial and compliance audits, as provided in Chapter V of the GAO Standards for Audits of Governmental Organizations, Programs, Activities and Functions. This is the publication the Revenue Sharing Act requires recipient governments to follow in conducting audits. The ORS has no authority to provide otherwise. However, section 51.105 of the regulations entitled "Reliance upon audits under other Federal laws" does specify that audits performed pursuant to OMB Circular A-102 Attachment P will be acceptable to meet the audit requirements.

One commenter recommended that the reference to OMB Circular A-102, Attachment P, be eliminated because it is not statutory. The Director declines to accept that recommendation because it is in the interest of consistency and uniformity to allow compliance with A-102. Further, the OMB circular represents the Federal government's policy on these matters and is therefore entitled to great weight.

It should also be noted that Congress recently passed the Single Audit Act of 1984 which provides for one uniform single audit requirement for States and units of local government. The Revenue Sharing audit requirement will be affected by this legislation. We will await guidance from OMB to determine how it will affect the ORS and amend the Revenue Sharing regulations accordingly.

One commenter suggested with respect to subsection (a)(3) that the waiver provisions be expanded to provide for waiver of the requirement to submit an audit report within eight months. The Director declines to accept this comment because eight months is more than reasonable time within which to receive an audit report. Further, the current regulations give the Director authority to grant waivers where the circumstances warrant.

One commenter suggested that subsection (b)(4) should be eliminated because GAO's standards on internal control should govern. The comment is declined because § 51.102(b)(4) merely attempts to inform recipients that the reporting requirements are threefold as a result of the use of generally accepted government auditing standards: financial report, compliance report and an auditor's report on the study and evaluation of the internal accounting controls.

Section 51.103 Waiver of audit requirement.

The final rule makes minor revisions to this section for greater clarity.

Section 51.104 Audits of secondary recipients.

This section is amended to reflect the amendments to the audit provision by the 1983 Amendments. One commenter recommended that the provision be eliminated because it is unsupported in the Revenue Sharing Act or in GAO's standards. This comment is declined because it is a long accepted policy of the ORS to apply the restrictions, prohibitions and requirements that attach to the expenditure of Revenue Sharing funds by a primary recipient government to the secondary recipient.

Section 51.107 Scope of audits.

This section is amended to reflect the revised title of the Comptroller General's generally accepted government auditing standards.

Section 51.108 Public inspection, retention and submission of audit report and workpapers.

The final rule amends this section to implement the requirement added by the 1983 Amendments that the audit report be made available for public inspection thirty (30) days after the audit is completed. A recipient government is also required to publish a notice in a newpaper of general circulation that the report is available for inspection.

One commenter suggested that the audit report may not be received within thirty (30) days of completion of the audit therefore § 51.108(b) should refer to making the report available for public inspection thirty (30) days after it is received rather than after the report is completed. This comment cannot be accepted because the Revenue Sharing Act, as amended in 1983 (31 U.S.C. 6723(e)) specifically requires that the report be made available for public inspection thirty (30) days after it is completed. The provision cannot be changed by regulation.

Another commenter suggested that ORS did not have the authority to require submission of audit reports or retention of audit workpapers because it is an unauthorized collection of information requirement (presumably in violation of the Paperwork Reduction Act of 1980). This comment is not accepted because the Revenue Sharing Act specifically provides that the recipient government will provide an opinion on the audit to the Director in the form and at the times requested, 31 U.S.C. 6723(e). Further, the information collection requirements of this section have been approved by OMB pursuant to the Paperwork Reduction Act. OMB has assigned Control Number 1505-0038.

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Part III

Environmental Protection Agency

40 CFR Part 123

National Pollutant Discharge Elimination System; Noncompliance and Program Reporting; Notice of Additional Information and Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[W-H-FRL-2763-3]

National Pollutant Discharge Elimination System; Noncompliance and Program Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Additional Information and Request for Comments.

SUMMARY: On Monday, July 23, 1984 (49 FR 29270) EPA proposed revisions to the noncompliance reporting requirements for the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act (CWA). These program requirements are for quarterly reporting of instances of noncompliance by major dischargers which is prepared by EPA Regions and approved NPDES States. In addition to requirements for a narrative report of instances of noncompliance, this regulation includes a requirement for a quarterly statistical summary of other instances of noncompliance. In the July 23, 1984 proposal, EPA had discussed several alternative criteria for revising the statistical summary to require reporting of other instances of effluent limit noncompliance, rather than all other instances of noncompliance. Recently, EPA completed its evaluation of the proposed alternative criteria for a numerical summary of other instances of noncompliance. EPA is providing its results and a selected option for public comment. In addition, EPA is providing additional information to clarify the purpose of the QNCR and those instances of noncompliance not identified as Category I which must be reported. Today EPA is extending the comment period for thirty days to receive public comments on this additional information.

