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Tuesday
October 1, 1985

Selected Subjects

CONTINUED INSIDE

Selected Subjects

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Contents

Federal Register
Vol. 50, No. 190
Tuesday, October 1, 1985

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
5368 59953
5369 59955
5370 59957

5 CFR
530 40178
531 40178
536 40178
540 40178

7 CFR
1822 39959
1872 39959
1930 39959
1944 39959
1951 (2 documents) 39959, 39967
1980 39959

11 CFR
2 39968
3 39968

12 CFR
211 39974
338 39986

13 CFR
Proposed Rules:
121 40032

14 CFR
39 39990
71 (2 documents) 39991, 39992
Proposed Rules:
39 40034
71 (2 documents) 40035, 40036

15 CFR
376 39993
379 (2 documents) 39993
399 (2 documents) 39993

20 CFR
302 39993

21 CFR
558 39994

22 CFR
208 39994

26 CFR
51 39998
602 39998

28 CFR
503 40104
527 40105
540 40106
Proposed Rules:
540 (3 documents) 40113–40115
544 40116

40 CFR
60 40158
191 40003

42 CFR
405 40168
420 40003

44 CFR
1 40004
2 40004
5 40004
6 40004
8 40004
9 40004
10 40004
11 40004
12 40004
59 40004
205 40004
300 40004
301 40004
303 40004
304 40004
311 40004
350 40004
351 40004

45 CFR
205 40120
305 40120

46 CFR
69 40008
Proposed Rules:
160 40036

47 CFR
0 40012
1 40012
2 40016
25 40019
73 (4 documents) 40012, 40021, 40022
74 40012
76 40012
78 40012
81 40023
83 40023
87 40023

49 CFR
509 40023
11002 40024
13 (2 documents) 40027, 40029
1043 40029
1171 40029
Proposed Rules:
391 40040

Federal Register
Vol. 50, No. 190
Tuesday, October 1, 1985

Presidential Documents

Title 3—

The President

Proclamation 5368 of September 27, 1985

National Sewing Month, 1985

By the President of the United States of America

A Proclamation

The sewing industry annually honors approximately fifty million people who sew at home and approximately forty million people who sew at least part of their wardrobes. Their initiative, creativity, and self-reliance are characteristic of the people of our Nation.

The home sewing industry generates an estimated $3,500,000,000 annually for the economy of the United States. Home sewing also has enhanced career opportunities for many Americans in fields such as fashion, retail merchandising, design, patternmaking, and textiles. Learning the art of sewing in the home or in elementary school home economics classes started many on careers in these fields.

In recognition of the importance of home sewing to our Nation, the Congress, by Senate Joint Resolution 173, has designated the month of September 1985 as "National Sewing Month," authorizing and requesting the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 1985 as National Sewing Month. I call upon the people of the United States to observe this month with appropriate ceremonies and activities.

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

Ronald Reagan

[FR Doc. 85-23583
Filed 9-30-85; 10:58 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5369 of September 27, 1985

National Adult Day Care Center Week, 1985

By the President of the United States of America

A Proclamation

The people of this Nation are striving to help older Americans to avoid being institutionalized unnecessarily and to remain independent in their homes. The rapid growth of adult day care centers is a reflection of the increasing interest in the development of long-term community care alternatives for the elderly. These centers offer comprehensive personal, medical, and therapeutic assistance to older people and to the handicapped, thus helping them to maintain a great degree of independence. The centers also offer support for families who are willing to care for their loved ones at home, but who welcome the opportunities the centers afford for wider human contacts among people often consigned to loneliness.

The many adult day care centers throughout America are to be commended for recognizing the vital needs of older people and for striving to meet those needs.

To increase public awareness of the importance of adult day care centers, the Congress, by House Joint Resolution 229, has designated the week beginning September 22, 1985, as "National Adult Day Care Center Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning September 22 through September 28, 1985, as National Adult Day Care Center Week, and I call upon all government agencies, national organizations, community groups, and the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

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

Ronald Reagan

[FR Doc. 85-23584
Filed 9-30-85; 10:59 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5370 of September 27, 1985

National Historically Black Colleges Week, 1985

By the President of the United States of America

A Proclamation

The one hundred and two historically black colleges and universities in the United States have contributed substantially to the growth and enrichment of the Nation. These institutions have a rich heritage and tradition of providing high quality academic and professional training, and their graduates have made countless contributions to the progress of our complex technological society.

Historically black colleges and universities bestow forty percent of all degrees earned by black students in the United States. They have awarded degrees to sixty percent of the black physicians, sixty percent of the pharmacists, forty percent of the attorneys, fifty percent of the engineers, seventy-five percent of the military officers, and eighty percent of the members of the judiciary. Throughout the years, these institutions have helped many underprivileged students to develop their full talents through higher education.

Recognizing that the achievements and aspirations of historically black colleges and universities deserve national attention, the Congress of the United States, by Senate Joint Resolution 186, has designated the week of September 23 through September 29, 1985, as "National Historically Black Colleges Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 23 through September 29, 1985, as National Historically Black Colleges Week. I ask all Americans to observe this week with appropriate ceremonies and activities to express our respect and appreciation for the outstanding academic and social accomplishments of the Nation's black institutions of higher learning.

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

Ronald Reagan

[FR Doc. 85-23585
Filed 9-30-85; 11:00 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 50, No. 190
Tuesday, October 1, 1985

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1822, 1872, 1930, 1944, 1951, and 1980

Revision of Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding section 502 rural housing (RH) loans to implement the provisions of Pub. L. 98–181, the Rural Housing Amendments of 1983, which was signed into law on November 30, 1983. The circumstances requiring this action are changes in FmHA's authorizing statutes (Title V of the Housing Act of 1949, as amended). The intended effect is to implement these amendments as speedily as possible so that the parts of the 1983 amendments which were effective upon enactment can be implemented in such a way as to not deny needed housing to low and very low-income persons.

DATES: Interim Rule effective on October 1, 1985. However, comments will be considered if received on or before October 31, 1985.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, D.C. 20250. All written comments made pursuant to this publication will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ruth Corcoran, Senior Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5334, South Building, 14th and Independence Avenue SW., Washington, D.C. 20250, telephone (202) 382–1488.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor, because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State or local 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.

The Rural Housing Amendments of 1983 require the following changes in the section 502 rural housing program:

1. FmHA must adopt the maximum income limits for eligibility for lower and very low-income applicants used by the Department of Housing and Urban Development (HUD) for its section 8 Housing Assistance Payments Program. The maximum moderate-income limits will be the greater of $5,500 over the applicable lower-income limits for the county or Metropolitan Statistical Area (MSA) or the moderate-income limit as previously provided in Exhibit C to FmHA Instruction 1944–A. FmHA is removing the Exhibit C from the Code of Federal Regulations and will make the Exhibit C available in any FmHA office. This action will facilitate the necessary periodic updates to these income limits as they become available from HUD.

2. FmHA must define and compute "total income" and "adjusted annual income" in accordance with criteria prescribed by the Secretary of HUD under section 3(b)(4) and the amendments to section 3(b)(5) of the United States Housing Act of 1937. Thus, FmHA is revising its regulations to incorporate these definitions for its section 502 homeownership program

3. Pub. L. 98–181 removed the authority of the Secretary of HUD to establish mortgage interest rates pursuant to section 3(a) of Pub. L. 90–301 for mortgages insured under section 203(b) of the National Housing Act. Interest rates for the section 203(b) program are now to be as agreed upon between the lender and the borrower. Thus the requirement in section 521(a)(1)(A) of the Housing Act of 1949 that loans to some moderate income borrowers must bear interest at the rate determined under section 3(a) of Pub. L. 90–301 is no longer operative for insured loans under Title V of the Housing Act of 1949. FmHA is removing the requirement in this regulation that section 502 moderate income borrowers will pay the HUD interest rate if a borrower's annual payments of principal, interest, taxes, and insurance do not exceed twenty percent (20%) of adjusted income with payments calculated at the HUD interest rate.

4. As required by the new housing amendments, subdivisions will be accepted by FmHA without further processing upon receipt of written evidence of current acceptance by HUD or the Veteran's Administration (VA). The regulations are being revised to permit this. Also, provision is made for different construction standards if advisable for FmHA demonstration housing.

5. FmHA is providing a priority system whereby applicants are afforded maximum opportunity to use funds as appropriated by the Congress. The regulations are being revised to provide for two application processing lists; one for applicants with very low incomes and one for applicants with low and moderate incomes. This will expedite the making of loans to very low-income persons. The application backlog will be reviewed, assigned to the appropriate application list, and given a processing priority category in date order of receipt of the application.

6. Sections 1944.2 (c), (d), (h), (i), (k), (l), (m), (n), 1944.5, 1944.6, 1944.24(b) and new form, FmHA 1944–4, "Certification of Disability or Handicap" are changed to incorporate specific statutory requirements which leave no options to the Agency. These changes bring FmHA regulation into conformity with regulations promulgated by the Secretary of HUD under the United States Housing Act of 1937. Title V of the Housing Act of 1949, as amended directs FmHA to adopt these changes to provide uniformity. HUD has recently adopted a final rule which FmHA is

bound to conform to.
Nonimplementation of these changes at this time would leave the Agency in noncompliance with the law and may require a suspension of the section 502 program. Therefore, an emergency situation exists which justifies publication as an interim rule without prior public comment.

7. Revisions to §§ 1944.24(a), 1944.28(b), 1944.34 paragraphs (i)(1), (i)(3)(i), and (i)(3)(ii), Exhibit D, item 3, Form FmHA 1944–6, Form FmHA 1944–1, and Form FmHA 410–4 are administrative in nature, have no impact on the public, and involve internal Agency management and are, therefore, not being published as a proposed rule.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This action does not directly affect any FmHA programs or projects which are subject to intergovernmental consultation.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Need for Governmental Action

FmHA section 502 regulations must be revised in the earliest possible time-frame in order to comply with the Rural Housing Amendments of 1983. The objective is maintenance of an ongoing, viable rural housing program. There were no alternative actions considered since the changes in the regulations are mandated by the changes in the Agency's authorizing statutes.

Pursuant to the rulemaking provisions in 5 U.S.C. 553, it is found upon good cause that notice and public procedure with respect to this action are impracticable, unnecessary and contrary to the public interest. Public comments are solicited and will be considered, however, good cause is found for making this an interim rule effective upon publication of this document in the **Federal Register**, and to have changes take effect immediately to comply with the housing amendments and avoid an adverse effect on the public.

Therefore, the Secretary of Agriculture has determined that due to the immediate need for this regulation it must be published as an interim rule under the emergency provisions of E.O. 12291 and section 534 of the Housing Act of 1949.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan program—Housing and community development, Low and moderate income housing—Rental, Mortgages, Rural housing, Subsidies.

For the reasons set out in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1822—RURAL HOUSING LOANS AND GRANTS

1. The authority citation for Part 1822 is revised to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Section 502 Rural Housing Weatherization Loans

§ 1822.21 [Amended]

2. Section 1822.21 is amended by changing the references from "§ 1944.2(m) to § 1944.2(p)" and from "§ 1944.26(f) to 1944.26(g)" in the penultimate sentence and by inserting the reference "1944.5, 1944.6" following the word "Sections" in the last sentence.

PART 1872—REAL ESTATE SECURITY

3. The authority citation for Part 1872 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

4. Section 1872.23 introductory text is revised to read as follows:

§ 1872.23 Cosigners—Rural Housing (RH) loans.

A cosigner, as defined in § 1944.2(a) of Subpart A of Part 1944, is personally liable for payment of the RH debt. Cosigners are not entitled to any interest in the security property or the rights of the borrower under the loan agreements or security instruments. However, the cosigner may pay the loan in full and take any assignment of FmHA interests.

* * * * *

PART 1930—GENERAL

5. The authority citation for Part 1930 is revised to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

Exhibit B [Amended]

6. Exhibit B is amended by revising paragraphs II M, II S and II BB to read as follows:

Exhibit B—Multiple Housing Management Handbook

* * * * *

II * * *

M *Low-Income Household.* A household having an adjusted annual income within the maximum low-income limit stated in Exhibit M of Subpart E of Part 1944 of this chapter (available in any FmHA office).

* * * * *

S *Moderate-Income Household.* A household having an adjusted annual income within the maximum moderate-income limit stated in Exhibit M of Subpart E of Part 1944 of this Chapter (available in any FmHA office).

* * * * *

BB *Very Low-Income Household.* A household having an adjusted annual income within the maximum very low-income limit stated in Exhibit M of Subpart E of Part 1944 of this chapter (available in any FmHA office).

* * * * *

Exhibit E [Amended]

7. Exhibit E, Paragraph II A 1 is revised to read as follows:

Exhibit E—Rental Assistance Program

* * * * *

II * * *

A * * *

1. The household adjusted annual income must not exceed the low income limit as indicated in Exhibit M to Subpart E of Part 1944 of this chapter (available in any FmHA office).

* * * * *

PART 1944—HOUSING

8. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

9. Section 1944.2 is revised to read as follows:

§ 1944.2 Definitions.

The following definitions apply to this subpart:

(a) *Cosigner.* A party who joins in the execution of a promissory note to guarantee its repayment by the borrower. The cosigner becomes jointly and severally liable to comply with the terms of the note in the event of the borrower's default.

(b) *County Supervisor.* Includes Assistant County Supervisor for all duties and responsibilities which are included in the employee's job description and for authorizations which have been delegated in writing in accordance with FmHA Instruction 2006–F (available in any FmHA office). For the areas of Alaska and Western Pacific Territories it also includes the Area Supervisor.

(c) *Disabled person.* A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Form FmHA 1944–4, "Certification of Disability or Handicap," will be used to verify disability in cases where State Review Board or Social Security records are not available. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A disabled person also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

(i) Self-care,

(ii) Receptive and expressive language,

(iii) Learning,

(iv) Mobility,

(v) Self-direction,

(vi) Capacity for independent living,

(vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(d) *Elderly family.* An elderly family consists of one of the following:

(1) A person who is the head, spouse or sole member of a family and who is 62 years of age or older, or who is handicapped or disabled and is the applicant/borrower or the co-applicant/co-borrower; or

(2) Two or more unrelated elderly (age 62 or older), disabled or handicapped persons who are living together, at least one of whom is the applicant/borrower or co-applicant/co-borrower; or

(3) In the case of a family where the borrower/co-borrower, or spouse, was at least 62 years old, handicapped, or disabled, the surviving household member(s) shall continue to be classified as an "elderly family" for the purpose of determining adjusted income even though the surviving member or members may not meet the definition of elderly family on their own, provided:

(i) They occupied the dwelling with the deceased family member at the time of his or her death; and

(ii) If one of the surviving family members is the spouse of the deceased family member the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of the death of the deceased family member the dwelling was financed under Title V of the Housing Act of 1949.

(e) *Existing dwellings.* A dwelling which is:

(1) More than 1 year old; or

(2) Previously occupied as a residence.

(f) *Extended family.* A family unit consisting of parents, children and other relatives who will live together on a permanent basis as a part of the household.

(g) *Farm.* Includes the total acreage of one or more tracts of land which:

(1) Is owned by the applicant,

(2) Is operated as a single unit,

(3) Is in agricultural production, and

(4) Annually will produce agricultural commodities for sale and home use with a gross value of at least $400 based on 1944 prices. To aid in estimating the gross annual value of agricultural commodities produced on a particular farm, a State Supplement will be issued listing the 1944 prices for the principal farm commodities in the State.

(h) *Full-time student.* A person who is carrying a subject load that is considered full-time for day students (excluding correspondence courses) under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

(i) *Handicapped person.* A person having a physical or mental impairment which:

(1) Is expected to be of long or indefinite duration;

(2) Substantially impedes his or her ability to live independently; and

(3) Is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. Form FmHA 1944–4 will be used to verify handicap in cases where State Review Board or Social Security records are not available.

(j) *Household.* The applicant and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months.

(k) *Income:* (1) *Very low income.* An adjusted annual income that does not exceed the very low-income limit according to size of household as established by the Department of Housing and Urban Development (HUD) for the county or Metropolitan Statistical Area (MSA) where the property is or will be located. Maximum very low-income limits are set forth in Exhibit C of this subpart (available in any FmHA office).

(2) *Low income.* An adjusted annual income that does not exceed the "lower" income limit according to size of household as established by HUD for the county or MSA where the property is or will be located. Maximum lower-income limits are set forth in Exhibit C of this subpart (available in any FmHA office).

(3) *Moderate income.* An adjusted annual income that does not exceed the maximum limit for moderate-income households as provided in Exhibit C of this subpart (available in any FmHA office).

(4) *Above-moderate income.* An adjusted annual income that exceeds the maximum limit for moderate-income households as provided in Exhibit C of this subpart (available in any FmHA office).

(l) *Metropolitan Statistical Area.* MSAs are defined according to a set of detailed standards prepared by the Federal Committee on MSAs. An area qualifies as an MSA if it contains a city of at least 50,000 population or an urbanized area of at least 50,000 with a total metropolitan population of at least 100,000. MSAs are defined in terms of

entire counties, except in the six New England states where they are defined in terms of cities and towns. An MSA may also include additional counties having strong economic and social ties of the central county. The term Standard Metropolitan Statistical Area (SMSA) was in use prior to the June 30, 1983, effective date of the MSA terminology.

(m) *Minor.* Persons under 18 years of age. Neither the head of household nor spouse may be counted as a minor. Foster children are not counted as minors for determining annual or adjusted annual income.

(n) *Net family assets.* Include:

(1) The value of equity in real property, savings, demand deposits, and the market value of stocks, bonds, and other forms of capital investments, but *exclude:*

(i) Interests in Indian trust land,

(ii) The value of dwelling and a minimum adequate dwelling site,

(iii) Cash on hand which will be used to reduce the amount of the loan,

(iv) The value of necessary items of personal property such as furniture and automobile(s) and the debts against them,

(v) The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and

(vi) The value of a trust fund that has been established and the trust is not revocable by, or under the control of, any member of the household, so long as the fund continues to be held in trust.

(2) The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in foreclosure or bankruptcy sale) during the two years preceding the date of application, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be for less than fair market value if the household member receives important consideration not measureable in dollar terms.

(o) *Nonfarm tract.* A parcel of land that is not a farm and is located in a rural area, or a building site that is part of a farm, and which secures an RH loan in accordance with § 1944.18(b)(10) of this subpart.

(p) *Place.* An area containing a concentration of inhabitants within a determinable unincorporated area.

(q) *Rehabilitation.* Major repairs and improvements to existing dwellings such as the installation or completion of bathroom facilities, installation of major items of equipment, additions, or structural changes.

(r) *Senior citizen.* A "senior citizen" is a person who is 62 years of age or older.

(s) *Town.* A "town" means a municipality similar to a city but not a New England-type town which resembles a township or county in most States.

(t) *Urban area.* Either a town, village, city, place, or any associated combination thereof which, with the immediately adjacent densely settled areas, has a population in excess of the limits prescribed in § 1944.10(a)(2) (i) and (ii) of this subpart.

§§ 1944.5 and 1944.6 [Added]

10. Sections 1944.5 and 1944.6 are added to read as follows:

§ 1944.5 Annual income.

Income will be determined as follows and thoroughly documented in the case file running record:

(a) Current verified income either part-time or full-time received by the applicant and all adult members of the household including the spouse is derived by multiplying:

(1) An hourly wage by 2080 hours (for part-time employment use anticipated annual hours); or

(2) A weekly wage by 52 weeks; or

(3) A biweekly wage by 26 weeks; or

(4) A monthly wage by 12 months.

(b) If the spouse or any other adult member of the household is not presently employed but there is a recent history of such employment, that person's income will be considered unless the applicant/borrower and the person(s) involved sign a statement that the person(s) is not presently employed and does not intend to resume employment in the foreseeable future, or if interest credit is involved, during the term of the Interest Credit Agreement. The statement will be filed in the applicant/borrower's case file.