DATE: Comments on the additional information provided in today's notice must be submitted by February 25, 1985.

ADDRESSES: Interested persons should submit written comments to: Edward S. Bender, Enforcement Division (EN-338), Office of Water Enforcement and Permits, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, (202) 475-8331.

FOR FURTHER INFORMATION CONTACT: Edward S. Bender (202) 475-8331. The additional information on the statistical summary is available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (rear) (PM-213). Public comments will be made available as they are received. The EPA public information regulation (40 Part 2) provides that a reasonable fee may be charged for copying.

SUPPLEMENTARY INFORMATION: On July 23, 1984, EPA proposed revisions to 40 CFR 123.45, (49 FR 29270), the NPDES requirement for the preparation and submission of a Quarterly Noncompliance Report (QNCR) of instances of permit noncompliance by major dischargers (49 FR 29270). During the initial public comment period on this proposed rule several commenters indicated that two aspects of the proposed rule were unclear. These areas were: (1) The relationship of the QNCR to Agency enforcement policy, guidance, or practice; and (2) the requirements for listing instances of noncompliance not defined as Category I in the regulation. Additionally, the proposal presented four options for revising the criteria upon which a numerical summary of other instances of noncompliance was to be prepared. EPA has completed its evaluation of these options in relation to permittee Discharge Monitoring Reports (DMRs) from several States. A summary of EPA's evaluation of these options for defining a summary report and further information on the proposed rule follows.

I. Purposes of the QNCR

The preamble to the proposed rule stated that "the QNCR is intended to be used solely to track and evaluate the effectiveness of compliance and enforcement activities. The proposal has no impact '. . . upon what is considered a violation, or on whether or what kind of enforcement action will be taken in a given case.' " Appendix A stated that "the revised QNCR will be used as part of the administrative procedure for screening NPDES self-monitoring data and other data to report instances of noncompliance which are of major concern to the EPA and State regulatory agency."

Several commenters felt that the proposal failed to accurately discuss the relationship between the QNCR and the Agency's enforcement policies. Specific reference was made to two documents prepared by the Agency which discuss the use of QNCR and other information in developing enforcement responses to instances of permit noncompliance. (See "Policy Framework for State/Federal Enforcement 'Agreements' " (July 26, 1984) and "Guidance for Oversight of NPDES Programs" July 6, 1984.)

EPA believes that its explanations of the purpose of the QNCR may have been unclear and wishes to clarify its initial statements. The primary purpose of the QNCR has always been to provide information to the Agency by which it could assess the effectiveness of State and EPA Regional compliance activities and thereby best determine how to manage or oversee program activities. In evaluating such activities, EPA thought it more appropriate to focus primarily on patterns of noncompliance rather than on individual instances of noncompliance. In addition, EPA is often called upon to report noncompliance information to Congress and the public. One of the main reasons EPA has proposed changes to the QNCR was to ensure that consistent measurements for evaluating instances of noncompliance were used in gathering this information.

Regardless of whether a violation is listed on the QNCR, any violation of an NPDES permit is a violation of the CWA for which the permittee is strictly liable and for which the Agency encourages some type of enforcement response to be taken. Listing, or failure to be listed, on the QNCR does not itself determine what type of response will be taken. The Office of Water has historically maintained an Enforcement Management System (EMS), which guides EPA Regions and States in responding to all instances of noncompliance. Within EMS, an Enforcement Response Guide directs managers to escalate the level of enforcement in response to violations which are persistent, have potential water quality impacts, or recur frequently. As proposed, the QNCR regulation requires reporting of instances of noncompliance which exceed certain thresholds of time, magnitude or frequency of occurrence or which otherwise indicate particular environmental problems. Considering the basic principles of EMS, it is reasonable and likely that these instances of noncompliance will be given priority for resolution.

Several commenters suggested that because the 1984 Oversight Guidance and Policy Framework documents indicate that permitting agencies should give priority enforcement attention to QNCR reported violations, the criteria used to determine QNCR coverage should be reassessed to limit or expand the instances of violations reported. These commenters apparently assumed that enforcement action will *only* be taken against violations listed on the QNCR and that other violations are protected from any type of enforcement response. This is clearly not true. The purpose of these documents was to provide guidance on EPA's oversight role of State and Regional enforcement programs. Since EPA pays particular attention in such review to patterns of

noncompliance the QNCR is a useful tool, in addition to others, in assessing such State and Regional activities. However, as indicated above, the EMS further encourages that appropriate enforcement response be taken against all violations. A particular violation may be resolved by a permittee's action so that a formal enforcement response on the part of the regulatory agency is unnecessary. Other violations may require formal enforcement action in order to be resolved.

From time to time EPA issues guidance to EPA Regions and NPDES States which suggests goals and strategies for resolving compliance problems. These problems may include those identified on the QNCR or any other management report. However, EPA does not restrict its enforcement effort to those facilities listed on the QNCR. An EPA Region or State agency's decision whether to initiate enforcement and what type of action is appropriate in any particular case is based on an evaluation of the data showing the severity of the violation, other information which shows the compliance history of the permittee, and other relevant facts in the case. The QNCR reports some instances of noncompliance which may require formal enforcement action but it also reports how and when other instances of noncompliance were resolved. EPA enforcement is not limited to the permittees on the QNCR. For example, last year approximately 20 percent of civil referrals were for violations by minor permittees which are not included on the QNCR. Thus, it is clear that a violation does not need to be reported on the QNCR before the regulatory agency decides to take action.

II. Instances of Category II Noncompliance

The proposed rule defined instances of Category I noncompliance which must be reported. Category I includes four types of readily quantifiable violations: (A) Violations of enforcement orders; (B) violations of compliance schedules; (C) violations of monthly average effluent limits; and (D) violations of reporting requirements (which includes both failure to submit required reports and submission of deficient reports). (See 49 FR 29723.) It is EPA's intent to use instances of Category I noncompliance primarly for national evaluations, because they are based on uniform criteria.

In the proposal, EPA indicated that a second category of noncompliance would be established to allow States the flexibility to add other instances of noncompliance to the QNCR at their discretion. However, several commenters stated that the proposed regulation did not explain what types of violations were intended to be included in this second category and how they would be reported.

In establishing the types of noncompliance identified as Category I, EPA has focused on permit violations (e.g. monthly average limitations, compliance deadlines, and reporting requirements) for which objective criteria are easily set, to ensure more consistent, uniform reporting. The Agency recognizes that this category excludes other potentially important violations of permit conditions; however, EPA cannot meaningfully develop quantifiable definitions or thresholds for reporting purposes for all possible types or ranges of permit violations. EPA is considering making these violations a separate category for reporting purposes, Category II. Examples would include violations of best management practices (BMPs), proper operation and maintenance requirements, certain Publicly Owned Treatment Works (POTW) pretreatment requirements, and violations of short-term limits or unauthorized discharges which have the potential to cause adverse water quality impacts or pose threats to human health. EPA recognizes that the States and EPA Regions may have special concern for these or other instances of noncompliance not identified as Category I. Thus, EPA is considering allowing both NPDES States and EPA Regions to add other instances of noncompliance which they determine to be of concern but do not satisfy the Category I criteria. All such instances of noncompliance would be listed on the QNCR as Category II noncompliance. From time to time EPA will issue guidance on the factors to be considered in reporting Category II noncompliance.

III. Summary of Other Instances of Noncompliance

The proposed rule contained options for revising the statistical (numerical) summary of other instances of noncompliance by major dischargers. The existing regulation requires all instances of noncompliance not otherwise identified on the QNCR to be reflected in the statistical summary. The proposed numerical summary would include all instances of noncompliance with a specific criterion. The proposal identified four alternative criteria to determine which permit violations would be included in a numerical summary. Each criterion was based on violations of monthly average effluent limits. EPA has applied each criteria to DMR data in the Permit Compliance System (the national NPDES data base) which were available for a one year period. These DMR data covered over 2500 major permittees in 12 states. The results of that analysis are summarized in the table below:

TABLE I.—EVALUATION OF CRITERIA FOR A SUMMARY REPORT

Criteria options (based on monthly average limits only)	Percent of major permittees which meet or exceed criterion
1. Two or more violations (of the same limit) in 12 months	43
2. Two or more violations (same limit) in 6 months	42
3. Any violations in 3 months	37
4. Any TRC* violation in 3 months	24

*TRC is a technical review criterion as defined in the proposal (49 FR 29724) July 23, 1984.