(c) Income from such sources as seasonal type work of less than 12 months duration, commissions, overtime, bonuses, and unemployment compensation will be computed as the estimated annual amount of such income for the ensuing 12 months. Historical data based on the past 12 months may be used if a determination of expected income cannot logically be made.

(d) The following *are* included in annual income:

(1) The gross amount, before any payroll deductions, of wages and salaries overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adult members of the household.

(2) The *net* income from operation of a farm, business or profession. Consider the following:

(i) Expenditures for business or farm expansion and payments of principal on capital indebtedness shall not be used as deductions in determining income. A deduction is allowed in the manner prescribed by Internal Revenue Service (IRS) regulations only for interest paid in amortizing capital indebtedness.

(ii) Farm and nonfarm business losses are considered "0" in determining annual income.

(iii) A deduction based on straight line depreciation is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescene of depreciable property used in the operation of a trade, farm or business by a member of the household. The deduction must be based on an itemized schedule showing the amount of straight line depreciation actually claimed for Federal income tax purposes.

(iv) Any withdrawal of cash or assets from the operation of a farm, business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by a member of the household.

(3) Interest, dividends, and other net income of any kind from real or personal property, including:

(i) The share received by adult members of the household from income distributed from a trust fund.

(ii) Any withdrawal of cash or assets from an investment except to the extent the withdrawal is reimbursement of cash or assets invested by a member of the household.

(iii) Where the household has net family assets, as defined in § 1944.2(n) of this subpart, in excess of $5,000, the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by the County Supervisor.

(4) The full amount of periodic payments received from social security (including social security received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay.

(6) Public assistance except as indicated in paragraph (e)(2) of this section.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regularly recurring cash contributions or gifts received from persons not residing in the dwelling.

(8) Any earned income tax credit to the extent it exceeds income tax liability.

(9) Any amount of educational grants or scholarships or Veteran's Administration benefits available for subsistence after deducting expenses for tuition, fees, books and equipment.

(10) All regular pay, special pay (except for persons exposed to hostile fire), and allowances of a member of the armed forces who is the applicant/borrower or spouse, whether or not that family member lives in the unit.

(11) The income of an applicant's spouse, unless the spouse has been living apart from the applicant for at least 6 months (for reasons other than military or work assignment), or court proceedings for divorce or legal separation have been commenced.

(e) The following *are not* included in annual income but will be considered in determining repayment ability:

(1) Income from employment of minors (including foster children) under 18 years of age. The applicant and spouse may never be considered minors.

(2) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

(3) Payments received for the care of foster children.

(4) Casual, sporadic or irregular cash gifts.

(5) Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard, or worker's compensation policies, and settlements for personal or property losses (except as provided in paragraph (d)(5) of this section).

(6) Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses.

(7) Amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships or veteran's payments, which are not used for above purposes and are available for subsistence, are considered to be income. Student loans are not considered income.

(8) The hazardous duty pay to a service person applicant/borrower or spouse away from home and exposed to hostile fire.

(9) Payments to volunteers under the Domestic Volunteer Service Act of 1973, including but not limited to:

(i) National Volunteer Antipoverty Programs which include VISTA, Peace Corps, Service Learning Program and Special Volunteer Programs.

(ii) National Older American Volunteer Programs for persons age 60 and over which include Retired Senior Volunteer Programs, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Persons with Business Experience, Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).

(10) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(11) Payments received under the Alaska Native Claims Settlement Act.

(12) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes.

(13) Payments or allowances made under the Department of Health and Human Services Low-Income Home Energy Assistance Program.

(14) Payments received from the Job Training Partnership Act.

(15) Income derived from the disposition of funds of the Grand River Bank of Ottawa Indians.

(16) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims, or from funds held in trust for an Indian tribe by the Secretary of Interior.

(17) Any funds, other than those listed in paragraph (e) of this section, which a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits to which the recipient would otherwise be entitled.

§ 1944.6 Adjusted annual income.

Adjusted annual income is annual income as determined in § 1944.5 of this subpart less the following:

(a) A deduction of $480 for each member of the family residing in the household, other than the applicant, spouse, or co-applicant, who is:

(1) Under 18 years of age; or

(2) Eighteen years of age or older and is disabled or handicapped as defined in § 1944.2 (c) and (i) of this subpart; or

(3) A full-time student aged 18 or older.

(b) A deduction of $400 for any elderly family as defined in § 1944.2(d) of this subpart.

(c) A deduction for the care of minors 12 years of age or under to the extent necessary to enable a member of the applicant/borrower's family to be gainfully employed or to further his or her education. The deduction will be based only on monies reasonably anticipated to be paid for care services and, if caused by employment, must not exceed the amount of income received from such employment. Payments for these services may not be made to persons whom the applicant/borrower is entitled to claim as dependents for income tax purposes. Full justification for such deduction must be recorded in detail in the loan docket.

(d) A deduction of the amount by which the aggregate of the following expenses of the household exceeds 3 percent of gross annual income:

(1) Medical expenses for any elderly family as defined in § 1944.2(d) of this subpart. This includes medical expenses the applicant/borrower anticipates incurring over the ensuing 12 months and which are not covered by insurance. Examples of medical expenses are dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, the cost of home nursing care, monthly payments on accumulated major medical bills, and cost of full-time nursing or institutional care which cannot be provided in the home for a member of the household; and

(2) Reasonable attendant care and auxiliary apparatus expenses for each handicapped/disabled member of *any* household to the extent necessary to enable any member of such household (including such handicapped/disabled member) to be employed.

§ 1944.8 [Amended]

11. Section 1944.8 is amended by removing paragraph (c) and revising paragraph (a)(1) to read as follows:

§ 1944.8 Income eligibility requirements.

(a) * * *

(1) The adjusted annual income as defined in § 1944.6 of this subpart at the time of loan approval does not exceed the applicable income limit in Exhibit C of this subpart (available in any FmHA office).

* * * * *

(c) [removed]

12. Section 1944.8, paragraph (b) is amended by changing the reference in the first sentence from "(a)(2)(i)" to "(a)(2)".

§ 1944.10 [Amended]

13. Section 1944.10(a)(2)(ii)(A) is revised to read as follows:

§ 1944.10 Rural area designation.

(a) * * *
(2) * * *
(ii) * * *
(A) is not contained within an MSA, and
* * * * *

§ 1944.16 [Amended]

14. In § 1944.16, paragraph (a)(6) is amended by changing the reference in the first sentence from "§ 1944.2(g)" to "§ 1944.2(f)".

§ 1944.24 [Amended]

15. In § 1944.24, paragraphs (a) and (b) are revised to read as follows:

§ 1944.24 Technical services.

(a) *Planning and performing construction work.* Any construction work will be planned and completed in accordance with Subpart A of Part 1924 of this chapter or a lesser standard as may be prescribed by FmHA for demonstration type loans.

(b) *Planning and performing site development work.* Any site development will be planned and completed in accordance with Subpart D of Part 1804 of this Chapter (FmHA Instruction 424.5). Subdivisions will be accepted by FmHA without further processing when the developer provides written evidence of current subdivision acceptance by HUD or VA. The developer must also provide proof of compliance with exception conditions established by HUD or VA. Such evidence will be reviewed and approved by the State Director.
* * * * *

16. In § 1944.24, paragraph (c)(1) is amended by changing the reference in the second sentence from "§ 1944.2(h)" to "§ 1944.2(g)".

§ 1944.25 [Amended]

17. In § 1944.25, pararaph (b) is amended by removing the last three sentences of the paragraph.

§ 1944.26 [Amended]

18. In § 1944.26, paragraph (a)(2)(ii), paragraph (b) and the introductory text of paragraph (c) are revised to read as follows:

§ 1944.26 Application processing.

(a) * * *
(2) * * *
(ii) Dependably available income from all sources not used to determine adjusted annual income, such as earning from employment of minors, foster care payments, and similar income items, will be considered to the extent it is used to offset budgeted expenses even though such income will not be included in "annual income."
(3) * * *
(4) * * *

(b) *Processing priorities.* Applications for section 502 RH loans will be processed in accordance with § 1910.4(a) of Subpart A of Part 1910 of this chapter with the following exceptions:

(1) All applications, including those on hand prior to the revision date of this paragraph, will be separated into two major groups: (i) Low income, moderate income and other, and (ii) Very low income, based on data contained in the application form. The county office will enter the names of the applicants in date order of the receipt of the applications, on two Forms FmHA 1905–4, "Application and Processing Card—Individual," with the proper designation of "Low and moderate income and other" or "Very low income" in the upper right hand corners of the cards.

(2) Applications in the above income groups, including those applications on hand prior to revision date of this paragraph, will be assigned to an appropriate category (except as otherwise noted in this subparagraph), and the category numeral entered on the left side of the Forms FmHA 1905–4, to establish a processing priority system as follows:

(i) The State Director will maintain an adequate reserve to fund applications for the following types of loans (applications for such loans will not be categorized, will be processed as soon as they are received in the county office and the approved loans submitted through the State Office for funding):

(A) Credit sales of inventory property with or without subsequent loans.

(B) Transfers by assumption with or without subsequent loans.

(C) Subsequent loans for essential improvements and repairs.

(ii) Category I. Applicants for refinancing of debts in accordance with § 1944.22(b) and applicant hardship cases as determined by the State Director. These also will be processed as soon as the application is received.

(iii) Category II. Applicants for mutual self-help housing loans in FmHA approved self-help projects.

(iv) Category III. Applicants living in deficient housing for a period of more than 6 months prior to the date of application. Base this determination on information obtained from the applicant and document it on the application. If the County Supervisor believes there is reason to question the accuracy of the information provided, an on-site inspection may be made. Deficient housing is defined as follows:

(A) Lack of complete plumbing: no bathtub or shower, wash basin, flush toilet or hot running water for the exclusive use of the occupant, or

(B) The persons per room ratio is greater than one. The number of rooms in a dwelling includes bedrooms, a living room, a dining room, a kitchen, and other rooms designed as living area.

(v) Category IV. All other section 502 RH applications.

(c) *Selection for processing.* Quarterly, or as necessary, the County Supervisor will select a sufficient number of applicants from categories II, III, and IV, in that order, to assure an adequate number of loans which can be processed and approved during the period. In selecting applications for processing, the requirement of serving very low-income families and persons in accordance with the Agency's funding directives (available in any FmHA office) will be complied with. Processing will be handled in accordance with the following:
* * * * *

§ 1944.33 [Amended]

19. Section 1944.33, paragraphs (a) and (b) are amended by inserting "(available in any FmHA office)" following the words "Exhibit C of this subpart" in the second sentences of both paragraphs.

§ 1944.34 [Amended]

20. In § 1944.34, paragraphs (f)(1) (i) and (ii) are revised to read as follows:

§ 1944.34 Interest credit.

* * * * *
(f) * * *
(1) * * *
(i) The borrower's adjusted annual income at time of loan approval did not exceed the applicable low-income limit in Exhibit C of this subpart (available in any FmHA office).

(ii) The borrower's net family assets as defined in § 1944.2(n) of this subpart do not exceed $7,500 (maximum net family assets of $10,000 will be allowed for an elderly family as defined in § 1944.2(d) of this subpart) unless an exception is authorized. For the purpose of determining whether an exception is justified, consideration will be given to the nature of the assets, particularly whether they are assets upon which a borrower is currently dependent for a livelihood or which could be used to reduce or eliminate the need for interest credit. The District Director may authorize exceptions of the net family assets limitation up to $20,000. Cases

recommended by the State Director for which the net family assets exceed $20,000 will be submitted to the National Office for authorization to grant interest credit.

* * * * *

21. Section 1944.34, paragraph (f)(2) is amended by inserting "(available in any FmHA office)" following the words "Exhibit C of this subpart" in the second sentence.

22. Section 1944.34, paragraph (g)(2)(i)(C) is amended by inserting "(available in any FmHA office)" following words "Exhibit C of this subpart" in the third sentence.

23. Section 1944.34, paragraph (i)(1)(ii)(B) is amended by inserting "(available in any FmHA office)" at the end of the sentence.

24. In § 1944.34, paragraphs (i)(1) introductory text, (i)(3)(i) and (i)(3)(ii) are revised to read as follows:

§ 1944.34 Interest credit.

(1) *Annual review.* The eligibility of borrowers will be reviewed annually during the review period.

(i) * * *

* * * * *

(3) * * *

(i) *Increased adjusted income.* If the County Supervisor determines that the borrower's adjusted income exceeds the moderate-income limit set forth in Exhibit C of this subpart (available in any FmHA office), the interest credit will be cancelled effective the date the County Supervisor becomes aware of the situation. The borrower will be notified in accordance with paragraph (1) of this section.

(ii) *Decreased adjusted income.* Changes in interest credit will not be made except in cases where the decrease in income is such that the sum of annual installments of principal and interest at the current effective interest rate on loans eligible for interest credit, the amount of annual installments due at the note rate on qualified loans ineligible for interest credit, and the real estate taxes and insurance equals or exceeds 35 percent of the borrower's adjusted income. If the change is determined within three months prior to the anniversary date of the agreement currently in effect, the change will be effective on the anniversary date.

* * * * *

Exhibit C [Removed].

25. Exhibit C is removed.

Exhibit D [Amended]

26. Exhibit D is amended by revising Item 3 to read as follows:

Exhibit D—Rural Housing Applicant Interview

* * * * *

3. *Adjusted Income:* Qualification for low or moderate income is based on adjusted income. This is the total annual income less $480 for each minor person who is a member of the immediate household and lives in the home. A deduction of $480 is also allowed for persons other than the applicant or co-applicant who are 18 years of age or older and are handicapped or disabled as defined in the regulations, or who are full-time students. Also, a $400 deduction is allowed for an elderly family as defined in the regulations. Other deductions are contained in the regulations.

* * * * *

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

§ 1944.205 [Amended]

27. In § 1944.205, paragraphs (d) and (f)(5) are revised to read as follows:

§ 1944.205 Definitions.

* * * * *

(d) *Low- or moderate-income household.* Households having incomes within the limits of the maximum adjusted income as outlined in Exhibit M of this subpart (available in any FmHA office).

* * * * *

(f) * * *

(5) In the case of cooperative housing projects, all members (tenants) must be of low or moderate income except that, any tenant who is admitted as an eligible tenant of the cooperative may not subsequently be deprived of her/his membership or tenancy by reason of no longer meeting the income eligibility requirements as outlined in Exhibit M of this subpart (available in any FmHA office).

* * * * *

§ 1944.215 [Amended]

28. In § 1944.215, the first sentence of paragraph (i)(1) is revised to read as follows:

§ 1944.215 Special conditions.

* * * * *

(i) * * *

(1) When a household consists of only one individual an additional individual or individuals may reside in the unit provided the unit has adequate space for their total needs and provided the combined incomes of the occupants does not exceed the levels set for the project in accordance with §1944.205(f) of this subpart and as defined in Exhibit M of this subpart (available in any FmHA office). * * *

* * * * *

Subpart J—Section 504 Rural Housing Loans and Grants

§ 1944.453 [Amended]

29. Section 1944.453 is revised to read as follows:

§ 1944.453 Definitions.

(a) *Adjusted annual income.* Adjusted annual income is annual income as defined in paragraph (b) of this section less the following:

(1) A deduction of $480 for each member of the family residing in the household, other than the applicant, spouse, or co-applicant, who is:

(i) Under 18 years of age; or

(ii) Eighteen years of age or older and is disabled or handicapped as defined in paragraphs (e) and (h) of this section; or

(iii) A full-time student aged 18 or older.

(2) A deduction of $400 for any elderly family as defined in paragraph (f) of this section.

(3) A deduction for the care of minors 12 years of age or under to the extent necessary to enable a member of the applicant/borrower's family to be gainfully employed or to further his or her education. The deduction will be based only on monies reasonably anticipated to be paid for care services and, if caused by employment, must not exceed the amount of income received from such employment. Payments for these services may not be made to persons whom the applicant/borrower is entitled to claim as dependents for income tax purpose. Full justification for such deduction must be recorded in detail in the loan docket.

(4) A deduction of the amount by which the aggregate of the following expenses of the household exceeds 3 percent of gross annual income:

(i) Medical expenses for any elderly family as defined in paragraph (f) of this section. This includes medical expenses the applicant/borrower anticipates incurring over the ensuing 12 months and which are not covered by insurance. Examples of medical expenses are dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, the cost of home nursing care, monthly payments on accumulated major medical bills, and cost of full-time nursing or institutional care which cannot be provided in the home for a member of the household; and

(ii) Reasonable attendant care and auxiliary apparatus expenses for each

handicapped/disabled member of *any* household to the extent necessary to enable any member of such household (including such handicapped/disabled member) to be employed.

(b) *Annual income.* Current verified income either part-time of full-time received by the applicant and all adult members of the household including the spouse. Annual income is determined as set forth in § 1944.5 of Subpart A of this Part.

(c) *Co-signer.* A party who joins in the execution of the Promissory Note to guarantee repayment by the borrower. The co-signer becomes jointly and severally liable to comply with the terms of the note in the event of the borrower's default.

(d) *County Supervisor.* Includes Assistant County Supervisor for all duties and responsibilities which are included in the employee's job description and for authorizations which have been delegated in writing in accordance with FmHA Instruction 2006–F (available in any FmHA office). For the areas of Alaska and the Western Pacific Territories, it also includes the Area Supervisor and Assistant Area Supervisor.

(e) *Disabled person.* A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Form FmHA 1944–4, "Certification of Disability or Handicap," will be used to verify disability in cases where State Review Board or Social Security records are not available. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A disabled person includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairment;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

(i) Self-care,

(ii) Receptive and expressive language,

(iii) Learning,

(iv) Mobility,

(v) Self-direction,

(vi) Capacity for independent living,

(vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are in lifelong or extended duration and are individually planned and coordinated.

(f) *Elderly family.* An elderly family consists of one of the following:

(1) A person who is the head, spouse or sole member of a family and who is 62 years of age or older, or who is handicapped or disabled and is the applicant/borrower or the co-applicant/co-borrower; or

(2) Two or more unrelated elderly (age 62 or older), disabled or handicapped persons who are living together, at least one of whom is the applicant/borrower or co-applicant/co-borrower; or

(3) In the case of a family where the borrower/co-borrower, or spouse, was at least 62 years old, handicapped, or disabled, the surviving household member(s) shall continue to be classified as an "elderly family" for the purpose of determining adjusted income even though the surviving member or members may not meet the definition of elderly family on their own, provided:

(i) They occupied the dwelling with the deceased family member at the time of his or her death; and

(ii) If one of the surviving family members is the spouse of the deceased family member the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of the death of the deceased family member the dwelling was financed under Title V of the Housing Act of 1949.

(g) *Full-time student.* A person who is carrying a subject load that is considered full-time for day students (excluding correspondence courses) under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

(h) *Handicapped person.* A person having a physical or mental impairment which:

(1) Is expected to be of long or indefinite duration;

(2) Substantially impedes his or her ability to live independently; and

(3) Is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. Form FmHA 1944–4 will be used to verify handicap in cases where State Review Board or Social Security records are not available.

(i) *Hazard.* A condition of the dwelling or dwelling site which may jeopardize the health or safety of the occupants of the dwelling and/or the members of the community.

(j) *Household.* The applicant and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months.

(k) *Major hazard.* A condition of the dwelling or site so severe as to make the dwelling unfit for habitation.

(l) *Manufactured home.* A manufactured home means a structure, transportable in one of more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required facilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files the certification required by the Secretary of Housing and Urban Development and complies with the standards established under Title VI of the Housing and Community Development Act of 1974, Pub. L. 93–383.

(m) *Minor.* Persons under 18 years of age. Neither the head of household nor spouse may be counted as a minor. Foster children are not counted as minors for determining annual or adjusted annual income.

(n) *Mobile home.* For the purpose of this instruction a mobile home is an older home commonly referred to as a "trailer," designed to be used as a dwelling but built prior to the enactment of Pub. L. 96–399 (October 8, 1980).

(o) *Net family assets.* Include:

(1) The value of equity in real property; savings, demand deposits, and the market value of stocks, bonds, and other forms of capital investments, but *exclude:*

(i) Interests in Indian trust land,

(ii) The value of the dwelling and a minimum adequate site,

(iii) Cash on hand which will be used to reduce the amount of the loan,

(iv) The value of necessary items of personal property such as furniture and automobile(s) and the debts against them,

(v) The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and

(vi) The value of a trust fund that has been established and the trust is not revocable by, or under the control of, any member of the household, so long as the fund continues to be held in trust.

(2) The value of any assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be for less than fair market value if the household member receives important consideration not measurable in dollar terms.

(p) *Owner.* For the purposes of this subpart, an owner is one who can meet the conditions of ownership in accordance with § 1944.458(a)(3) of this subpart.

(q) *Rural area.* A determination of rural area will be in accordance with § 1944.10 of Subpart A of this part.

(r) *Very low income.* An adjusted annual income that does not exceed the very low-income limit according to size of household as established by the Department of Housing and Urban Development (HUD) for the county or Metropolitan Statistical Area (MSA) where the property is located. Maximum very low-income limits are set forth in Exhibit C of Subpart A of this part (available in any FmHA office).

§ 1944.458 [Amended]

30. In § 1944.458, paragraph (a)(4) is revised to read as follows:

§ 1944.458 Eligibility requirements.

(a) * * *

(4) *Income.* The applicant must have an adjusted annual income that does not exceed "very low income" as defined in § 1944.453(r) of this subpart.

* * * * *

Subpart K—Technical and Supervisory Assistance Grants

31. In § 1944.506, paragraph (d) is revised to read as follows:

§ 1944.506 Definitions.

* * * * *

(d) *Low-income family.* Any household, including those with one member, whose adjusted annual income, computed in accordance with §§ 1944.5 and 1944.6 of Part 1944, Subpart A, of this chapter, does not exceed the maximum low-income limit specified in Exhibit C of Subpart A of Part 1944 (available in any FmHA office).

* * * * *

PART 1951—SERVICING AND COLLECTIONS

32. The authority citation for Part 1951 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

§ 1951.313 [Amended]

33. Section 1951.313(a)(2)(i)(B) is amended by changing the reference from "§ 1944.2" to "§ 1944.5."

PART 1980—GENERAL

34. The authority citation for Part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Rural Housing Program Loans

35. In § 1980.302, paragraph (a) is revised to read as follows:

§ 1980.302 Definitions.

* * * * *

(a) *Above moderate income.* An adjusted annual income of more than the maximum moderate-income limit as shown in Exhibit C of Subpart A, Part 1944, of this chapter (available in any FmHA office), but not more than $30,000 except for Hawaii, Guam, and Alaska in which the maximums are $40,000, $40,000 and $50,000, respectively. (See also § 1980.330(h)(1).)

* * * * *

36. In § 1980.330, paragraph (h)(1) is revised to read as follows:

§ 1980.330 Borrower eligibility requirements for a loan.

* * * * *

(h) * * *

(1) *Above moderate income.* An above-moderate income is an adjusted annual income of more than the maximum moderate-income limit as shown in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office), but not more than $30,000, except for Hawaii, Guam, and Alaska in which the maximum is $40,000, $40,000 and $50,000 respectively.

* * * * *

Dated: August 9, 1985.

Frank W. Naylor, Jr.,

Under Secretary for Small Community and Rural Development.

[FR Doc. 85-22586 Filed 9-30-85; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1951

Special Debt Set-Aside of a Portion of the Indebtedness of Farmer Program Borrowers

AGENCY: Farmers Home Administration, USDA.

ACTION: Supplemental notice to interim rule.

SUMMARY: The Farmers Home Administration (FmHA) published an interim rule amending its account servicing regulation in the **Federal Register** October 19, 1984 (49 FR 41220). The interim rule provided that the authorities contained in 7 CFR 1951.41 would expire September 30, 1985, unless extended by the Administrator. This notice is taken to set forth that special debt set-aside will expire September 30, 1985, pursuant to 7 CFR 1951.41(a), except for: (1) Timely filed applications on hand and unprocessed on September 30, 1985, and (2) appeals relating to such applications. The intended effect of this notice is to provide for those borrowers who applied for debt set-aside and whose applications are unprocessed to be granted debt set-aside if they are determined eligible. It also allows borrowers to receive debt set-aside when the outcome of their appeal results in their being determined eligible for this assistance.

EFFECTIVE DATE: This action shall be effective September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Jane Corbett, Loan Officer, Farm Real Estate and Production Division, Farmers Home Administration, USDA, Room 5449-S, Washington, D.C. 20250, telephone (202) 447-4572.

Dated: September 24, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 85-23417 Filed 9-30-85; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 2 and 3

[Notice 1985-11]

Sunshine Act Regulations Scope and Definitions; Meetings

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: The Federal Election Commission has revised its regulations implementing the Government in the Sunshine Act, 5 U.S.C. 552b. The revisions are based on the Commission's experience in working with the Sunshine Act and on public comments received in response to the two Notices of Proposed Rulemaking published by the Commission. The revisions consolidate the Sunshine Act regulations into 11 CFR Part 2 and reserve 11 CFR Part 3 for future use. The amended rules also provide a more complete statement of exemptions from the open meeting requirement and clarify the procedures for closing meetings. Finally, the revised regulations provide new procedures for processing requests for transcripts or electronic recordings of closed meetings when the exemptions no longer apply. Further information on these revisions is provided in the supplementary information which follows.

EFFECTIVE DATE: October 31, 1985.

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SUPPLEMENTARY INFORMATION: On December 19, 1984 the Commission published a Notice of Proposed Rulemaking to revise the Sunshine Act regulations at 11 CFR Parts 2 and 3. 49 FR 49306. Ten comments were received in response to the Notice. Several of the comments suggested that the Commission hold a hearing regarding the proposed rules. The Commission redrafted portions of the proposed rules based on the public comments and the Commission's public discussion of the regulations. The Commission published a Second Notice of Proposed Rulemaking on March 13, 1985 to solicit additional public comment. 50 FR 10066. The Second Notice also announced that a public hearing would be held on April 24, 1985 and invited requests to testify. The hearing was subsequently cancelled because no requests to testify were received. One comment was received in response to the Second Notice.

Having considered the comments made on both versions of the proposed rules, the Commission is now publishing the final rules together with a statement explaining their basis and purpose in accordance with the Administrative Procedure Act, 5 U.S.C. 553(c). The final rules are the same as the draft rules published in the Second Notice except that 11 CFR 2.6(b)(2) has been modified to indicate that transcripts will be made available to the public through the Commission's Public Records Office. In addition, a statutory reference in 11 CFR 2.8(d) has been clarified.

Basis and Purpose of the Sunshine Act Regulations, 11 CFR Part 2

The rules implementing the Government in the Sunshine Act have been substantially revised and reorganized. The Sunshine Act regulations in 11 CFR Parts 2 and 3 have been consolidated into Part 2, and Part 3 have been set aside for future use. This is intended to remove any confusion regarding the relationship between these two Parts.

Section 2.1 Scope.

A technical amendment has been made in § 2.1 to make clear that 11 CFR Part 2 implements Section 3 of the Government in the Sunshine Act.

Section 2.2 Definitions.

This section consolidates the definitions currently in 11 CFR 2.2, 2.3, 2.4 and 2.5. Paragraph 2.2(a) generally follows current § 2.2. Paragraph 2.2(b) generally follows current § 2.3, but a technical amendment has been made to correct the statutory citation. The definition of "person" in § 2.2(c) generally follows current § 2.4, but has been slightly revised to specifically include employees of the Commission. This change is intended to clarify that Commission employees may invoke the procedures of new § 2.5(e) if appropriate.

The definition of meeting in § 2.2(d) is based on current § 2.5, but has been significantly revised and reorganized. Paragraph (d)(1) clarifies that "joint conduct of official Commission business" does not include situations in which a quorum is physically present but is not conducting agency business as a body. This is intended to exclude situations where, for example, a member of the Commission gives a speech concerning agency business while other members are present in the audience. This example is taken from the legislative history of the Sunshine Act. H.R. Rep. No. 94-880, 94th Cong., 2d Sess. 8 (1976); S. Rep. No. 94-354, 94th Cong., 1st Sess. 18 (1975).

Paragraph (d)(2) explains that the term "meeting" does not include the process of notation voting by circulated memorandum for the purpose of expediting consideration of routine matters. One comment suggested that the exclusion of notation voting is not consistent with the spirit of the Sunshine Act. The Commission notes that the practice of notation voting is provided for in the legislative history, and has been specifically approved by the U.S. Court of Appeals for the D.C. Circuit. H.R. Rep. No. 94-1441, 94th Cong., 2d Sess. 11 (1976); *Common Cause* v. *Nuclear Regulatory Commission*, 674 F.2d 921, 935 n. 42 (D.C. Cir. 1982); *Committee to Elect Lyndon La Rouche* v. *Federal Election Commission*, 613 F.2d 834, 847 n. 22 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980); *Communications System Inc.* v. *Federal Communications Commission*, 595 F.2d 797, 800 (D.C. Cir. 1978).

Section 2.3 General Rules.

Paragraphs 2.3 (a) and (b) generally follow current § 3.1. Paragraph 2.3(c) has been added to explain that Commission meetings are not part of the formal or informal record of decision of the matters discussed therein. Statements made by Commissioners or FEC employees at meetings are not intended to represent final determinations or beliefs and should not be construed as such. Paragraph (c) represents a continuation of past policy in this area.

Paragraph 2.3(d) has been added to provide a statement of Commission policy and practice regarding the use of electronic recording devices by members of the public attending Commission meetings. In response to several comments made on the first version of this provision, it was reworded to clarify that the use of cameras and large electronic recording equipment requires advance notice to and coordination with the Press Officer. One comment expressed concern as to the lack of a policy statement or standards as to how advance notice and coordination with the Press Officer will work. Advance notice and coordination is necessary because there are limitations on the space available to accommodate the media and because there are limitations on the electrical circuits in the Commission's meeting room. This requirement also gives sufficient notice to the Commission as to the type of coverage that can be expected. It is not meant to restrict press access to Commission meetings. When the space limitations of the Commission's meeting room do not permit all members of the press to be accommodated, the Press Officer will try to work out a voluntary pooling arrangement. This is a continuation of

the Commission's past policy of openness and access. Pooling arrangements have worked well informally in the past, and the space available for the Press can be expected to improve once the Commission moves to new, larger quarters. Hence, formal guidelines for the Press Officer are unnecessary and could prove to be overly restrictive.

Section 2.4 Exempted Meetings

This section substantially revises and reorganizes current § 3.2. Section 2.4 provides a more complete list of matters that may be considered in closed Commission meetings, and reorders the exemptions to conform to their placement in the Sunshine Act. The revision also clarifies the distinction between meetings required to be closed by statutes other than the Sunshine Act, and meetings which may be closed under one of the "discretionary" exemptions available under the Sunshine Act. This distinction is significant because the Commission may waive the discretionary exemptions and open up a discussion, whereas the Commission may not waive a statutory requirement of confidentiality. The exemption claimed also affects the manner in which transcripts or tapes of the discussion will be released once the matter loses its exemption. *See* 11 CFR 2.6(b). However, the type of exemption does not affect the procedures to be used to close the matter to the public, as set out in 11 CFR 2.5.

Paragraph 2.4(a) exempts from public disclosure matters specifically required by statute to be closed. This includes the Federal Election Campaign Act of 1971, as amended ("FECA"), 2 U.S.C. 431 *et seq.* as well as other statutes which may compel closure. The FECA exemption is set out in § 2.4(a)(1). Under 2 U.S.C. 437g(a)(12), the Commission is required to maintain confidentiality for any notification or investigation that a violation of the FECA has occurred. Therefore, the Commission must close discussions of enforcement matters. Paragraph 2.4(a)(2) explains the scope of the FECA exemption. It follows the definition of "notification or investigation" in current § 3.2(a)(2) by including section 437g determinations, issuance of subpoenas, discussions of referrals to the Department of Justice, and any other matters related to the Commission's enforcement activity under 11 CFR Part 111. For example, discussions of audit reports are covered by this exemption whenever they are likely to lead to a compliance action. However, following the format of the Sunshine Act, discussions regarding civil actions and adjudications are covered by new paragraph § 2.4(b)(7).

In some situations, several exemptions permit closure of a meeting. For example, discussions of enforcement matters that are exempt from disclosure under the § 2.4(a) FECA exemption will also be exempt under § 2.4(b) (1) and (5) whenever there is mention of internal investigative techniques, such as audit thresholds. A waiver of confidentiality by a respondent would not necessarily eliminate the application of § 2.4(a). For example, the presence of other respondents in the case or ambiguity as to the extent of the waiver could require a continued claim of exemption under § 2.4(a). Even in cases where a waiver of confidentiality does appear to be complete, however, other exemptions may still compel closure.

The Commission received several comments that interpreted the first proposed draft of § 2.4(a) to mean that transcripts of enforcement matters would no longer be released. As it was never the intention of the Commission to change its policy of releasing transcripts, the language that created the misperception was deleted from the second draft of § 2.4(a), and from the final rule. Accordingly, transcripts of enforcement matters will continue to be made public on request once the investigation is closed and the matter is no longer entitled to exemption. *See* § 2.6(b)(3).

Paragraph 2.4(b) contains the remaining Sunshine exemptions that are pertinent to the Commission's activities. They have been reordered from the way they appear in current § 3.2(b) to conform to their placement in the Sunshine Act. In addition, one new exemption has been added and the scope of others has been clarified.

Paragraph 2.4(b)(1) generally follows current § 3.2(b)(1)(i) to exempt matters related solely to the Commission's internal personnel decisions and internal rules and practices. However, § 2.4(b)(1) has been supplemented by examples to make clear how the exemptions may be applied. The examples are based on the legislative history of the Sunshine Act, and recent judicial interpretations of the Freedom of Information Act, which contains an identical exemption. The legislative history of the Sunshine Act indicates that Congress intended judicial interpretations of the FOIA to apply to the Sunshine exemption. H.R. Rep. No. 94–1441, 94th Cong., 2d Sess. 15 (1976).

Paragraph (b)(1)(i) provides that the internal personnel rules exemption applies to discussions of materials prepared predominately for internal use where disclosure would risk circumvention of Commission regulations. This is based on a recent decision in which the U.S. Court of Appeals for the D.C. Circuit held that an agency's training manual for law enforcement personnel was exempt from disclosure under FOIA because it would reveal internal investigatory techniques which, if generally known, would risk circumvention of agency regulations. *Crooker* v. *Bureau of Alcohol, Tobacco & Firearms*, 670 F.2d 1051, 1073 (D.C. Cir. 1981). The court relied on the intent of Congress to exempt from disclosure "operating rules, guidelines, and manuals of procedure for Government investigators. . . ." *Id.* at 1060, *quoting* H.R. Rep. No. 89–1497, 89th Cong., 2d Sess. 10 (1966). On the basis of this precedent, the U.S. District Court for the District of Columbia held that the FEC's "threshold requirements for substantial compliance [with the FECA] are exempt from disclosure under FOIA." *Fund for a Conservative Majority* v. *Federal Election Commission*, Civil Action No. 84–1342, slip op. at 6 (D.D.C. Feb. 26, 1985). The court reasoned that the thresholds for identifying potential audit subjects are predominately internal and disclosure "would enable unscrupulous political committees to tailor their reports to avoid being audited, and ignore statutory reporting requirements that are not central to the internal review procedures." *Id.* at 4–5. Therefore, Commission discussions of the audit-triggering thresholds, or of any documents revealing the thresholds, or similar materials produced for staff use in enforcement of the FECA requirements are exempt from public disclosure under the Sunshine Act and 11 CFR 2.4(b)(1).

Paragraph 2.4(b)(1)(ii), following current § 3.2(b)(1)(i), explains that the internal personnel exemption does not apply to discussions or materials regarding employees' dealings with the public, such as personnel manuals or Commission directives setting forth job functions or procedures. This provision is taken from the legislative history, H.R. Rep. No. 94–880, 94th Cong., 2d Sess. 9 (1976).

Paragraph 2.4(b)(2) generally follows current § 3.2(b)(1)(iv) in restating the exemption provided by the Sunshine Act for financial or commercial information obtained from any person which is privileged or confidential.

Paragraph 2.4(b)(3) generally follows current § 3.2(b)(1)(ii), which contains the Sunshine exemption for matters involving formal proceedings against a specific person or formal censure of any person. The legislative history indicates

that this exemption covers discussions of crimes or misconduct before the agency. S. Rep. No. 94–354, 94th Cong., 1st Sess. 22 (1975). This exemption also applies generally whenever "opening to the public agency discussions of such matters could irreparably harm the person's reputation. If the agency decides not to accuse the person of a crime or not to censure him the harm done to the person's reputation by the open meeting could be very unfair." *Id.* This exemption could be invoked, for example, if the Commission wishes to consider a possible ethical violation by a former Commission employee who subsequently represents the subject of an investigation in which the former employee participated. As indicated by this example, there may be situations in which exemption (b)(3) can be invoked in addition to exemptions (b)(4) and (b)(5), concerning personal privacy and investigatory records.

Paragraph 2.4(b)(4) generally follows current § 3.2(b)(1)(iii) to provide an exemption for information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. This exemption protects the privacy interests of both members of the public and Commission employees. Hence, it overlaps with the personnel exemption to cover a discussion of particular job descriptions and the upgrading of positions if the discussion is likely to involve an identifiable employee in that position.

Paragraph 2.4(b)(5) has been added to incorporate exemption 7 of the Sunshine Act regarding investigatory records compiled for law enforcement purposes where disclosure of these records would, for example, interfere with enforcement proceedings or disclose investigative techniques and procedures. *See* 5 U.S.C. 552(c)(7). The *Fund for a Conservative Majority* case, discussed above, focused on whether the corresponding FOIA exemption protects internal memoranda that applied the FEC's audit thresholds and review and referral policies in a particular investigation. *Fund for a Conservative Majority* v. *Federal Election Commission*, Civil Action No. 84–1342, slip op. at 6–8 (D.D.C. Feb. 26, 1985). The court held that the internal memoranda are protected by this exemption because they would reveal investigative techniques by showing which reporting requirements will be focused upon during the investigation. *Id.* Therefore, whenever a Commission discussion of a particular mattter is likely to reveal the thresholds or discuss their application, the discussion may be closed to the public.

Paragraph 2.4(b)(6) generally follows current § 3.2(b)(1)(iv) to permit closure of meetings when the premature disclosure of information is likely to have a considerable adverse effect on the implementation of a proposed Commission action, so long as the Commission has not already disclosed the proposed action or is not required by law to disclose it prior to final action. For example, an adverse effect could be expected if discussions concerning contract negotiations were made public before final action was taken.

Paragraph 2.4(b)(7) follows Sunshine Act exemption 10 to permit closure of discussions concerning the Commission's participation in a civil action or proceeding, or an arbitration, or involving a determination on the record after opportunity for a hearing. Paragraph 2.4(b)(7) replaces the litigation and adjudication exemptions in current § 3.2(a)(2). This revision is intended to clarify that discussions of both defensive and offensive litigation are included in the exemption.

Paragraph 2.4(c) revises current § 3.2(b)(2) regarding the Commission's assessment of whether the public interest requires a meeting to be open. The new language more closely conforms to the statutory intent that a meeting must be open if the public interest so requires, regardless of whether it may be technically exempt from disclosure under one or more of the exemptions in § 2.4(b). However, considerations of public interest cannot be used to open meetings closed pursuant to § 2.4(a) because the FECA requires the Commission to maintain confidentiality with regard to enforcement activities.