The above table compares the percentage of permittees which would be reported on a statistical summary using each of the proposed criteria. Under each of the proposed criteria more violations would be reflected than just those identified as Category I. (Category I noncompliance for effluent violations includes two violations of the same limit which exceed the TRC or four violations of the same limit which exceed the permit limit by any amount in a six month period (49 FR 29724).)

Because the QNCR focuses on particular instances of noncompliance, EPA has additionally relied on a numerical summary to provide a more comprehensive evaluation of overall noncompliance with program requirements. EPA continues to believe that this additional level of reporting is important to provide this broader analysis. EPA intends to use this report as another management tool which would provide supplementary data to evaluate the effectiveness of NPDES compliance activities. It would also be used to evaluate the effect of the Technical Review Criteria on reporting noncompliance with effluent limits and to identify problems and needs which the program should address.

Unlike the existing regulation, the proposed summary does not include all instances of noncompliance. It is based only on violations of monthly average limits. EPA has proposed criteria for the summary report based on patterns of monthly average limit violations, because they represent long-term problems which EPA believes should be its primary focus in evaluating State and Regional enforcement activities. Because summary reports are prepared every few months, the tracking of short-term violations (i.e., of daily maximum and seven day averages) is not an

effective use of limited resources nor does it provide useful information to management. For example, a violation on a single day during a quarter is likely to have been addressed by the regulatory agency and resolved long before the report is prepared.

Based on the analysis of the options, EPA is considering making the following changes to the existing regulation for a quarterly numerical summary of other instances of noncompliance. First, EPA is considering defining the criterion as two or more violations of the same monthly average limitation by any amount in a six month period. In addition, it is considering requiring the numerical summary to be submitted every six months instead of quarterly. The report would thus be prepared and submitted with the first and third quarter QNCR according to the Federal fiscal year calendar. EPA is considering this approach for several reasons. Since EPA's stated purpose has been to focus on trends or patterns of noncompliance, EPA believes that more than one violation for a given time period should be assessed. The Agency's analysis has indicated that the percentage of permittees with two or more violations is approximately the same for both the six month and twelve month periods. A six month time frame will be more useful to the Agency in conducting its semiannual management reviews. In addition, since this time frame corresponds to the time frame for Category I noncompliance with effluent limits used in the QNCR, the numerical summary can be prepared at the same time and should not require many additional resources.

Dated: January 14, 1985.

Henry L. Longest II,

Acting Assistant Administrator for Water.

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Vol. 50, No. 16

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Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

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United States Government Manual 523-5230

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FEDERAL REGISTER PAGES AND DATES, JANUARY

1-210.....2
211-426.....3
427-720.....4
721-916.....7
917-1038.....8
1039-1202.....9
1203-1428.....10
1429-1812.....11
1813-2038.....14
2039-2272.....15
2273-2538.....16
2539-2658.....17
2659-2770.....18
2771-2946.....22
2947-3306.....23
3307-3496.....24

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:

12291 (See EO 12498).....1036
12456 (Superseded by EO 12496).....211
12462 (Amended by EO 12497).....229
12496.....211
12497.....229
12498.....1036
12499.....2947

Proclamations:

5201 (See Proc. 5291).....223
5290.....1
5291.....223
5292.....2536

5 CFR

293.....3307
294.....3307
300.....3307
511.....3307
531.....427
532.....3307
536.....427, 3307
553.....2039
630.....3314
734.....1203
735.....1203
736.....3307
737.....1203

Proposed Rules:

831.....473, 2575

7 CFR

Ch. I.....1813
Ch. VII.....1813
17.....2949
46.....428
58.....3
354.....721
271.....2659
371.....2660
401.....1814
408.....1205
425.....2039
427.....1039
434.....1814
435.....2950
436.....1819
437.....1824
800.....2273
810.....1039
905.....231
907.....5, 231, 1039, 1429, 2274, 2661, 3314
908.....231, 1429
910.....428, 1206, 1829, 2661
912.....231
913.....231
917.....231
928.....231, 1438, 1439
932.....231, 2539
959.....5
966.....5
971.....5
979.....5
982.....2539, 2955
987.....5
989.....1830
1446.....2541
1930.....1206
1944.....1206
1965.....1206
3015.....1040

Proposed Rules:

53.....2055
54.....2055
403.....2055
800.....948
920.....835
1030.....280
1094.....2678
1124.....1540
1136.....815
1205.....2575
1407.....2578
1789.....3290
1804.....815
1924.....815

8 CFR

103.....3315
204.....3315
238.....1206
292.....2040

9 CFR

113.....3316
72.....429, 430
73.....430
92.....1040, 1207
97.....722, 2955
113.....431, 439, 1041
307.....723
318.....6
350.....723
351.....723
354.....723
355.....723
362.....723
381.....6, 723

Proposed Rules:

93.....1863
101.....1230
114.....1230
145.....2684
147.....2684
322.....1540
381.....280, 1540

10 CFR

440.....708

Proposed Rules:
2.....2579
40.....2293
50.....2056
60.....2579
903.....206

11 CFR

Proposed Rules:
Ch. I.....477

12 CFR

5.....1439
201.....444
304.....7
337.....2274
346.....1209
505d.....7
545.....1043, 2662

Proposed Rules:
225.....2057
535.....1863

13 CFR

Ch. I.....917
112.....1441
113.....1442
120.....725
123.....704
305.....725

14 CFR

Ch. II.....451, 1209, 2374
21.....7
39.....10, 445–448, 2040–2045, 2274, 2771–2774, 3316
71.....726–728, 2275, 2542 2775
97.....449, 2776
121.....450
135.....450
241.....10, 232
245.....453
246.....453
291.....453
298.....14
310b.....454
312.....454
370.....455
385.....22
399.....455
1215.....2777

Proposed Rules:
33.....1542
39.....280, 478, 479, 2059–2063, 2293, 2824
71.....90–93, 1232, 1866, 1867, 2294, 2825, 2826, 2987
73.....2827
91.....949
121.....949
125.....949
135.....949
211.....95
223.....480
241.....101
272.....95
302.....95
323.....481
383.....482

15 CFR

0.....928, 2276
325.....1804
377.....729
399.....2276

Proposed Rules:
377.....835, 2064

16 CFR

13.....2277

Proposed Rules:
13.....2065
443.....2829
456.....598

17 CFR

1.....22, 928
31.....22, 2283
240.....730, 1442, 2956
249.....1442, 2956
270.....1442, 2556, 3317
274.....1442, 2956, 3317
275.....1442, 2542

Proposed Rules:
31.....102
190.....102
239.....1542
240.....2690, 3351
274.....1542

18 CFR

154.....2283
271.....931, 2778

Proposed Rules:
157.....114
271.....2829
284.....114
430.....2987
501.....956
502.....956
503.....956
504.....956
505.....956
506.....956
507.....956
508.....956

19 CFR

12.....1043
113.....739
141.....1499
177.....1044

Proposed Rules:
4.....1060
6.....1544
18.....1545, 1546
101.....1063
103.....1233
114.....1546
134.....1064

20 CFR

404.....1831
701.....384
702.....384
703.....384

21 CFR

105.....1833
107.....1833
173.....61
175.....1500
176.....1209, 1500
177.....1501, 1841
178.....62–64, 1502, 1842
182.....2957
193.....2958
430.....1503
436.....1503
440.....1503
446.....1503
448.....1503
450.....1503
452.....1503
455.....1503
520.....64, 1045
524.....739
540.....2779
558.....1842
561.....2283, 2958
1316.....2046

Proposed Rules
133.....119, 120
148.....2693
193.....120
310.....2160, 2168, 2184, 2200
331.....2160
333.....2172
334.....2124
341.....2160, 2220
357.....2244
442.....253
510.....254
522.....254
558.....254
600.....3082
610.....3082
680.....3082
866.....414

22 CFR

308.....1844

23 CFR

Proposed Rules:
650.....2694

24 CFR

Ch. II.....2779
200.....2781
570.....1505
885.....2781
965.....456

Proposed Rules:
200.....1233
203.....1233
220.....1233
228.....1233
232.....2830

26 CFR

1.....740, 747, 2959, 3317, 3324
31.....747, 2959
54.....747

Proposed Rules:
1.....836, 837, 3351, 3352
31.....836
54.....836

27 CFR

4.....758, 759
9.....255, 2782, 2978

Proposed Rules:
4.....960, 2832
5.....960
7.....960
240.....2832

28 CFR

540.....410
550.....410

Proposed Rules:
33.....3353

29 CFR

1625.....2543
1627.....2543
1910.....64, 1046
2622.....1210

Proposed Rules:
1910.....1547, 2890
1952.....2440–2491
2510.....961
2520.....3362
2550.....961
2610.....1065