Section 2.5 Procedure for Closing Meetings.

Paragraph 2.5(a) generally follows current § 3.3(a) except that a new sentence has been added to reflect Congressional intent that each portion of a closed meeting must qualify separately for an exemption and must be considered separately. H.R. Rep. No. 94–1441, 94th Cong., 2d Sess. 17 (1976).

With regard to the General Counsel's certification that the meeting may be closed, § 2.5(b) generally follows current § 3.3(e), except that the certification need not be provided before the meeting is held. This permits the certification to be prepared after the meeting is held in cases where time does not permit its preparation earlier. This paragraph also clarifies that the certification is made with respect to each item on the agenda rather than to the meeting as a whole.

Paragraph 2.5(c) prescribes procedures for voting to close a meeting. This provision restates current §3.3, with several significant additions. Paragraph (c)(1) follows current § 3.3(c) in stating that a meeting need not be held to consider closing a meeting. A sentence has been added to clarify that the vote may be taken by means of the Commission's notation vote procedures (presently set forth in FEC Directive No. 52). Paragraph (c)(1)(i) has been added to clarify that a separate vote must be taken for each particular matter to be considered in a closed meeting. However, paragraph (c)(1)(ii), following current § 3.3(b), permits a single vote to be taken if a particular item will be discussed at a series of meetings that are held within a thirty-day period. As the legislative history indicates, this provision releases the Commission from voting repeatedly on whether to close the same discussion which stretches over more than one meeting. S. Rep. No. 94–354, 94th Cong., 1st Sess. 27 (1975). Paragraph (c)(1)(iii) has been added to distinguish the practice of setting meeting dates from the procedures for voting to close particular agenda items. It clarifies that the voting procedures do not restrict the setting of meeting dates more than thirty days in advance.

Paragraph (c)(2) generally follows current § 3.3(c) regarding the recordation of the vote and the prohibition of proxies. The Sunshine Act prohibits a member of the Commission from voting by proxy for another Commissioner or from delegating his or her vote or decision-making authority to any other person such as a staff person. However, a Commissioner may authorize a staff person to sign the Commissioner's name on a circulation vote sheet provided that the Commissioner has given instructions regarding the matter being acted on and the staff member is acting in accordance with those instructions. *See* FEC Directive No. 52.

Paragraph (c)(3) has been added to provide a procedure under which a Commissioner may object to the discussion of a particular matter in open or closed session. Such an objection will be discussed in the next closed meeting.

Paragraph 2.5(d) generally follows the procedures in current § 3.3(d) regarding the public announcement of a closed meeting. A sentence has been added to paragraph (d)(1)(iii) to provide a simplified method for indicating Commission personnel who will be attending the closed meeting. Under Paragraph (d)(1)(iv), the Commission Secretary signs the public statement rather than "the Commissioner who

presided at the meeting." Although no signature is expressly required by the Sunshine Act, the signature of the Secretary is appropriate because the Secretary records the vote and prepares the statement. Under (d)(2), the original copy of the statement will be maintained by the Commission Secretary and a copy will be posted in the Public Records Office.

Paragraph 2.5(e) has been added to implement the provision of the Sunshine Act that grants members of the public an opportunity to request that a meeting be closed if their interests are directly affected by the discussion. Under paragraph (e) the request must be made in writing and must be directed to the Chairman of the Commission. The requester must specify the particular exemption(s) in § 2.4 that permit the discussion to be closed. Under § 2.5(e), the requester may rely on any of the § 2.4 exemptions, even though the Sunshine Act contemplates reliance on a more limited number of exemptions. A recorded vote on whether to close the meeting shall be taken. The request procedures do not give a person whose interests may be adversely affected by disclosure a right to compel closure. Rather, the Sunshine Act establishes these procedures to insure that agencies do not inadvertently overlook legitimate concerns of personal privacy and confidentiality. S. Rep. No. 94–354, 94th Cong., 1st Sess. 28 (1975). Thus, the request procedures do not grant any additional rights to participate in Commission proceedings, and the requester is not entitled to a hearing on the request.

Section 2.6 Transcripts and Recordings

Paragraph 2.6(a) generally follows current § 3.4(a) in providing that the Commission Secretary shall maintain transcripts or electronic recordings of closed meetings.

Paragraph 3.4(b), which permitted the Commission to maintain a detailed set of minutes in lieu of a complete transcript or electronic recording for certain closed meetings, has been deleted for several reasons. First, its application is limited to discussions of litigation and other matters exempted under 11 CFR 2.4(b)(7). Second, the minutes that would be kept are considerably more detailed than those currently prepared. Finally, the Commission routinely tapes discussions exempted under § 2.4(b)(7). The Commission has not made use of this provision in the past and is not likely to do so in the future. Deletion of this provision will have no effect on future Commission decisions to release any of the minutes it currently keeps.

New paragraph 2.6(b) has been added to more fully explain the Commission's procedures for releasing transcripts or recordings of closed meetings once the relevant exemptions no longer apply. This paragraph was the subject of considerable public comment and has been revised to clarify when and how transcripts or tapes are made public. Paragraph 2.6(b) provides two different sets of procedures for releasing transcripts or tapes, depending on the exemption claimed for a particular matter. The first set of procedures, set out in § 2.6(b) (1) and (2), applies to items for which one of the discretionary exemptions in § 2.4(b) was claimed. Under § 2.6(b)(1), the Commission will determine at the end of the closed meeting whether the exemption still applies. Under § 2.6(b)(2), if the exemption can no longer be claimed, the transcript or tape will be reviewed for remaining exemptions and thereafter made available to the public through the Commission's Public Records Office.

The other set of procedures, found in § 2.6(b)(3), applies to materials for which a § 2.4(a) exemption was claimed. The § 2.4(a) exemption covers matters that are required by statutes other than the Sunshine Act to be kept confidential. Since the Federal Election Campaign Act of 1971, as amended, is one such statute, enforcement actions will be subject to the § 2.6(b)(3) procedures. Thus, transcripts or tapes of these matters will be reviewed and made available on request when the relevant exemptions no longer apply. Several other Federal agencies have also chosen to review transcripts and release materials on request. The Commission has taken this approach because it would be a waste of resources to routinely review each transcript when no one is likely to evince any interest in most of them. The Commission notes that § 2.6(b) does not alter the Commission's past policies regarding the release of transcripts or recordings on enforcement matters. If the subject of an investigation waives confidentiality, the Commission will consider whether the other Sunshine exemptions, the FOIA exemptions or other common law exemptions apply before making the material available.

Paragraph 2.6(b) provides that requests for transcripts or tapes shall be made and processed in accordance with 11 CFR Part 5. Section 5.5 provides for requests to be made through the Public Disclosure Division. Section 5.6 contains the fee schedule for such materials. Several comments suggested that § 2.6(b) should explicitly provide for the waiver or reduction of fees when it is in the public interest to do so. The Commission has decided not to include such language because it would merely repeat the fee waiver provision in § 5.6(d). That provision is made applicable to Sunshine materials through § 2.6(b)(2).

Several comments expressed concern that § 2.6(b) does not specifically permit access to transcripts or tapes to those who may wish to inspect them but do not desire to obtain a copy. The Commission agrees that requesters do, indeed, have this option. Another concern was that requesters may wish copies of tapes rather than transcripts for cost reasons. It is by no means clear whether edited tapes or transcripts will prove to be the less costly alternative. The Commission will continue to provide public access under a system that is responsive to the needs of the public while taking into account the needs, capabilities, and resources of the Commission.

Paragraph 2.6(c) generally follows current § 3.4(d) regarding the length of time documents and recordings will be kept by the Commission. However, this paragraph has been slightly reworded to indicate that materials will be retained for a minimum of two years, or one year after the conclusion of the matter, whichever is later. Although this is the minimum amount of time required by the Sunshine Act, the Commission's practice has been to maintain an institutional history by retaining such documentation indefinitely.

Section 2.7 Announcement of Meetings and Schedule Changes.

Section 2.7 generally follows current § 3.5 concerning public announcement of Commission meetings and subsequent changes in the time, place or subject matter of the meeting. A sentence has been added to § 2.7(a)(1) to indicate that a copy of the public announcement will be posted in the Commission's Public Records Office. Paragraph 2.7(d)(2) has been slightly revised to more closely conform to the language of the Sunshine Act regarding publication of meeting changes.

Section 2.8 Annual Report.

Section 2.8 generally follows current § 3.6 except that it more clearly states that the annual report to Congress will reflect the Commission's compliance with the Sunshine Act, and will describe litigation brought against the Commission under the Sunshine Act.

List of Subjects in 11 CFR Part 2

Administrative practice and procedure, Sunshine Act.

11 CFR Chapter I is amended as follows:

PART 3—[REMOVED]

1. Part 3 is removed.
2. Part 2 is revised to read as follows:

PART 2—SUNSHINE REGULATIONS; MEETINGS

Sec.
2.1 Scope.
2.2 Definitions.
2.3 General rules.
2.4 Exempted meetings.
2.5 Procedures for closing meetings.
2.6 Transcripts and recordings.
2.7 Announcement of meetings and schedule changes.
2.8 Annual report.

Authority: Sec. 3(a), Pub. L. 94–409, 5 U.S.C. 552b.

§ 2.1 Scope.

These regulations are promulgated pursuant to the directive of 5 U.S.C. 552b(g) which was added by section 3(a) of Pub. L. 94–409, the Government in the Sunshine Act, and specifically implement section 3 of that Act.

§ 2.2 Definitions.

(a) *Commission.* "Commission" means the Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463.

(b) *Commissioner or Member.* "Commissioner" or "Member" means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c and section 101(e) of Pub. L. 94–283 and shall also include ex-officio non-voting Commissioners or Members, the Secretary of the Senate and the Clerk of the House, but does not include a proxy or other designated representative of a Commissioner.

(c) *Person.* "Person" means an individual, including employees of the Commission, partnership, corporation, association, or public or private organization, other than an agency of the United States Government.

(d) *Meeting.* (1) "Meeting" means the deliberation of at least four voting members of the Commission in collegia where such deliberations determine or result in the joint conduct or disposition of official Commission business. For the purpose of this section, "joint conduct" does not include, for example, situations where the requisite number of members is physically present in one place but not conducting agency business as a body (e.g., at a meeting at which one member is giving a speech while a number of other members are present in the audience). A deliberation conducted through telephone or similar communications equipment by means of which all persons participating can hear each other will be considered a "meeting" under this section.

(2) The term "meeting" does not include the process of notation voting by circulated memorandum for the purpose of expediting consideration of routine matters. It also does not include deliberations to schedule a meeting, to take action to open or close a meeting, or to release or withhold information, or to change the subject matter of a meeting under 11 CFR 2.5, 2.6 and 2.7.

§ 2.3 General rules.

(a) Commissioners shall not jointly conduct, determine or dispose of Commission business other than in accordance with this Part.

(b) Except as provided in 11 CFR 2.4, every portion of every Commission meeting shall be open to public observation.

(c) No additional right to participate in Commission meetings is granted to any person by this Part. A meeting is not part of the formal or informal record of decision of the matters discussed therein except as otherwise required by law. Statements of views or expressions of opinions made by Commissioners or FEC employees at meetings are not intended to represent final determinations or beliefs.

(d) Members of the public attending open Commission meetings may use small electronic sound recorders to record the meeting, but the use of other electronic recording equipment and cameras requires advance notice to and coordination with the Commission's Press Officer.

§ 2.4 Exempted meetings.

(a) *Meetings Required by Statute to be Closed.* Meetings concerning matters specifically exempted from disclosure by statutes which require public withholding in such a manner as to leave no discretion for the Commission on the issue, or which establish particular types of matters to be withheld, shall be closed to public observation in accordance with the procedures of 11 CFR 2.5.

(1) As required by 2 U.S.C. 437g(a)(12), all Commission meetings, or portions of meetings, pertaining to any notification or investigation that a violation of the Act has occurred, shall be closed to the public.

(2) For the purpose of this section, "any notification or investigation that a violation of the Act has occurred" includes, but is not limited to, determinations pursuant to 2 U.S.C. 437g, the issuance of subpoenas, discussion of referrals to the Department of Justice, or consideration of any other matter related to the Commission's enforcement activity, as set forth in 11 CFR Part 111.

(b) *Meetings Closed by Commission Determination.* Except as provided in 11 CFR 2.4(c), the requirement of open meetings will not apply where the Commission finds, in accordance with 11 CFR 2.5, that an open meeting or the release of information is likely to result in the disclosure of:

(1) Matters that relate solely to the Commission's internal personnel decisions, or internal rules and practices.

(i) This provision includes, but is not limited to, matters relating to Commission policies on working conditions, or materials prepared predominantly for internal use, the disclosure of which would risk circumvention of Commission regulations; but

(ii) This provision does not include discussions or materials regarding employees' dealings with the public, such as personnel manuals or Commission directives setting forth job functions or procedures;

(2) Financial or commercial information obtained from any person which is privileged or confidential;

(3) Matters which involve the consideration of a proceeding of a formal nature by the Commission against a specific person or the formal censure of any person;

(4) Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(5) Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(6) Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action, as long as the Commission has not already disclosed the content or nature of its proposed action, or is not required by law to disclose it prior to final action; or

(7) Matters that specifically concern the Commission's participation in a civil action or proceeding, or an arbitration, or involving a determination on the record after opportunity for a hearing.

(c) Nothwithstanding the applicability of any exemptions set forth in 11 CFR 2.4(b), the Commission may determine that the public interest requires a meeting to be open.

§ 2.5 Procedures for closing meetings.

(a) *General.* No meeting or portion of a meeting may be closed to the public observation under this section unless a majority of the Commissioners (not including ex officio non-voting Commissioners) votes to take such action. The closing of one portion of a meeting shall not justify closing any other portion of a meeting.

(b) *Certification.* Each time the Commission votes to close a meeting, the General Counsel shall publicly certify that, in his or her opinion, each item on the agenda may properly be closed to public observation. The certification shall state each relevant exemption provision. The original copy of the certification shall be attached to, and preserved with, the statement required by 11 CFR 2.5(d).

(c) *Voting Procedures.* (1) No meeting need be held to consider closing a meeting. The Commission may vote to close a meeting or any portion thereof by using its notation vote procedures.

(i) A separate vote shall be taken with respect to each item on an agenda proposed to be closed in whole or in part pursuant to 11 CFR 2.4, or with respect to any information proposed to be withheld under 11 CFR 2.4.

(ii) A single vote may be taken with respect to a particular matter to be discussed in a series of closed meetings, or with respect to any information concerning such series of meetings, so long as each meeting in the series is scheduled to be held no more than 30 days after the initial meeting.

(iii) This section shall not affect the Commission's practice of setting dates for closed meetings more than 30 days in advance of such meetings.

(2) The Commission Secretary shall record the vote of each Commissioner participating in the vote. No proxies, written or otherwise, shall be counted.

(3)(i) A Commissioner may object to a recommendation to close the discussion of a particular matter or may assert a claim of exemption for a matter scheduled to be discussed in an open meeting. Such objection or assertion will be discussed by the Commission at the next scheduled closed meeting, to determine whether the matter in question should be discussed in a closed meeting.

(ii) An "objection for the record only" will not cause the objection to be placed on any agenda.

(d) *Public Statement of Vote.* (1) If the Commission votes to close a meeting, or any portion thereof, under this section, it shall make publicly available within 24 hours a written statement of the vote. The written statement shall contain:

(i) A citation to the provision(s) of 11 CFR 2.4 under which the meeting was closed to public observation and an explanation of why the specific discussion comes within the cited exemption(s);

(ii) The vote of each Commissioner participating in the vote;

(iii) A list of the names of all persons expected to attend the closed meeting and their affiliation. For purposes of this section, affiliation means title or position, and name of employer, and in the case of a representative, the name of the person represented. In the case of Commission employees, the statement will reflect, through the use of titles rather than individual names, that the Commissioners, specified division heads and their staff will attend; and

(iv) The signature of the Commission Secretary.

(2) The original copy of the statement shall be maintained by the Commission Secretary. A copy shall be posted on a public bulletin board located in the Commission's Public Records Office.

(e) *Public Request to Close a Meeting.* A person whose interests may be directly affected by a portion of a meeting may request that the Commission close that portion to the public for any of the reasons referred to in 11 CFR 2.4. The following procedures shall apply to such requests:

(1) The request must be made in writing and shall be directed to the Chairman of the Commission.

(2) The request shall identify the provisions of 11 CFR 2.4 under which the requestor seeks to close all or a portion of the meeting.

(3) A recorded vote to close the meeting or a portion thereof shall be taken.

(4) Requests made under this sectin shall become part of the official record of the underlying matter and shall be disclosed in accordance with 11 CFR 2.6 on completion of the matter.

(5) If the Commission decides to approve a request to close, the Commission will then follow the procedures for closing a meeting set forth in 11 CFR 2.5 (a) through (d).

§ 2.6 Transcripts and recordings.

(a) The Commission Secretary shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to public observation. An electronic recording of a meeting shall be coded, or other records shall be kept in a manner adequate to identify each speaker.

(b)(1) In the case of any meeting closed pursuant to 11 CFR 2.4(b), as the last item of business, the Commission will determine which, if any, portions of the electronic recording or transcript and which if any, items of information withheld under 11 CFR 2.5 contain information which should be withheld pursuant to 11 CFR 2.4.

(2) Portions of transcripts or recordings determined to be outside the scope of any exemptions under 11 CFR 2.6(b)(1) shall be promptly made available to the public through the Commission's Public Records Office at a cost sufficient to cover the Commission's actual cost of duplication or transcription. Requests for such copies shall be made and processed in accordance with the provisions of 11 CFR Part 5.

(3) Portions of transcripts or electronic recordings not made available immediately pursuant to 11 CFR 2.6(b)(1), and portions of transcripts or recordings withheld pursuant to 11 CFR 2.4(a), will be made available on request when the relevant exemptions no longer apply. Such materials shall be requested and processed under the provisions of 11 CFR 2.6(b)(2).

(c) A complete verbatim copy of the transcript or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, shall be maintained by the Commission Secretary in confidential files of the Commission, for a minimum of two years subsequent to such meeting, or a minimum of one year after the conclusion of any agency proceeding with respect to which the meeting, or portion of the meeting was held, whichever occurs later.

§ 2.7 Announcement of meetings and schedule changes.

(a)(1) In the case of each meeting, the Commission shall publicly announce and shall submit such announcement for publication in the **Federal Register** at least seven days prior to the day on which the meeting is to be called to order. The Commission Secretary shall also forward a copy of such announcement for posting in the Commission's Public Records Office.

(2) Announcements made under this section shall contain the following information:

(i) The date of the meeting;

(ii) The place of the meeting;

(iii) The subject matter of the meeting;

(iv) Whether the meeting is to be open or closed to the public; and

(v) The name and telephone number of the official designated by the agency to respond to requests for information about the meeting.

(b) The public announcement and submission for publication shall be made when required by 11 CFR 2.7(a) in the case of every Commission meeting unless a majority of the Commissioners decide by recorded vote that Commission business requires that the meeting be called at an earlier date, in which case the Commission shall make at the earliest practicable time, the announcement required by this section and a concurrent submission for publication of that announcement in the **Federal Register**.

(c) The time or place of a meeting may be changed following the public announcement required by 11 CFR 2.7 (a) or (b) only if the Commission announces the change at the earliest practicable time.

(d) The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portions of a meeting, to the public may be changed following the public announcement required by 11 CFR 2.7 (a) or (b) only if:

(1) A majority of the entire membership of the Commission determines by recorded vote that Commission business so requires and that no earlier announcement of the change was possible; and

(2) The Commission publicly announces the change and the vote of each member upon the change at the earliest practicable time. Immediately following this announcement, the Commission shall submit for publication in the **Federal Register** a notice containing the information required by 11 CFR 2.7(a)(2), including a description of any change from the earlier published notice.

§ 2.8 Annual report.

The Commission shall report annually to Congress regarding its compliance with the requirements of the Government in the Sunshine Act and of this Part, including:

(a) A tabulation of the total number of Commission meetings open to the public;

(b) The total number of such meetings closed to the public;

(c) The reasons for closing such meetings; and

(d) A description of any litigation brought against the Commission under the Sunshine Act, including any costs assessed against the Commission in such litigation (whether or not paid by the Commission).

Dated: September 26, 1985.

John Warren McGarry,

Chairman.

[FR Doc. 85-23388 Filed 9-30-85; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Docket No. R-0520]

Regulation K; International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has reviewed and revised its regulations governing the operations of Edge corporations. The revisions concern certain U.S. activities of Edge corporations, lending limits and investment and change in control procedures applicable to Edge corporations. Some proposals dealing with foreign banking organizations operating in the United States have also been adopted.

EFFECTIVE DATE: October 24, 1985, except in the use of the provisions in section 211.5(c), which are effective immediately.

FOR FURTHER INFORMATION CONTACT: Frederick R. Dahl, Associate Director (202/452-2726); James S. Keller, Manager, International Banking Applications (202/452-2523), Division of Banking Supervision and Regulation; Ricki Rhodarmer Tigert, Assistant General Counsel (202/452-3428); Kathleen M. O'Day, Senior Counsel (202/452-3786), Legal Division; or Joy W. O'Connell, Telecommunication Device for the Deaf (TDD), (202/452-3244), Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: In June 1984, the Board published for comment proposed revisions to Regulation K. The proposals were made pursuant to the directive in the International Banking Act of 1978 ("IBA") that the Board review and revise its regulations governing Edge corporations every five years in order to ensure that the purposes of the Edge Act are being served in light of prevailing economic conditions.

The Board proposed major revisions in four areas: (1) Activities of Edge corporations in the United States; (2) capitalization requirements and lending limits of Edge corporations; (3) procedures to permit Board review of a proposed change in control of Edge corporations, and (4) limits on investments in other organizations. In addition, various changes were proposed to other parts of the regulation.

The Board received 56 public comments on the proposal. The final revisions to the regulation and the reasons for the Board's action are outlined below. Some of the proposed revisions did not receive substantial comment and were adopted as proposed. In addition to the revisions described below, a number of technical and clarifying changes were also made.

Activities of Edge Corporations in the United States

Edge corporations are international banking and financial vehicles through which U.S. banking organizations can offer international banking services and through which they may compete with similar foreign-owned institutions in the United States and abroad. An Edge corporation is limited by statute to engaging only in activities in the United States that are "incidental" to international or foreign business. The Board, however, has broad discretionary authority to determine what U.S. activities are incidental to international or foreign business of an Edge corporation. The Board has interpreted this provision to require that all deposits accepted by Edge corporations from domestic residents must be related to or for the purpose of carrying out internatioal transactions, and that all credit and other transactions with domestic residents must be related to identifiable international transactions. This approach, designed to assure the international character of Edge corporations and prevent their use to circumvent limitations on interstate banking, imposes fairly stringent constraints on the operations of Edge corporations in the United States.

In its 1984 proposal for comment, the Board suggested several possible modifications to this transaction-by-transaction approach. The Board requested comment on the feasibility of these proposals and whether they would maintain the necessary linkage with international or foreign business required by statute. The proposals were as follows:

1. Allow Edge corporations to provide full banking services (deposits, loans and other services) to a limited class of companies that are restricted charters or

licenses to an exclusively international business.

2. Allow Edge corporations to engage in domestic lending activities to the extent they were funded with overseas deposits from nonbank sources (the "limited branch" concept).

3. Allow Edge corporations to lend for domestic purposes to U.S. resident customers so long as at least 75 percent of the credits extended to that customer were for international purposes and met the traditional transactions test (a "transactional leeway" approach).

4. Allow Edge corporations to lend for domestic purposes to certain qualifying customers (U.S. residents engaged principally in international business) so long as 75 percent of a corporation's business meets the transactions test (a modified transactional leeway approach).

The comments on the proposals were mixed. Twenty commenters opposed any expansion at all of the powers of Edge corporations. These commenters, primarily smaller and regional banking organizations and associations representing such organizations, stated that any intrusion of Edge corporations into domestic business is contrary to the intent of the Edge Act, would constitute impermissible interstate banking, and would benefit only large institutions to the detriment of smaller organizations. On the other hand, four commenters supported all the proposals to expand Edge powers. The remainder of the comments supported some expansion of powers of Edge corporations but there was considerable diversity in the recommended approaches.

Restricted Charter

Under this proposal, an Edge corporation could provide full banking services (deposit-taking, lending and other services) to any entity that engages only in international business by virtue of its charter or license or by government regulation. These establishments would include such entities as international airlines or shipping lines and export trading companies that engage exclusively in international activities. This proposal is viewed as easier to administer than the qualified business entity ("QBE") concept that was proposed but not adopted in 1979, which required that the QBE meet a quantitative test based on export-import transactions.

The Board has determined to adopt this test as proposed. There is a clear international connection in the operations of these entities and any transaction by an Edge corporation with one of these entities would be incidental to international or foreign business. Some commenters suggested expanding the list of eligible organizations to include embassies, consulates, agencies of foreign governments, international commodities brokerage firms, international organizations such as the World Bank, and Foreign Sales Corporations ("FSCs"). The Board has included FSCs on the list in the regulation because they meet the test of being exclusively engaged in international transactions. The other entities suggested by the comments all transact substantial domestic business and therefore would not qualify under the test. It should be noted, however, that Edge corporations are currently permitted to maintain official embassy and consular accounts, although they may not offer accounts to embassy personnel. The Board is continuing to consider standards and procedures for determining whether other entities or businesses may be considered truly international and therefore eligible for full banking services from Edge corporations.

"Limited Branch" Concept

Under this approach, the international link that is required between an Edge corporation's domestic and international business would have been supplied by the funding sources of the Edge. The proposal would have permitted an Edge corporation to lend for any purpose in the United States up to the amount of the deposits it derived from foreign nonbank sources. This proposal drew the most support of any of the proposals from money center banks, some regional companies active in international lending, and trade associations of the larger institutions. These commenters stated that this proposal could be the single most important regulatory measure that would enable Edges to compete more effectively with U.S. branches and agencies of foreign banks. They also stated that the Board has broad discretionary power under the Edge Act to determine what is "incidental" and that the tie between nonqualifying loans and foreign deposit-taking may provide a sufficient international nexus. They went on to state that the effectiveness of the approach would be seriously compromised by not including all foreign source deposits, including those from foreign banks.

The opponents of this approach stated that a funding link is insufficient to make domestic loans "incidental" to international business. They asserted that the Board would be assisting in the creation of a loophole that would permit evasion of the restrictions on interstate banking, including by nonbank banks. Opponents also contended that Edges remain an attractive vehicle despite limitations on powers, as evidenced by their proliferation since 1979 (from about 70 offices to about 320 offices).

After consideration of the comments received, the Board was not convinced that adoption of this proposal would be consistent with the requirements of the Edge Act that an Edge corporation's business in the United States must be incidental to foreign business. It was also not clear that the proposal would further the purpose of the Act to finance international trade since the thrust of the proposal would be toward transactions of a purely domestic nature. For these reasons the Board determined not to adopt the proposal in the final revision.

Transactional Leeway Proposals

The two other proposals put forth for comment attracted little support. In the transactional leeway proposal, an Edge corporation would be permitted to lend to a customer for any purpose up to 25 percent of the Edge's total lending to that customer. Thus, 75 percent of the business of an Edge corporation with that customer would have to meet the transaction-by-transaction test but the Edge would also be able to service the needs of the customer better by lending a limited amount for purposes that could not meet this strict transaction test. There would be no expansion of deposit-taking activities.

Some commenters were opposed to this approach as an unwarranted expansion of Edge powers in the domestic area. Others did not support it because the proposal would be too difficult to implement. These commenters stated that the recordkeeping would be burdensome and that compliance could fluctuate according to when a customer repaid loans.

In a similar vein, it was also proposed that an Edge corporation be permitted to lend to "qualified customers" for domestic purposes up to 25 percent of the Edge's total lending. No expansion of deposit-taking would be permitted. The Board requested specific comment on the feasibility of the approach and on the measures that should be employed in determining qualified customers. The Board requested actual data that could be used in establishing the test.

As with the previous approach, few commenters supported this proposal. Most objections focused on the difficulties in establishing a rational test for measuring international business and on the recordkeeping burden that would be required. Others objected on

the grounds that the benefits received would be far outweighed by the burdensome requirements of the proposal. Many other commenters, mainly smaller and regional banking organizations, objected because, in their view, it would exceed the scope of the Edge Act and would permit Edge participation in domestic banking.

In proposing these for comment, the Board had intended to reduce the burden of maintaining records on a transaction-by-transaction basis. Many of the comments indicate that these proposals would be more burdensome than the current requirements. Moreover, little useful data that would help establish a qualified customer test in the modified transactional leeway proposal was supplied by the comments. In light of this and the admittedly difficult administrative problems associated with the proposals, the Board has determined not to adopt these proposals.

One commenter did submit data on the number of companies that engage in export sales and recommended adoption of a test that establishes a very low threshold of international sales—10 percent—in order to qualify. In support of this very low test, the comment states that it is those companies with low exports sales that could best use the services of Edge corporations. The Board is of the view that this does not meet the intent of the proposal, which was to establish a test of whether a customer is primarily engaged in international business such that all of an Edge's dealings with that customer could reasonably be deemed to be internationally related. This particular proposal would permit Edges to act as full service lenders to companies that have negligible connections to international business transactions and, for this reason, the Board did not adopt it.

In sum, the Board has revised Regulation K to permit Edge corporations to engage in a fuller range of transaction with identifiable international businesses. The Board has not adopted provisions that would allow a substantial expansion of an Edge corporation's domestic powers because of the difficulty in devising standards that would meet the incidental test, would be easily administered, and would not involve potential evasion of statutory restrictions against interstate banking.

Although the Board has adopted only one of the proposals liberalizing Edge lending powers, the Board also believes that the purposes of the revision of Regulation K, which are to make Edge corporations more competitive and to provide U.S. businesses with a source of international credit and other services, are met through other revisions of the regulation adopted by the Board. These include a significant increase in the lending limit of Edge corporations and the liberalization of investment limits. With respect to activities in the United States, the revised regulation clarifies that an Edge corporation may offer merger and acquisition advice to foreign persons and to U.S. persons with respect to foreign assets. This would include providing advice to a U.S. company on a proposed merger with or acquisition by a foreign company. This activity has been previously determined to be permissible for Edge corporations subject to the conditions that a foreign company to which it provides advice is a company more than half of the assets and revenues of which, on a consolidated basis at the ultimate parent level, are located and derived outside the United States. Advice on transactions in the United States is available only to foreign persons and a U.S. subsidiary of a foreign company would not be considered "foreign" for this purpose.

Similarily, the provision dealing with an Edge corporation acting as a agent for the purchase of securities at the order and for the account of a customer has been adopted as proposed. The provision was clarified to require that, with respect to U.S. securities, the customer for whom the Edge corporation is acting must be a foreign person. In this regard, an Edge corporation would be permitted to purchase and sell, for the account of any customer, securities that are registered in the United States for the sole purpose of serving as a substitute for foreign securities issued abroad. These kinds of securities, so-called American depository receipts ("ADRs"), have substance only with respect to the underlying foreign securities and therefore would be considered foreign securities for purposes of Regulation K.

The revised regulation also would permit Edge corporations to engage in a wider range of foreign exchange activity than is currently permitted. As new contracts in foreign exchange are developed, an Edge corporation would be permitted to enter these contracts without receiving prior Board approval. Several commenters stated that futures, options and options on futures contracts on foreign exchange are useful hedging tools that enhance the ability of an Edge corporation to minimize risk associated with transactions related to foreign currencies. An Edge corporation is expected to conduct these operations in a prudent manner and in accordance with the policies governing the foreign exchange activities of its parent U.S. banking organization. For an Edge corporation that is not owned by a U.S. banking organization, the Edge corporation should conduct its foreign exchange activities in accordance with Board policies. This authority would not permit an Edge corporation to become a member of an exchange or to act generally as a broker or futures commission merchant with respect to contracts on foreign exchange. Such activity would require an application to the Board for prior approval.

Prudential limitations on Edge corporations

The Board proposed a number of changes to § 211.6 of Regulation K, dealing with limits on acceptances, lending limits, and capital requirements. The technical changes on bankers' acceptances—one clarifying that a separate lending limit applies to acceptances of the kind described in section 13 of the Federal Reserve Act and the other clarifying the treatment of participation agreements with respect to acceptances—drew little comment and are adopted as proposed.

The Board has also proposed raising the customer lending limit for Edge corporation from 10 percent to 15 percent of the Edge Corporation's capital and surplus. Some commenters stated that an Edge corporation does not need a separate lending limit and that an Edge's lending should merely be aggregated into the parent bank's customer lending limit. The Board, however, continues to believe that Edge corporations, as separate corporate banking vehicles, should be operated in accordance with prudent standards, which would include diversification. Therefore, the separate lending limit for Edge corporation is maintained. The Board adopted the proposed increase in the per-customer lending limit of 15 percent of the Edge corporation's capital and surplus.

With respect to lending limits generally, Regulation K also requires aggregation of the loans made to a customer by an Edge corporation with the loans to the same customer by the parent bank. The total amount may not exceed the parent bank's lending limit. The provision has been the source of some confusion because Regulation K includes within the lending limit certain kinds of obligations that may not be included in the parent bank lending limit. For example, Regulation K includes within the lending limit investments in unaffiliated organizations. The National Bank Act,

however, permits a national bank to invest up to 10 percent of its capital and surplus in debt securities of other organizations. These investment securities are not included in the National Bank Act's lending limit.

The purpose of the aggregation requirement is to prevent the parent bank from using the Edge corporation to evade the parent bank's lending limits. For purposes of determining compliance with the aggregation provision of Regulation K's lending limit, a parent bank may exclude from the Edge corporation's loans and extensions of credit any obligations, such as investment securities, that are not included in the parent bank's lending limit. Where such obligations, however, are subject to separate limitations in the law or regulations governing the parent bank, the Edge corporation's holdings of such obligations may not be used to evade these separate limitations on the parent bank.

With respect to capitalization requirements, under the current regulation the capital requirement for banking Edge corporations is set at 7 percent of "risk" assets with risk assets being defined as total assets less cash, amounts due from domestic banking organizations, U.S. government securities, and federal funds sold. It was proposed to change this standard to accord with the standards applied to commercial banks under the Board's capital adequacy guidelines. The Board did not adopt this proposal.

The principal objection to the proposal in comments submitted to the Board was similar to that voiced with respect to lending limits, namely, that no separate capital requirement should be applied to Edge corporations because they are generally parts of larger banking organizations to which a capital requirement is applied on a consolidated basis. However, as already noted, an Edge corporation is a separately chartered company engaged in the conduct of a banking business and should therefore maintain an individual capital position to support its own operations. Moreover, not all banking Edge corporations are part of larger banking organizations to which U.S. capital requirements apply. In addition to Edge corporations owned by foregin banks, several Edge corporations have recently been acquired by nonbanking organizations.

A number of comments objected to abandoning the "risk asset" capital requirement, asserting that it would have a negative impact on some Edge corporations because of clearing activities and the large amounts of funds in the category of "due from banks." At the time the change was proposed, available data indicated that, while a few banking Edge corporations would have to strengthen their capital positions, changes in clearing procedures had greatly reduced the amount of float, and thus the amount of interbank claims booked in Edge corporations. Thus, the original justification for the risk asset standard for capital requirements appeared inapplicable. More recent data still seem to confirm that conclusion. The data show that 12 out of 94 banking Edge corporations would have to obtain additional capital or reduce assets if the capital standard were changed. Of those 12 Edge corporations, many are either placing large amounts of surplus funds with their parent banks or are very active in interbank money market transactions. For example, in several of these cases, claims on other banks amount to a majority of total assets. Most of the affected corporations have capital ratios that range from three to five percent of total assets and are still capitalized well above the 7 percent of risk assets standards. The remaining 82 banking Edge corporations, in addition to meeting the risk-asset ratio requirement, also have capital ratios well in excess of the minimum standards under the capital guidelines.

In light of the generally satisfactory capital positions on Edge corporations, the Board has decided to defer action on this proposal pending futher experience with the capital guidelines for banks and bank holding companies. Those guidelines are being reevaluated in the light of recent developments in banking markets and for their adequacy in relation to current banking practices. The Board believed that a change in the method of calculating the capital requirements of Edge Corporations should await that reevaluation. As already noted, the great bulk of existing banking Edge corporations now meet the commercial bank capital standards. Because the Board has deferred action on the proposal to adopt the capital adequacy standards applicable to banks for Edge corporations, Regulation K has not been revised to conform the definition of capital and surplus to the components of primary capital in the Board's capital adequacy guidelines. Capital and surplus therefore will continue to be defined in § 211.2(b) to include paid-in and unimpaired capital and surplus, which would include reserves for loan losses, and undivided profits, but not capital notes or debentures.

Change in control of Edge corporations

The Board in 1984 proposed for comment a procedure that would require a person to give the Board prior notice of acquisition of control of an Edge corporation. In its proposal, the Board noted the substantial growth in the number and the asset size of Edge corporations since 1979, and their increased participation in the economy and the interbank market. The prior review procedure was intended to allow the Board to assess the financial strength of the acquiror and whether adverse effects might result from the acquisition.

Under the proposed procedure any person would be required to give 60 days' notice before acquiring 25 percent or more of the voting shares of an Edge corporation. The Board could disapprove an investment or impose conditions necessary to prevent adverse effects such as conflicts of interest, undue concentration of resources or unsound banking practices. The proposal was generally supported in the comments received. However, three commenters objected on the grounds that the Board lacked specific statutory authority for the requirement.

The Board has exclusive jurisdiction over chartering, supervising and examining Edge corporations. The governing statute and the Board's regulations establish a comprehensive scheme requiring the prior approval of the Board for the formation and establishment of Edge corporations, extensions of their corporate existence, change to their articles of association, their investments in other organizations and any new activities in which they may seek to engage. Moreover, paragraph 4 of the Edge Act provides that an Edge corporation may prescribe "by-laws not inconsistent with law or with the regulations of the Board . . . regulating the manner in which its stock shall be transferred . . . ." This framework commits responsibility to the Board to maintain the sound operation of Edge corporations and clearly authorizes the Board to adopt a procedure for review of the transfer of ownership of an Edge corporation. Therefore, the Board adopted the proposal. The language of the proposal was revised to reflect some technical clarifications and to make clear that the prior notice requirements applies to foreign banks acquiring between 25 and 50 percent of the shares of an Edge corporation.

Investment procedures

Under Regulation K, U.S. banking organizations may invest in international subsidiaries that confine their activities to those specified by the Board as permissible, and may acquire 20 to 50 percent interests in foreign joint ventures that are predominantly engaged in premissible activities. They may also make international portfolio investment by acquiring up to 20 percent of the shares of companies regardless of the nature of their activities. These investments must be made in accordance with procedures set forth in the regulation.

Three changes were proposed in those procedures.

1. Under the General Consent, to raise the amount for initial investments that may be made without prior notice or approval from $2 million to $15 million.

2. Under the General Consent, to alter from historical cost to book value the basis on which additional investments in a single organization may be made without prior notice or approval.

3. In the acquistion of going concerns, to permit some leeway in the requirement that subsidiaries confine their activities exclusively to those listed in the regulation.