30 CFR

229.....2663
701.....257
762.....257
816.....257
817.....257
913.....1507
920.....2782
926.....258
931.....456
934.....260

Proposed Rules:
250.....838, 1549
401.....956
884.....483
886.....483
901.....2988
913.....485
914.....281
917.....283, 2996
935.....284
938.....486
950.....1869

31 CFR

51.....3454
129.....262
209.....263
210.....263
240.....263

32 CFR

63.....2665
166.....77
505.....932
706.....1210–1212

33 CFR

110.....1849
117.....1212, 1849, 2545, 2546 2785, 2786

Proposed Rules
110.....859, 1869
117.....122, 860, 861, 1069, 2590

34 CFR

690.....1178

36 CFR

2.....1850
223.....458
1155.....1032, 2284

Proposed Rules:
7.....973
223.....488, 2591

37 CFR

211.....263

Proposed Rules:
1.....2294

38 CFR

36.....3333

Proposed Rules:
21 ... 1549

39 CFR
10 ... 763
111 ... 2787
Proposed Rules:
10 ... 2070
111 ... 1870
265 ... 1069

40 CFR
35 ... 1774
52 ... 459, 764–769, 3932, 1213, 2820, 3336–3338
60 ... 933, 1164
61 ... 933
65 ... 772–775, 935, 3339, 3340
81 ... 935, 1509, 3341
130 ... 1774
136 ... 690, 695
180 ... 61, 1050–1054, 2546, 2547, 2980–2983
260 ... 273, 614
261 ... 614, 1978
264 ... 614, 1978
265 ... 614, 1978
266 ... 614
270 ... 1978
271 ... 775, 1513, 1515, 2550, 2820, 2821, 3342–3348
704 ... 1215, 2046
775 ... 1978
Proposed Rules:
51 ... 974, 3365
52 ... 123, 285, 493, 862–865, 975, 1880
61 ... 1182
80 ... 718
81 ... 286, 2832
123 ... 2996, 3494
136 ... 697
147 ... 2696
153 ... 1070
180 ... 125, 1071, 2296, 2533
264 ... 1238
266 ... 1684
455 ... 3366
721 ... 127

41 CFR
101–11 ... 81
101–41 ... 938
101–49 ... 82

42 CFR
36 ... 1852
71 ... 1516
122 ... 2008
123 ... 2008
405 ... 1314
417 ... 1314

43 CFR
20 ... 2671
1880 ... 1304
2880 ... 1308
3110 ... 2048
Public Land Orders:
6581 ... 1055
6582 ... 2551
Proposed Rules:
Subtitle A ... 1550
2 ... 286, 1072
2800 ... 2697
2880 ... 2697
3140 ... 1300

44 CFR
64 ... 84, 1856, 1857
150 ... 3349
Proposed Rules:
67 ... 3367, 3368

45 CFR
77 ... 776
Proposed Rules:
1601 ... 495
1612 ... 501
1614 ... 509
1620 ... 512
1622 ... 514

46 CFR
170 ... 1524
171 ... 1524
172 ... 1524
173 ... 1524
174 ... 1524
Proposed Rules:
Ch. IV ... 3368
50 ... 1072
56 ... 1072
150 ... 1550
160 ... 1558
572 ... 3369

47 CFR
Ch. I ... 1525, 2552
0 ... 85, 2984
13 ... 1215
15 ... 2564
25 ... 2671
31 ... 782
61 ... 1215
67 ... 939
69 ... 939
73 ... 273, 1223–1228, 1534, 2564
74 ... 2564
76 ... 2565
81 ... 85
83 ... 85
90 ... 783
Proposed Rules:
Ch. I ... 1570, 1881
1 ... 2594
2 ... 1582
15 ... 1582
18 ... 287
31 ... 1590
32 ... 1590
33 ... 1590
62 ... 976
63 ... 1890, 2594
67 ... 2594, 2833
69 ... 2036
73 ... 1239, 1241, 2596, 2835 2997
76 ... 1890, 2594
81 ... 132
83 ... 132
90 ... 865, 1582, 2837