The General Consent now permits initial investments of lesser of $2 milion or five percent of the investor's capital and surplus to be made without prior notice or consent, provided, of course, that the investment raises no question regarding the permissiblity of the activities. The comment supported a liberalization of the General Consent, with some commenters proposing a higher dollar amount than that proposed, and others suggested elimination of the dollar amount with reliance exclusively on the five percent of capital limitation. After consideration of all comments, the Board adopted the proposal to raise the initial investment amount covered by general consent to $15 million. In reaching this determination, the Board noted that elimination of a dollar amount limit would allow the largest banks to make substantial individual investments without any prior review, in some cases of up to $300 million. Because this amount can be leveraged many times in the case of subsidiaries, thus increasing exposure beyond the investment amount, the Board decided to maintain a dollar limit set at a level that would allow routine initial investments to be made without regulatory scrutiny while at the same time permitting regulatory review of those investments that are likely to be more significant.

As to the second proposed change in investment procedures, additional investments beyond the initial investment (or series of investments up to $15 million) in an organization may now be made under the General Consent in any one year of up to 10 percent of the *historical cost* of the investment and these rights may be carried forward and accumulated for up to five years (*i.e.*, up to 50 percent). It was proposed that the basis for this calculation be changed from historical cost to book value. It was believed that the book value would be easier to account for over time and therefore that the change would represent a simplication. However, a number of strong objections were received to the proposed change, and these objections were registered mainly by organizations active in making additional investments.

The main arguments were that maintaining records of historical cost is not burdensome, that book values fluctuate, and that more often than not additional investments are likely to be needed where the book value has fallen below historical cost. Some commenters suggested that if a change were to be made it should permit the greater of historical cost or book value to be used as the basis. However, this could lead to difficult problems of regulatory administration and compliance. In light of all the comments, the Board decided to retain the historical cost criterion for calculating additional investments under the General Consent.

The third proposed change in investment procedures was to allow a certain amount of leeway in the permissible activities of subsidiaries when they are acquired as going concerns. Under the present regulatory requirements, a subsidiary must conform its activities exclusively to those listed in the regulation or otherwise permitted by the Board. By contrast, up to 10 percent of the assets or revenues of a joint venture may be attributable to impermissible activities.

When subsidiaries have been acquired as going concerns, there have often been parts of the organization engaged in impermissible activities. These sectors, either departments of the company or separate subsidiaries, have often been small in relation to the overall organization and sometimes have been historically associated with the firm acquired. In the circumstances, it has frequently been awkward to effect their discontinuance either prior to acquisition or even post-acquisition. The proposed change sought to avoid this kind of difficulty by setting a *de minimis* standard that would allow up to 2 percent of assets and revenues in such companies to be derived from impermissible activities.

While supporting the idea in principle, many commenters suggested a higher limit (*e.g.*, 5 percent) or applying the limit selected to all subsidiaries (going concerns and *de novo*). Because the proposal was intended to provide flexibility to banking organizations, the Board adopted a limit of 5 percent of assets and revenues that may be derived from impermissible activities in a subsidiary acquired as a going concern. The provision is intended primarily to permit acquisitions under the General Consent and should provide the intended flexibiity in that area. Where, however, an investor proposes to acquire a very large organization, which does not qualify for the General Consent, such that 5 percent of assets and revenues would be large in absolute dollar terms, the Board will take into account the size of the investment, the magnitude of impermissible activities, and the structure of the acquired organization in detemining whether the proposed investment should be approved or whether the impermissible activities could be retained. The Board also determined that *de novo* subsidiaries should continue to conform strictly to the activities standards set by the Board because the parent has control over the subsidiary's activities from the outset.

In addition to these revisions, the Board adopted as proposed the revision to § 211.5(d)(5) that would permit foreign subsidiaries to underwrite all forms of credit life, and credit accident and health insurance, eliminating the requirement that such insurance be underwritten only for credit extended by the investor and its affiliates. Section 211.5(d)(1) was revised to clarify that a U.S. banking organization may invest in foreign thrift institutions, such as savings banks and building and loan associations.

The Board also adopted as proposed the revision that eliminates from the list of activities in § 211.5(d) those activities that the Board has found to be closely related to banking *by order* under section 4(c)(8) of the Bank Holding Company Act. Investments made or activities commenced in reliance on this provision may continue to be held or conducted.

Securities Activities Abroad

The Board proposed no change to the provision permitting foreign subsidiaries to engage in certain securities activities. Comments were received on two aspects of securities activities abroad: limits on the underwriting of equities

and limits affecting dealing or trading in equities. Because of significant developments currently under way in this area, no changes were adopted in the rules governing the conduct of securities activities abroad pending further study and analysis.

U.S. nonbanking activities of foreign banks. One proposed change in the regulation dealt with exempt U.S. nonbanking activities of foreign banks. Section 2(h) of the BHC Act permits foreign banks to own foreign companies that engage in nonbanking activities in the United States if the U.S. activities are in the same general line of business as the company's foreign activities. The exemption is intended to prevent disruptions in the foreign activities and business of foreign banks that would occur if its nonbank affiliates were completely barred from U.S. markets. However, the exemption was intended to be available to commercial and industrial companies with which foreign banks were affiliated and not to companies that engage in financial or financially-related activities, or are primarily investment vehicles.

To clarify this point, an amendment to § 211.23(f)(5) was proposed which would require these foreign companies affiliated with foreign banks to conduct an actual operating business overseas in order to take advantage of the exemption. This would preclude a foreign company that engages only in acquiring noncontrolling interests in other companies from using the section 2(h) exemption to engage in the United States in activities of the kind conducted by such companies. An example would be a foreign bank that directly or indirectly acquires oil and gas properties abroad as investments and seeks to rely on the section 2(h) exemption to engage in the oil and gas business in the United States or to engage generally in investing in such properties in the United States.

Two commenters opposed adoption of this change. They argued that the Board should not seek to prevent foreign banking organizations from investing for their own account in real estate and oil, gas and other mineral properties in the United States because these are commercial properties entitled to the exemption. The Board is of the view that the exemption was intended to apply only to directly related U.S. activities of foreign affiliates engaged in commercial activities and was not intended to allow unrelated investments in commercial and industrial businesses in the U.S. simply because investments are held in the same kinds of businesses abroad.

Both commenters requested that the provision not be construed to exclude foreign shell holding companies that are set up for legitimate corporate tax purposes. The Board did not intend that the proposal interfere with or inhibit the legitimate structuring of foreign holdings by foreign banking organizations. The Board adopted the proposal with the clarification that the U.S. company may be held through a shell holding company so long as the foreign banking organization *controls* a foreign company actually engaged in the same kind of commercial business as the U.S. company.

The Board had also proposed a change to §211.23(b) of Regulation K concerning qualification of foreign banking organizations to take advantage of the exemptions for foreign banks in the Bank Holding Company Act. The proposal required that a foreign bank include in its calculation of the amount of its assets, revenues and net income attributable to U.S. banking, any assets, revenues or income derived from banking operations in U.S. territories and possessions and Puerto Rico. The Institute of Foreign Bankers objected to this proposal because such locations have generally been treated as foreign. However, the Board continues to be of the view that a foreign bank, should not be permitted to bootstrap itself into qualification for exemptions from nonbanking prohibitions by including banking assets that are subject to U.S. jurisdiction. Therefore, the Board adopted this revision as proposed.

Other Issues

The Board also adopted two liberalizing provisions that were not contained in the proposal for comment.

Additional investment authority for foreign branches. Section 25 of the Federal Reserve Act provides that a member bank may hold the shares of a foreign bank as a limited exception to the restrictions on member bank ownership of stock generally. The Board has not permitted member banks to hold directly the shares of any foreign organization other than a foreign bank. The Board has received requests to permit member banks to hold directly the shares of companies that engage only in activities permitted to the foreign branch or foreign bank subsidiary of the member bank where the conduct of the activity in a separate company is required or necessary under local law or regulation.

The Board has the authority under section 25 to grant additional powers to foreign branches of member banks where such powers are usual in connection with the banking business in the country in which the bank is located. The Board has used this authority where an additional power appeared necessary in order to allow foreign branches of member banks to compete with local banking organizations.

The Board has amended the regulations to permit a member bank, with the prior approval of the Board, to hold shares of subsidiaries that engage solely in activities permitted to a foreign branch where this structure is required by local law or regulation. Because the subsidiary would engage only in activities permitted to the branch, the shareholding would be permissible and consistent with the Board's longstanding position that a member bank may not directly hold the shares of a foreign company except as the Board may permit in accordance with section 25 of the Federal Reserve Act.

De minimis investments in shares. Regulation K requires divestiture of any investment if the organization invested in engages directly or indirectly in business in the United States that is not permitted to an Edge Corporation. This requirement applies no matter how small the ownership interest may be, and can have an adverse impact upon U.S. banking organizations that make small investments in foreign companies that thereafter engage directly or indirectly in activities in the United States.

Several commenters requested limited relief from this divestiture requirement. The Board believes that this requirement is unnecessarily stringent and has amend the regulation to permit U.S. banking organizations to invest in up to five percent of the shares of a foreign company that engages in business in the United States without being required to divest those shares. This five percent exemption would correspond to the exemption for bank holding companies under the Bank Holding Company Act for investments in up to five percent of the shares of any company without regard to the activities of the company and may fairly be regarded as incidental to the foreign business of the investor because it is a *de minimis* holding.

In light of the Board's adoption of this liberalization, other clarifying and conforming changes were made to § 211.5(b).

Pursuant to section 605(b) of the Regulatory flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 211

Banks, banking; Federal Reserve System; Foreign banking, Investments, Reporting and recordkeeping

requirements, Export trading companies, Allocated transfer risk reserve, reporting and disclosure of international assets, accounting for fees on international loans.

12 CFR Part 211 is amended as follows:

1. The authority citation for Part 211 continues to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 211 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235); and the International Lending Supervision Act (Title IX, Pub. L. 98-181, 97 Stat. 1153).

Subpart A of 12 CFR Part 211 is revised to read as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS

Subpart A—International Operations of United States Banking Organizations

Sec.

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SUBPART A—INTERNATIONAL OPERATIONS OF UNITED STATES BANKING ORGANIZATIONS

§ 211.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Federal Reserve Act ("FRA") (12 U.S.C. 221 et *seq.*); the Bank Holding Company Act of 1956 ("BHC Act") (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 ("IBA") (92 Stat. 607; 12 U.S.C. 3101 *et seq.*). Requirements for the collection of information contained in this regulation have been approved by the Office of Management and Budget under the provision of 44 U.S.C. 3501, et seq. and have been assigned OMB Nos. 7100-0107; 7100-0109; 7100-0110; 7100-0069; 7100-0086, and 7100-0073.

(b) *Purpose.* This subpart sets out rules governing the international and foreign activities of U.S. banking organizations, including procedures for establishing foreign branches and Edge corporations to engage international banking and for investments in foreign organizations.

(c) *Scope.* This subpart applies to corporations organized under section 25(a) of the FRA (12 U.S.C. 611-631), "Edge corporations"; to corporations having an agreement or undertaking with the Board under section 25 of the FRA (12 U.S.C. 601-604a), "Agreement corporations"; to member banks with respect to their foreign branches and investments in foreign banks under section 25 of the FRA (12 U.S.C. 601-604a);[1] and to bank holding companies with respect to the exemption from the nonbanking prohibitions of the BHC Act afforded by section 4(c)(13) of the BHC Act (12 U.S.C. 1843(c)(13)).

§ 211.2 Definitions.

Unless otherwise specified, for the purposes of this subpart:

(a) An "affiliate" of an organization means (1) any entity of which the organization is a direct or indirect subsidiary; or (2) any direct or indirect subsidiary of the organization or such entity.

(b) "Capital and surplus" means paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

(c) "Directly or indirectly" when used in reference to activities or investments of an organization means activities or investments of the organization or of any subsidiary of the organization.

(d) An Edge corporation is "engaged in banking" if it is ordinarily engaged in the business of accepting deposits in the United States from nonaffiliated persons.

(e) "Engaged in business" or "engaged in activities" in the United States means maintaining and operating an office (other than a representative office) or subsidiary in the United States.

(f) "Foreign" or "foreign country" refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

(g) "Foreign bank" means an organization that: is organized under the laws of a foreign country; engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations; receives deposits to a substantial extent in the regular course of its business; and has the power to accept demand deposits.

(h) "Foreign branch" means an office of an organization (other than a representative office) that is located outside the country under the laws of which the organization is established, at which a banking or financing business is conducted.

(i) "Investment" means the ownership or control of shares (including partnership interests and other interests evidencing ownership), binding commitments to acquire shares, contributions to the capital and surplus of an organization, and the holding of an organization's subordinated debt when shares of the organization are also held by the investor or the investor's affiliate.

(j) "Investor" means an Edge corporation, Agreement corporation, bank holding company, or member bank.

(k) "Joint venture" means an organization that has 20 percent or more of its voting shares held directly or indirectly by the investor or by an affiliate of the investor, but which is not a subsidiary of the investor.

(l) "Organization" means a corporation, government, partnership, association, or any other entity.

(m) "Person" means an individual or an organization.

(n) "Portfolio investment" means an investment in an organization other than a subsidiary or joint venture.

(o) "Representative office" means an office that engages solely in representational and administrative functions such as solicitation of new business for or liaison between the organization's head office and customers in the United States, and does not have authority to make business decisions for the account of the organization represented.

(p) "Subsidiary" means an organization more than 50 percent of the voting shares of which is held directly or indirectly by the investor, or which is otherwise controlled or capable of being controlled by the investor or an affiliate of the investor.

§ 211.3 Foreign branches of U.S. banking organizations.

(a) *Establishment of foreign branches.*—(1) *Right to establish branches.* Foreign branches may be established by any member bank having capital and surplus of $1,000,000 or more, an Edge corporation, an Agreement corporation, or a subsidiary held pursuant to this Subpart. Unless otherwise provided in this section, the establishment of a foreign branch requires the specific prior approval of the Board.

(2) *Branching within a foreign country.* Unless the organization has been notified otherwise, no prior Board approval is required for an organization

[1] Section 25 of the FRA, which refers to national banking associations, also applies to state member banks of the Federal Reserve System by virtue of section 9 of the FRA (12 U.S.C. 321).

to establish additional branches in any foreign country where it operates one or more branches.[2]

(3) *Branching into additional foreign countries.* After giving the Board 45 days' prior written notice, an organization that operates branches in two or more foreign counties may establish a branch in an additional foreign country, unless notified otherwise by the Board.[2]

(4) *Expiration of branching authority.* Authority to establish branches through prior approval or prior notice shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

(5) *Reporting.* Any organization that opens, closes, or relocates a branch shall report such change in a manner prescribed by the Board.

(b) *Further powers of foreign branches of member banks.* In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a member bank may engage in the following activities so far as usual in connection with the business of banking in the country where it transacts business:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,[3] if the guarantee or agreement specifies a maximum monetary liability; but except to the extent that the member bank is fully secured, it may not have liabilities outstanding for any person on account of such guarantees or agreements which when aggregated with other unsecured obligations of the same person exceed the limit contained in paragraph (a)(1) of section 5200 of the Revised Statutes (12 U.S.C. 84) for loans and extensions of credit;

(2) *Investments.* Invest in: (i) The securities of the central bank, clearing houses, governmental entities, and government-sponsored development banks of the country in which the foreign branch is located; (ii) other debt securities eligible to meet local reserve or similar requirements; and (iii) shares of professional societies, schools, and the like necessary to the business of the branch; however, the total investments of the bank's branches in that country under this paragraph (exclusive of securities held as required by the law of that country or as authorized under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh)) may not exceed one percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or on the date of acquisition of the branch in the case of a branch that has not so reported);

(3) *Government obligations.* Underwrite, distribute, buy, and sell obligations of: (i) The national government of the country in which the branch is located; (ii) an agency or instrumentality of the national government; and (iii) a municipality or other local or regional governmental entity of the country; however, no member bank may hold, or be under commitment with respect to, such obligations for its own account in an aggregate amount exceeding 10 percent of its capital and surplus;

(4) *Credit extensions to bank's officers.* Extend credit to an officer of the bank residing in the country in which the foreign branch is located to finance the acquisition or construction of living quarters to be used as the officer's residence abroad, provided the credit extension is reported promptly to the branch's home office and any extension of credit exceeding $100,000 (or the equivalent in local currency) is reported also to the bank's board of directors;

(5) *Real estate loans.* Take liens or other encumbrances on foreign real estate in connection with its extensions of credit, whether or not of first priority and whether or not the real estate has been improved.

(6) *Insurance.* Act as insurance agent or broker;

(7) *Employee benefits program.* Pay to an employee of the branch, as part of an employee benefits program, a greater rate of interest than that paid to other depositors of the branch;

(8) *Repurchase agreements.* Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit;

(9) *Investment in subsidiaries.* With the Board's prior approval, establish or invest in a wholly-owned subsidiary to engage solely in activities in which the member bank is permitted to engage in or activities that are incidental to the activities of the foreign branch, where required by local law or regulation; and

(10) *Other activities.* With the Board's prior approval, engage in other activities that the Board determines are usual in connection with the transaction of the business of banking in the places where the member bank's branches transact business.

(c) *Reserves of foreign branches of member banks.* Reserves shall be maintained against foreign branch deposits when required by Part 204 of this chapter (Regulation D).

§ 211.4 Edge and Agreement corporations.

(a) *Organization.*—(1) *Permit.* A proposed Edge corporation shall become a body corporate when the Board issues a permit approving its proposed name, articles of association, and organization certificate.

(2) *Name.* The name shall include "international," "foreign," "overseas," or some similar word, but may not resemble the name of another organization to an extent that might mislead or deceive the public.

(3) Federal Register *notice.* The Board will publish in the Federal Register notice of any proposal to organize an Edge corporation and will give interested persons an opportunity to express their views on the proposal.

(4) *Factors considered by the Board.* The factors considered by the Board in acting on a proposal to organize an Edge Corporation include:

(i) The financial condition and history of the applicant;

(ii) The general character of its management;

(iii) The convenience and needs of the community to be served with respect to international banking and financing services; and

(iv) The effects of the proposal on competition.

(5) *Authority to commence business.* After the Board issues a permit, the Edge corporation may elect officers and otherwise complete its organization, invest in obligations of the United States Government, and maintain deposits with depository institutions, but it may not exercise any other powers until at least 25 percent of the authorized capital stock specified in the articles of association has been paid in cash, and each shareholder has paid in cash at least 25 percent of that shareholder's stock subscription. Unexercised authority to commence business as an Edge corporation shall expire one year after issuance of the permit, unless the Board extends the period.

(6) *Amendments to articles of association.* No amendment to the articles of association shall become effective until approved by the Board.

(b) *Nature and ownership of shares.*—(1) *Shares.* Shares of stock in an Edge corporation may not include no-par value shares and shall be issued and

[2] For the purpose of this paragraph, a subsidiary other than a bank or an Edge or Agreement corporation is considered to be operating a branch in a foreign country if it has an affiliate that operates an office (other than a representative office) in that country.

[3] "Readily ascertainable events" include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents.

transferred only on its books and in compliance with section 25(a) of the FRA and this subpart. The share certificates of an Edge corporation shall:

(i) Name and describe each class of shares indicating its character and any unusual attributes such as preferred status or lack of voting rights; and

(ii) Conspicuously set forth the substance of:

(A) Limitations upon the rights of ownership and transfer of shares imposed by section 25(a) of the FRA; and

(B) Rules that the Edge corporation prescribes in its by-laws to ensure compliance with this paragraph. Any change in status of a shareholder that causes a violation of section 25(a) of the FRA shall be reported to the Board as soon as possible, and the Edge corporation shall take such action as the Board may direct.