48 CFR
Ch. 1 ... 1726
Ch. 2 ... 274
Ch. 5 ... 945, 1534
Ch. 8 ... 789
Ch. 61 ... 1756
1 ... 2268
12 ... 2268
14 ... 2268
27 ... 2268
33 ... 2268
39 ... 2268
52 ... 2268
501 ... 2284
515 ... 2284
522 ... 2284
552 ... 2284
1803 ... 784
1804 ... 784
1805 ... 784
1812 ... 784
1813 ... 784
1814 ... 784
1815 ... 784
1816 ... 784
1817 ... 784
1825 ... 784
1827 ... 784
1831 ... 784
1832 ... 784
1833 ... 2049
1835 ... 784
1842 ... 784
1844 ... 784
1845 ... 784
1852 ... 784

49 CFR
1 ... 277
171 ... 798
172 ... 798
173 ... 798
174 ... 798
175 ... 798
176 ... 798
177 ... 798
574 ... 2287
661 ... 2289
1011 ... 2985
1033 ... 2676
1051 ... 2289
1135 ... 87
1140 ... 945
1245 ... 946
1312 ... 459
1320 ... 2289
1321 ... 2289
1322 ... 2289
1323 ... 2289
1324 ... 2289
Proposed Rules:
106 ... 288
107 ... 288
171 ... 288
172 ... 288
173 ... 288
174 ... 288
175 ... 288
176 ... 288
177 ... 288
178 ... 288
390 ... 1243, 2998
391 ... 1243, 2998
392 ... 1243, 2998, 3000
393 ... 1243, 1245, 1603, 2998, 3000
394 ... 1243, 2998
395 ... 1243, 2297, 2998
396 ... 1243, 1245, 2998
397 ... 1243, 2998
398 ... 1243, 2998
399 ... 1243, 2998, 3000
571 ... 294
1057 ... 517
1152 ... 3002

50 CFR
17 ... 1056
23 ... 811
222 ... 1056
227 ... 278
258 ... 1859
550 ... 2570
560 ... 2570
611 ... 460–468, 1862
645 ... 1229
652 ... 2292
655 ... 947, 2050
661 ... 811
663 ... 471, 2051
671 ... 2573
672 ... 467
Proposed Rules:
17 ... 1247
20 ... 2298
21 ... 518
226 ... 1088
227 ... 294
611 ... 1890, 2302
642 ... 518
651 ... 2598
655 ... 1890, 2302
661 ... 134

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 January 14, 1985

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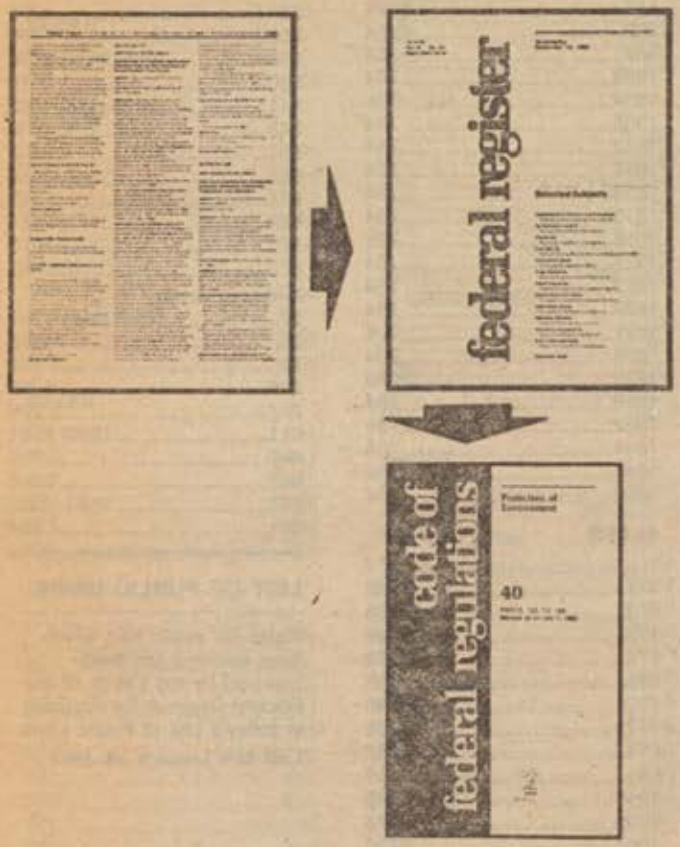

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