(2) *Ownership of Edge corporations by foreign institutions.*—(i) *Prior Board approval.* One or more foreign or foreign-controlled domestic institutions referred to in paragraph 13 of section 25(a) of the FRA (12 U.S.C. 619) may apply for the Board's prior approval to acquire directly or indirectly a majority of the shares of the capital stock of an Edge corporation.

(ii) *Conditions and requirements.* Such an institution shall:

(A) Provide the Board information related to its financial condition and activities and such other information as may be required by the Board;

(B) Ensure that any transaction by an Edge corporation with an affiliate [4] is on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions by the Edge corporation with nonaffiliated persons, and does not involve more than the normal risk of repayment or present other unfavorable features;

(C) Ensure that the Edge corporation will not provide funding on a continual or substantial basis to any affiliate or office of the foreign institution through transactions that would be inconsistent with the international and foreign business purposes for which Edge corporations are organized;

(D) In the case of a foreign institution not subject to section 4 of the BHC Act: (i) Comply with any conditions that the Board may impose that are necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States; and (ii) give the Board 45 days' prior written notice, in a form to be prescribed by the Board, before engaging in any nonbanking activity in the United States, or making any initial or additional investments in another organization, that would require prior Board approval or notice by an organization subject to section 4 of the BHC Act; in connection with such notice, the Board may impose conditions necessary to prevent adverse effects that may result from such activity or investment; and

(E) invest in Edge corporation no more than 10 percent of the institution's capital and surplus.

(3) *Change in control.*—(i) *Prior notice.* Any person shall give the Board 60 days' prior written notice, in a form to be prescribed by the Board, before acquiring, directly or indirectly, 25 percent or more of the voting shares, or otherwise acquiring control, of an Edge corporation; the Board may extend the 60-day period for an additional 30 days by notifying the acquiring party.

(ii) *Board review.* Interviewing a notice filed under this paragraph, the Board shall consider the factors set forth in paragraph (a)(4) of this section and may disapprove a notice or impose any conditions that it finds necessary to assure the safe and sound operation of the Edge corporation, to assure the international character of its operation, and to prevent adverse effects such as decreased or unfair competition, conflicts of interest, or undue concentration of resources.

(c) *Domestic branches.* An Edge corporation may establish branches in the United States 45 days after the Edge corporation has given notice to its Reserve Bank, unless the Edge corporation is notified to the contrary within that time. The notice to the Reserve Bank shall include a copy of the notice of the proposal published in a newspaper of general circulation in the communities to be served by the branch and may appear no earlier than 90 calendar days prior to submission of notice of the proposal to the Reserve Bank. The newspaper notice must provide an opportunity for the public to give written comment on the proposal to the appropriate Federal Reserve Bank for at least 30 days after the date of publication. The factors considered in acting upon a proposal to establish a branch are enumerated in paragraph (a)(4) of this section. Authority to open a branch under prior notice shall expire one year from the earliest date on which that authority could have been exercised, unless the Board extends the period.

(d) *Reserve requirements and interest rate limitations.* The deposits of an Edge or Agreement corporation are subject to Parts 204 and 217 of this chapter (Regulations D and Q) in the same manner and to the same extent as if the Edge or Agreement corporation were a member bank.

(e) *Permissible activities in the United States.* An Edge corporation may engage directly or indirectly in activities in the United States that are permitted by the sixth paragraph of section 25(a) of the FRA and are incidental to international or foreign business, and in such other activities as the Board determines are incidental to international or foreign business. The following activities will ordinarily be considered incidental to an Edge corporation's international or foreign business:

(1) *Deposit activities.*—(i) *Deposits from foreign governments and foreign persons.* An Edge corporation may receive in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposits) from foreign governments and their agencies and instrumentalities; offices or establishments located, and individuals residing, outside the United States.

(ii) *Deposits from other persons.* An Edge corporation may receive from any other person in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposit) if such deposits:

(A) Are to be transmitted abroad;

(B) Consist of funds to be used for payment of obligations to the Edge corporation or collateral securing such obligations;

(C) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(D) Consist of the proceeds of extensions of credit by the Edge corporation;

(E) Represent compensation to the Edge corporation for extensions of credit or services to the customer;

(F) Are received from Edge or Agreement corporations, foreign banks and other depository institutions (as described in Part 204 of this chapter (Regulation D));

(G) Are received from an organization that by its charter, license or enabling law is limited to business that is of an international character, including Foreign Sales Corporations (26 U.S.C. 921); transportation organizations

[4] For purposes of this paragraph, "affiliate" means any organization that would be an "affiliate" under section 23A of the FRA (12 U.S.C. 371c) if the Edge corporation were a member bank.

engaged exclusively in the international transportation of passengers or in the movement of goods, wares, commodities or merchandise in international or foreign commerce; and export trading companies that are exclusively engaged in activities related to international trade.

(2) *Liquid funds.* Funds of an Edge or Agreement corporation not currently employed in its international or foreign business, if held or invested in the United States, shall be in the form of cash, deposits with depository institutions, as described in Part 204 of this chapter (Regulation D), and other Edge and Agreement corporations, and money market instruments (including repurchase agreements with respect to such instruments) such as bankers' acceptances, obligations of or fully guaranteed by federal, state, and local governments and their instrumentalities, federal funds sold, and commercial paper.

(3) *Borrowings.* An Edge corporation may:

(i) Borrow from offices of other Edge and Agreement corporations, foreign banks, and depository institutions (as described in Part 204 of this chapter, Regulation D) or issue obligations to the United States or any of its agencies or instrumentalities;

(ii) Incur indebtedness from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof that the Edge corporation is obligated to repurchase;

(iii) Issue long-term subordinated debt that does not qualify as a "deposit" under Part 204 of this chapter (Regulation D).

(4) *Credit activities.* An Edge corporation may:

(i) Finance the following: (A) contracts, projects, or activities performed substantially abroad; (B) the importation into or exportation from the United States of goods, whether direct or through brokers or other intermediaries; (C) the domestic shipment or temporary storage of goods being imported or exported (or accumulated for export); and (D) the assembly or repackaging of goods imported or to be exported;

(ii) Finance the costs of production of goods and services for which export orders have been received or which are identifiable as being directly for export;

(iii) Assume or acquire participations in extensions of credit, or acquire obligations arising from transactions the Edge corporation could have financed;

(iv) Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,[5] if the guarantee or agreement specifies the maximum monetary liability thereunder and is related to a type of transaction described in paragraphs (e)(4)(i) and (ii) of this section; and

(v) Provide credit and other banking services for domestic and foreign purposes to organizations of the type described in § 211.4(e)(1)(ii)(G) of this part.

(5) *Payments and collections.* An Edge corporation may receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other instruments for collection abroad, and collect such instruments in the United States for a customer abroad; and may transmit and receive wire transfers of funds and securities for depositors.

(6) *Foreign exchange.* An Edge corporation may engage in foreign exchange activities.

(7) *Fiduciary and investment advisory activities.* An Edge corporation may:

(i) Hold securities in safekeeping for, or buy and sell securities upon the order and for the account and risk of, a person, provided such services for U.S. persons shall be with respect to foreign securities only;

(ii) Act as paying agent for securities issued by foreign governments or other entities organized under foreign law;

(iii) Act as trustee, registrar, conversion agent, or paying agent with respect to any class of securities issued to finance foreign activities and distributed solely outside the United States;

(iv) Make private placements of participations in its investments and extensions of credit; however, except to the extent permissible for member banks under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh), no Edge corporation may otherwise engage in the business of underwriting, distributing, or buying or selling securities in the United States;

(v) Act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real property interests and other investment assets,[6] and by providing advice on mergers and acquisitions, provided such services for U.S. persons shall be with respect to foreign assets only; and

(vi) Provide general economic information and advice, general economic statistical forecasting services and industry studies, provided such services for U.S. persons shall be with respect to foreign economies and industries only.

(8) *Banking services for employees.* Provide banking services, including deposit services, to the officers and employees of the Edge corporation and its affiliates; however, extensions of credit to such persons shall be subject to the restrictions of Part 215 of this chapter (Regulation O) as if the Edge corporation were a member bank.

(9) *Other activities.* With the Board's prior approval, engage in other activities in the United States that the Board determines are incidental to the international or foreign business of Edge corporations.

(f) *Agreement corporations.* With the prior approval of the Board, a member bank or bank holding company may invest in a federally- or state-chartered corporation that has entered into an agreement or undertaking with the Board that it will not exercise any power that is impermissible for an Edge corporation under this subpart.

§ 211.5 Investments and activities abroad.

(a) *General policy.* Activities abroad, whether conducted directly or indirectly, shall be confined to those of a banking or financial nature and those that are necessary to carry on such activities. In doing so, investors shall at all times act in accordance with high standards of banking or financial prudence, having due regard for diversification of risks, suitable liquidity, and adequacy of capital. Subject to these considerations and the other provisions of this section, it is the Board's policy to allow activities abroad to be organized and operated as best meets corporate policies.

(b) *Investment requirements.*—(1) *Eligible investments.* (i) An investor may directly or indirectly:

(A) Invest in a subsidiary that engages solely in activities listed in paragraph (d) of this section or in such other activities as the Board has determined in the circumstances of a particular case are permissible except that, in the case of an acquisition of a going concern, existing activities that are not otherwise permissible for a subsidiary may account for not more than five percent of either the consolidated assets or revenues of the acquired organization;

(B) Invest in a joint venture provided that, unless otherwise permitted by the

[5] "Readily ascertainable events" include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or cost of transport and loss or nonconformance of shipping documents.

[6] For purposes of this section, management of an investment portfolio does not include operational management of real property, or industrial or commercial assets.

Board, not more than 10 percent of the joint venture's consolidated assets or revenues shall be attributable to activities not listed in paragraph (d) of this section; and

(C) Make portfolio investments (including securities held in trading or dealing accounts) in an organization if the total direct and indirect portfolio investments in organizations engaged in activities that are not permissible for joint ventures does not at any time exceed 100 percent of the investor's capital and surplus.[7]

(ii) A member bank's direct investments under section 25 of the FRA shall be limited to foreign banks and to foreign organizations formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank.

(2) *Investment limit.* In computing the amount that may be invested in any organization under this section, there shall be included any unpaid amount for which the investor is liable and any investments by affiliates.

(3) *Divestiture.* An investor shall dispose of an investment promptly (unless the Board authorizes retention) if:

(i) The organization invested in—

(A) Engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States;

(B) Engages directly or indirectly in other business in the United States that is not permitted to an Edge corporation in the United States except that an investor may hold up to five percent of the shares of a foreign company that engages directly or indirectly in business in the United States that is not permitted to an Edge corporation; or

(C) Engages in impermissible activities to an extent not permitted under paragraph (b)(1) of this section; or

(ii) After notice and opportunity for hearing, the investor is advised by the Board that its investment is inappropriate under the FRA, the BHC Act, or this subpart.

(c) *Investment procedures.*[8] Direct and indirect investments shall be made in accordance with the general consent, prior notice, or specific consent procedures contained in this paragraph. The Board may at any time, upon notice, suspend the general consent and prior notice procedures with respect to any investor or with respect to the acquisition of shares of organizations engaged in particular kinds of activities. An investor shall apply for and receive the prior specific consent of the Board for its initial investment in its first subsidiary or joint venture unless an affiliate has made such an investment. Authority to make investments under prior notice or specific consent shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

(1) *General consent.* Subject to the other limitations of this section, the Board grants its general consent for the following:

(i) Any investment in a joint venture or subsidiary, and any portfolio investment, if the total amount invested (in one transaction or in a series of transactions) does not exceed the lesser of:

(A) $15 million; or

(B) 5 percent of the investor's capital and surplus in the case of a member bank, bank holding company, or Edge corporation engaged in banking, or 25 percent of the investor's capital and surplus in the case of an Edge corporation not engaged in banking;

(ii) Any additional investment in an organization in any calendar year so long as

(A) The total amount invested in that calendar year does not exceed 10 percent of the investor's capital and surplus; and

(B) The total amount invested under § 211.5 (including investments made pursuant to specific consent or prior notice) in that calendar year does not exceed cash dividends reinvested under paragraph (c)(1)(iii) of this section plus 10 percent of the investor's direct and indirect historical cost[9] in the organization, which investment authority, to the extent unexercised, may be carried forward and accumulated for up to five consecutive years;

(iii) Any additional investment in an organization in an amount equal to cash dividends received from that organization during the preceding 12 calendar months; or

(iv) Any investment that is acquired from an affiliate at net asset value.

(2) *Prior notice.* An investment that does not qualify under the general consent procedure may be made after the investor has given 45 days' prior written notice to the Board if the total amount to be invested does not exceed 10 percent of the investor's capital and surplus. The Board may waive the 45-day period if it finds immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is accepted. The Board may suspend the period or act on the investment under the Board's specific consent procedures.

(3) *Specific consent.* Any investment that does not qualify for either the general consent or the prior notice procedure shall not be consummated without the specific consent of the Board.

(d) *Permissible activities.* The Board has determined that the following activities are usual in connection with the transaction of banking or other financial operations abroad:

(1) Commercial and other banking activities;

(2) Financing, including commercial financing, consumer financing, mortgage banking, and factoring;

(3) Leasing real or personal property, or acting as agent, broker, or advisor in leasing real or personal property, if the lease serves as the functional equivalent of an extension of credit to the lessee of the property;

(4) Acting as fiduciary;

(5) Underwriting credit life insurance and credit accident and health insurance;

(6) Performing services for other direct or indirect operations of a United States banking organization, including representative functions, sale of long-term debt, name saving, holding assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible domestically for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the BHC Act;

(7) Holding the premises of a branch of an Edge corporation or member bank or the premises of a direct or indirect subsidiary, or holding or leasing the

[7] For this purpose, a direct subsidiary of a member bank is deemed to be an investor.

[8] When necessary, the general consent and prior notice provisions of this section constitute the Board's approval under the eighth paragraph of section 25(a) of the FRA for investments in excess of the limitations therein based on capital and surplus.

[9] The "historical cost" of an investment consists of the actual amounts paid for shares or otherwise contributed to the capital accounts, as measured in dollars at the exchange rate in effect at the time each investment was made. It does not include subordinated debt or unpaid commitments to invest even though these may be considered investments for other purposes of this part. For investments acquired indirectly as a result of acquiring a subsidiary, the historical cost to the investor is measured as of the date of acquisition of the subsidiary at the net asset value of the equity interest in the case of subsidiaries and joint ventures, and in the case of portfolio investments, at the book carrying value.

residence of an officer or employee of a branch or subsidiary;

(8) Providing investment, financial, or economic advisory services;

(9) General insurance agency and brokerage;

(10) Data processing;

(11) Managing a mutual fund if the fund's shares are not sold or distributed in the United States or to United States residents and the fund does not exercise managerial control over the firms in which it invests;

(12) Performing management consulting services provided that such services when rendered with respect to the United Sates market shall be restricted to the initial entry;

(13) Underwriting, distributing, and dealing in debt and equity securities outside the United States, provided that no underwriting commitment by a subsidiary of an investor for shares of an issuer may exceed $2 million or represent 20 percent of the capital and surplus or voting shares of an issuer unless the underwriter is covered by binding commitments from subunderwriters or other purchasers;

(14) Operating a travel agency provided that the travel agency is operated in connection with financial services offered abroad by the investor or others;

(15) Engaging in activities that the Board has determined by regulation in 12 CFR 225.25(b) are closely related to banking under section 4(c)(8) of the BHC Act; and

(16) With the Board's specific approval, engaging in other activities that the Board determines are usual in connection with the transaction of the business of banking or other financial operations abroad and are consistent with the FRA or the BHC Act.

(e) *Debts previously contracted.* Shares or other ownership interests acquired to prevent a loss upon a debt previously contracted in good faith shall not be subject to the limitations or procedures of this section; however, they shall be disposed of promptly but in no event later than two years after their acquisition, unless the Board authorizes retention for a longer period.

§ 211.6 Lending limits and capital requirements.

(a) *Acceptances of Edge corporations.*—(1) *Limitations.* An Edge corporation shall be and remain fully secured for (i) all acceptance outstanding in excess of 200 percent of its capital and surplus; and (ii) all acceptances outstanding for any one person in excess of 10 percent of its capital and surplus. These limitations apply only to acceptances of the types described in paragraph 7 of section 13 of the FRA (12 U.S.C. 372).

(2) *Exceptions.* These limitations do not apply if the excess represents the international shipment of goods and the Edge corporations (i) is fully covered by primary obligations to reimburse it that are guaranteed by banks or bankers, or (ii) is covered by participation agreements from other banks, as such agreements are described in § 250.165 of this chapter.

(b) *Loans and extensions of credit to one person.*—(1) *Limitations.* Except as the Board may otherwise specify:

(i) The total loans and extensions of credit outstanding to any person by an Edge corporation engaged in banking and its direct or indirect subsidiaries may not exceed 15 percent of the Edge corporation's capital and surplus; [10] and

(ii) The total loans and extensions of credit to any person by a foreign bank or Edge corporation subsidiary of a member bank, and by majority-owned subsidiaries of a foreign bank or Edge corporation, when combined with the total loans and extensions of credit to the same person by the member bank and its majority-owned subsidiaries, may not exceed the member bank's limitation on loans and extensions of credit to one person.

(2) *"Loans and extensions of credit"* means all direct or indirect advances of funds to a person [11] made on the basis of any obligation of that person to repay the funds. These shall include acceptances outstanding not of the types described in paragraph 7 of section 13 of the FRA (12 U.S.C. 372); any liability of the lender to advance funds to or on behalf of a person pursuant to a guaranteed, standby letter of credit, or similar agreements; investments in the securities of another organization except where the organization is a subsidiary, and any underwriting commitments to an issuer of securities where no binding commitments have been secured from subunderwriters or other purchasers.

(3) *Exceptions.* The limitations of paragraph (b)(1) of this section do not apply to:

(i) Deposits with banks and federal funds sold;

(ii) Bills or drafts drawn in good faith against actual goods and on which two or more unrelated parties are liable;

(iii) Any bankers' acceptance of the kind described in paragraph 7 of section 13 of the FRA that is issued and outstanding;

(iv) Obligations to the extent secured by cash collateral or by bonds, notes, certificates of indebtedness, or Treasury bills of the United States;

(v) Loans and extensions of credit that are covered by bona fide participation agreements; or

(vi) Obligations to the extent supported by the full faith and credit of the following:

(A) The United States or any of its departments, agencies, establishments, or wholly-owned corporations (including obligations to the extent insured against foreign political and credit risks by the Export-Import Bank of the United States or the Foreign Credit Insurance Association), the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association, the Inter-American Development Bank, the African Development Bank, or the Asian Development Bank;

(B) Any organization if at least 25 percent of such an obligation or of the total credit is also supported by the full faith and credit of, or participated in by, any institution designated in paragraph (b)(3)(v)(A) of this section in such manner that default to the lender will necessarily include default to that entity. The total loans and extensions of credit under this subparagraph to any person shall at not time exceed 100 percent of the capital and surplus of the Edge corporation.

(c) *Capitalization.* An Edge corporation shall at all times be capitalized in an amount that is adequate in relation to the scope and character of its activities. In the case of an Edge corporation engaged in banking, its capital and surplus shall be not less than 7 percent of risk assets. For this purpose, subordinated capital notes or debentures, in an amount not to exceed 50 percent of non-debt capital, may be included for determining capital adequacy in the same manner as for a member bank; risk assets shall be deemed to be all assets on a consolidated basis other than cash, amounts due from banking institutions in the United States, United States Government securities, and Federal funds sold.

§ 211.7 Supervision and reporting.

(a) *Supervision.*—(1) *Foreign branches and subsidiaries.* Organizations

[10] For purposes of this subsection, "subsidiary" includes subsidiaries controlled by the Edge corporation but does not include companies otherwise controlled by affiliates of the Edge corporation.

[11] In the case of a foreign government, these include loans and extensions of credit to the foreign government's departments or agencies deriving their current funds principally from general tax revenues. In the case of a partnership or firm, these include loans and extensions of credit to its members and, in the case of a corporation, these include loans and extensions of credit to the corporation's affiliates where the affiliate incurs the liability for the benefit of the corporation.

conducting international banking operations under this Subpart shall supervise and administer their foreign branches and subsidiaries in such a manner as to ensure that their operations conform to high standards of banking and financial prudence. Effective systems of records, controls, and reports shall be maintained to keep management informed of their activities and condition. Such systems should provide, in particular, information on risk assets, liquidity management, and operations of controls and conformance to management policies. Reports on risk assets should be sufficient to permit an appraisal of credit quality and assessment of exposure to loss, and for this purpose provide full information on the condition of material borrowers. Reports on the operations of controls should include internal and external audits of the branch or subsidiary.

(2) *Joint ventures.* Investors shall maintain sufficient information with respect to joint ventures to keep informed of their activities and condition. Such information shall include audits and other reports on financial performance, risk exposure, management policies, and operations of controls. Complete information shall be maintained on all transactions with the joint venture by the investor and its affiliates.

(3) *Availability of reports to examiners.* The reports and information specified in paragraph (a) (1) and (2) of this section shall be made available to examiners of the appropriate bank supervisory agencies.

(b) *Examinations.* Examiners appointed by the Board shall examine each Edge corporation once a year. An Edge corporation shall make available to examiners sufficient information to assess its condition and operations and the condition and activities of any organization whose shares it holds.

(c) *Reports.*—(1) *Reports of condition.* Each Edge corporation shall make reports of condition to the Board at such times and in such form as the Board may prescribe. The Board may require that statements of condition or other reports be published or made available for public inspection.

(2) *Foreign operations.* Edge and Agreement corporations, member banks, and bank holding companies shall file such reports on their foreign operations as the Board may require.

(3) *Acquisition or disposition of shares.* A member bank, Edge or Agreement corporation or a bank holding company shall report in a manner prescribed by the Board any acquisition or disposition of shares.

(d) *Filing and processing procedures.* (1) Unless otherwise directed by the Board, applications, notifications, and reports required by this part shall be filed with the Federal Reserve Bank of the district in which the parent bank or bank holding company is located or, if none, the Federal Reserve Bank of the district in which the applying or reporting institution is located. Instructions and forms for such applications, notifications and reports are available from the Federal Reserve Banks.

(2) The Board shall act on an application or notification under this Subpart within 60 calendar days after the Reserve Bank has accepted the application or notification unless the Board notifies the investor that the 60-day period is being extended and states the reasons for the extension.

3. Subpart B of 12 CFR Part 211 is amended by revising § 211.23 (b) and (f) introductory text and (f)(5) to read as follows:

Subpart B—Foreign Banking Organizations

* * * * *

§ 211.23 Nonbanking Activities of Foreign Banking Organizations.

* * * * *

(b) *Qualifying foreign banking organizations.* Unless specifically made eligible for the exemptions by the Board, a foreign banking organization shall qualify for the exemptions afforded by this section only if, disregarding its United States banking, more than half of its worldwide business is banking; and more than half of its banking business is outside the United States.[1] In order to qualify, a foreign banking organization shall:

(1) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed total worldwide nonbanking assets;

(ii) Revenues derived from business of banking outside the United States exceed total revenues derived from its worldwide nonbanking business; or

(iii) Net income derived from the business of banking outside the United States exceeds total net income derived from its worldwide nonbanking businesses; and

(2) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed banking assets held in the United States;

(ii) Revenues derived from the business of banking outside the United States exceed revenues derived from the business of banking in the United States; or

(iii) Net income derived from the business of banking outside the United States exceeds net income derived from the business of banking in the United States.

* * * * *

(f) *Permissible activities and investments.* A foreign banking organization that qualifies under paragraph (b) of this section may:

* * * * *

(5) Own or control voting shares of a foreign company that is engaged directly or indirectly in business in the United States other than that which is incidental to its international or foreign business, subject to the following limitations:

(i) More than 50 percent of the foreign company's consolidated assets shall be located, and consolidated revenues derived from, outside the United States;

(ii) The foreign company shall not directly underwrite, sell, or distribute, nor own or control more than 5 percent of the voting shares of a company that underwrites, sells, or distributes securities in the United States except to the extent permitted bank holding companies;

(iii) If the foreign company is a subsidiary of the foreign banking organization, the foreign company must be, or control, an operating company and its direct or indirect activities in the United States shall be subject to the following limitations:

* * * * *

Board of Governors of the Federal Reserve System, September 25, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-23339 Filed 9-30-85; 8:45 am]

BILLING CODE 6210-01-M

[1] None of the assets, revenues, or net income, whether held or derived directly or indirectly, of a subsidiary bank, branch, agency, commercial lending company, or other company engaged in the business of banking in the United States (including any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands) shall be considered held or derived from the business of banking "outside the United States."

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 338

Fair Housing

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is amending its fair-housing regulations, which apply to insured state nonmember banks. Metropolitan banks with more than $10 million in assets now must keep log-sheets of home-loan applications. The amendment ends that requirement for banks with $50 million or less in assets that have received fewer than 25 home-loan applications in the prior calendar year. As a safety measure, the FDIC's Board of Directors ("Board") may require any bank to keep log-sheets if the Board has reason to believe the bank is engaged in discriminatory practices (*e.g.*, illegal prescreening). The amendment reduces the paperwork burden on the banking industry without weakening enforcement of the fair-housing laws.

DATE: The new rule is effective on October 31, 1985.

FOR FURTHER INFORMATION CONTACT: Rex J. Morthland, Director, Office of Consumer Programs, Division of Bank Supervision (202/389-4473), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is amending § 338.4 of its regulations, 12 CFR 338.4. That section requires all state nonmember banks ("banks") to request and retain certain data from anyone who applies for a home loan. It further requires metropolitan banks [1] above a certain size—currently $10,000,000 in assets—to request and retain further information, and to keep log-sheets of all home-loan applications.[2] 12 CFR 338.4(a). The amendment provides that a bank does not have to keep log-sheets if it has assets of $50,000,000 or less and has received fewer than 25 loan applications in the prior calendar year. The new log-sheet requirements are as follows:

1. All banks with $10 million in assets or less, and all non-metropolitan banks, do not have to keep log-sheets.

2. Any metropolitan bank having more than $10 million but $50 million or less in assets must keep log-sheets if it has received 25 or more home-loan applications in the prior calendar year. If the bank has received fewer than 25 applications in the prior year, it does not have to do so.

3. Any metropolitan bank with more than $50 million in assets must keep log-sheets regardless of the number of applications it has received.

In addition, any FDIC-supervised bank—whatever its size, wherever located, and however many applications it may have received—must maintain log-sheets if the Board has reason to believe the bank may be engaged in discriminatory home-lending practices (including illegal prescreening).

The FDIC surveyed its experienced consumer compliance examiners twice in 1984. The June survey focused on the accuracy and usefulness of *inquiry* entries in conducting a fair-housing examination. Forty-eight examiners responded. The responses strongly influenced the FDIC's decision to omit inquiry entries on the log-sheets. See 49 FR 35758 (1984). The September survey focused on the usefulness of *application* entries on log-sheets. Sixty-one examiners responded. The FDIC also obtained information and opinions from other field examiners and compliance review examiners in the FDIC's regional offices.

In addition, the FDIC used data from banks' call reports for December 31, 1983, and from the records that banks compiled under the Home Mortgage Disclosure Act ("HMDA statements"). The FDIC summarized the call-report data on total assets, total real-estate loans outstanding, and total one-to-four-family residential loans outstanding by bank size for all banks wherever located, and separately for banks with at least one office in a metropolitan area (*i.e.*, a PMSA, a MSA, or a CMSA). The FDIC summarized HMDA statements of home loans made in 1982 by asset-size of bank, number of loans made per bank, and total number of loans. These summaries are the best basis available for estimating how the amendment will affect the number of banks that must keep log-sheets ("log-sheet banks") and the number of applications that must be recorded.

The FDIC concentrated on two issues:

1. Whether log-sheet records on applications are useful in conducting fair-housing compliance examinations; and

2. Whether the number of log-sheet banks can be reduced significantly without weakening the quality of the fair-housing compliance, and if so, how.

Nearly all the examiners said that the log-sheets were useful. In June, 80% of the responses were affirmative (41 of 51). In September, 97% of the examiners (59 of 61) said the log-sheets were helpful at some level of mortgage activity.

The examiners said the log-sheets improve the quality and the efficiency of fair-housing examinations. Examiners use the log-sheets to determine the proper scope of an examination, to identify problem areas, to select a sample of applications for detailed study, and to locate applications (particularly ones that have been approved). Most examiners in both surveys also said the log-sheets saved time. Estimates ranged from a few hours to a day or two, depending on how many applications a bank had received.

When examiners do not have log-sheets to rely on, they must locate and skim through most of the bank's home-loan applications in order to select an appropriate sample. The process is time-consuming when a bank has more than 25 to 50 applications a year. Examiners can find rejected applications fairly easily: Banks usually file them together, and discard them after 25 months.

But finding approved applications is harder. Banks often keep their home loans in alphabetical rather than chronological order. Many banks keep records of all mortgages—commercial as well as residential—in the same file. Some banks mingle records of recent loans (*i.e.*, those to be reviewed in the current examination) with records of loans made over the last 30 years. In that case, even if a bank makes only 25 to 50 home loans a year, the examiner may have to search through 300 to 600 files or more to obtain a valid sample.

Examiners said that log-sheets improve other aspects of compliance examinations too. Log-sheets provide the only complete list of applications—both approved and rejected—for various kinds of loan. They help examiners detect whether a bank is complying with consumer laws and regulations—*e.g.*, filing accurate HMDA statements; providing adverse-action notices on rejected loan applications issued under the Equal Credit Opportunity Act and Regulation B; meeting the credit needs of its community as required by the Community Reinvestment Act ("CRA"); providing notices to borrowers and requiring flood insurance in areas designated as being flood prone; and making the disclosures required by the Truth-in-Lending Act and the Real Estate Settlement Procedures Act.

Log-sheets can also be helpful to banks. Examiners reported that one-fifth of the banks having consumer-compliance examinations in June use

[1] The term "metropolitan bank" refers to a bank in a primary metropolitan statistical area ("PMSA"), a metropolitan statistical area ("MSA"), or a consolidated metropolitan statistical area ("CMSA") that is not comprised of designated primary metropolitan statistical areas. The terms "PMSA", "MSA" and "CMSA" replace the phrase "standard metropolitan statistical area" ("SMSA") throughout the current version of Part 338 in line with the new terminology used by the United States Office of Management and Budget.

[2] The log-sheets record the name, address, race/national origin, sex, marital status, and age of the applicant and co-applicant; the address of the property being purchased, constructed, repaired, or maintained; the type of home loan requested; and the bank's action on the application.

log-sheet data for internal review and control, *e.g.*, in marketing, in underwriting home loans, and in monitoring compliance with consumer protection laws and with the banks' own lending policies.

Nevertheless, more than half the examiners (32 of 61) said log-sheets are not especially helpful in examining banks with fewer than 25 to 50 applications per year. Below that level, said the examiners, they can study each application individually, and sampling is not needed. These results indicate that the number of log-sheet banks can be reduced significantly without harming the quality of fair-housing examinations.

The amendment lifts the burden of the log-sheet requirement from 1,033 banks, representing one-third of all banks that filed HMDA statements in 1982 ("HMDA banks"). Yet those 1,033 banks made only 11,410 home loans, comprising just 6.4% of the home loans made by all HMDA banks. On the other hand, 565 banks with $50 million or less in assets, representing 18.6% of the HMDA banks, will continue to maintain log-sheets. These banks reported 30,011 home loans, representing 16.9% of the home loans made by HMDA banks. See Table I.[3]

The amendment does not require non-metropolitan banks to keep log-sheets because such a requirement would have only marginal value. In 1980, 83% of all minorities and 81% of the Black population resided in SMSAs. Moreover, metropolitan banks make far more real-estate loans than non-metropolitan banks of comparable size. The 3,539 log-sheet banks comprise only 46% of all banks supervised by the FDIC. Yet in 1983 these banks held 84% of the outstanding real-estate loans of all types, and 84% of the one-to-four-family residential real-estate loans, made by all FDIC-supervised banks.

The FDIC published the amendment as a proposal in the **Federal Register** on March 18, 1985. The FDIC asked for comment on all aspects of the proposal. The FDIC particularly asked for comment on whether asset-size is the proper criterion for determining the exemption threshold, and if so what the proper threshold should be. The FDIC also sought comment on the merits of basing the log-sheet requirement on some other criterion (or combination of criteria), such as the number of a bank's yearly home-loan applications or the size of its home-loan mortgage portfolio.

Five national fair-housing groups, three community fair-housing groups, forty-three bankers, and two bankers' groups commented on the proposal. None of the comments provided any new information or documentation.

The FDIC evaluated the comments by the following standards: Maintenance of the effectiveness and efficiency of the FDIC fair-housing enforcement program; reduction of paperwork to reduce costs; clarification of standards to be used in order to facilitate bank compliance; and simplicity in implementation.

All the fair-housing groups opposed any change that reduced the number of log-sheet banks; indeed, all but one said that all banks should have to keep log-sheets. In the FDIC's view, however, log-sheets are not needed to detect discriminatory lending patterns in smaller banks with very few home-loan applications. The examiner surveys show that examiners can review all the applications in such banks individually. Moreover, the number of loans in such banks is too small to form a pattern with statistical significance.

Some fair-housing respondents said that the mere act of recording log-sheet information deters banks from indulging in discrimination, because the banks become aware of the cumulative effect of the information as it appears in the log-sheets. These respondents asserted that applications filed away after acceptance or rejection cannot have the same impact. One respondent observed that smaller banks share the potential to engage in illegal discrimination.

The FDIC believes that log-sheets have little added value as a deterrent. Banks are subject to regular compliance examinations and to random on-site complaint investigations. When a bank applies for permission to establish or move a deposit facility, the FDIC takes its compliance and CRA ratings into account. Moreover, people who believe they have been victims of discrimination can call the FDIC's toll-free 800 number, and speak directly with regulators.

Four fair-housing respondents said that the amendment signals a retreat from the FDIC's commitment to enforcing the fair-housing laws. The amendment only reduces the paperwork burden in cases where the paperwork is unhelpful. The FDIC has demonstrated its commitment to the principles and policies of the fair-housing laws in many ways. The FDIC has created an Office of Consumer Programs, whose mission is to assure that the FDIC's fair-housing program is effective and comprehensive. It has established a toll-free telephone number which anyone in the U.S., Puerto Rico, or the Virgin Islands can call with inquiries and/or complaints. It has developed a special examination for reviewing bank records to make sure that banks are complying with consumer-protection and civil-rights laws. It has developed a comprehensive manual for examiners to use in the course of compliance examinations. Moreover, the FDIC investigates complaints that consumers make against particular banks, and it conducts regular training programs for examiners, bankers, and consumers concerning consumer-protection and civil-rights laws and regulations. These actions all show that the FDIC remains steadfast in its dedication to, and enforcement of, the fair-housing laws.

Three fair-housing groups said the amendment would just transfer recordkeeping costs from banks to examiners, because examiners would have to compile log-sheets for their own use. These respondents misunderstand how examiners use log-sheets. Log-sheets give examiners an overall perspective on a bank's activities: Examiners use them to develop a sample of applications for in-depth analysis, to compare rejection ratios of applications submitted by members of protected classes and by members of other classes, and to check for possible illegal prescreening. In smaller banks that receive few applications, examiners can review each mortgage application individually. They do not need to use sampling techniques, and do not need log-sheets.

Several fair-housing respondents feared that the amendment would reduce banks' internal review and control. It is true that some banks may use log-sheets for these purposes, and may also adapt the log-sheets for use in keeping the information needed to prepare the annual HMDA disclosure reports of home loans made. But the FDIC does not need to prescribe their maintenance for this purpose. If a bank

[3] The percentages are more accurate than the absolute numbers for policy purposes. Four states have reporting requirements that are substantially the same as the HMDA requirements. Banks in these states must keep log-sheets, but most are exempt from filing federal HMDA statements, and accordingly are not counted in HMDA bank totals. Percentages based on these absolute numbers should be relatively reliable, however, as the HMDA banks constitute a large sample (85%) of all log-sheet banks.

In estimating how many banks are exempted under the new criteria, the FDIC has used the number of loans rather than the number of applications. The discrepancy is minor, however. In 30 of 46 banks (65%) covered in the June survey, less than 10% of the applications received were rejected; in 9 others (20%), the rejection rate was between 10 and 19%. Moreover, there are offsetting factors. For example, HMDA statements include unsecured loans that the bank classifies as home improvement loans, while log-sheets only record applications for secured home improvement loans. The offsetting effects are significant: Home-improvement loans constituted 55% of the number of home loans included in the HMDA statements in 1980 and 1981.

finds log-sheets are useful, it can keep them voluntarily.

Three housing groups said that basing a log-sheet requirement on applications received in the prior year could produce illogical results. Banks whose loan volume declined below 25 applications might have to keep log-sheets; and banks whose loan volume surged above that level would not have to do so. In the FDIC's view, however, cases like these are likely to be rare. The volume of home-loan applications usually correlates well with asset-size. Moreover, other methods do not appear to be any better, as discussed below.

Several fair-housing groups said that the amendment will erode the quality of fair-housing examinations. Log-sheets are useful primarily in banks with high mortgage volumes; these banks are not affected by the amendment. Accordingly, the FDIC believes that the examinations will not suffer in quality.

One fair-housing group said the amendment undermines the 1977 Settlement Agreement between the FDIC, the National Urban League, and others. The FDIC disagrees. The Agreement dealt with the development of a data-collection system. Partly (but only partly) in response to the Agreement, the FDIC has developed a system that monitors banks' home-loan policies and practices for evidence of discrimination in financing one-to-four-family residences. The amendment changes the system in ways that improve the system's efficiency, but does not alter the system in other respects.

A number of fair-housing groups said that the amendment would allow smaller banks to escape scrutiny, and that smaller banks can engage in illegal discrimination as easily as larger ones. The FDIC will continue to review housing loans made by smaller banks during the fair-housing portion of the compliance examination as well as during complaint investigations.

In the same vein, several fair-housing groups said that it is improper to distinguish between metropolitan banks and nonmetropolitan ones for the purpose of exempting banks from the log-sheet requirement, because members of protected groups are found in both areas. The FDIC believes, however, that the geographic criterion is useful. Smaller, less urban banks generally have a lower volume of home loans. It is not necessary for these banks to keep log-sheets: examiners will review their home-loan applications in full during compliance exams and complaint investigations.

Three fair-housing groups suggested that the FDIC should test banks to detect unlawful prescreening. The FDIC considers that testing is not necessary. If someone believes that a bank has improperly discouraged him or her from applying for a home loan, he or she can ask acquaintances—or members of a local fair-housing group—to make a home-loan inquiry at the bank. If the bank's response differs, evidently because of a difference in protected-group characteristics, the person can file a complaint with the FDIC, with the Department of Housing and Urban Development, or with other official bodies, including the state government. The FDIC will consider testing if examiners strongly suspect that a bank is engaged in illegal prescreening, and if the FDIC views testing as the only reliable way to detect that activity.

One fair-housing group suggested that a bank should only be exempt from the log-sheet requirement if the bank has a satisfactory CRA rating. The FDIC does not agree. The CRA has its own policy objective: Namely, encouraging financial institutions to satisfy the credit needs (including but not limited to mortgage credit) of their local communities. A bank can receive a low CRA rating for reasons wholly apart from its home-loan practices. To be sure, when a bank has a low CRA rating, the examiner will scrutinize the bank's overall compliance performance more closely. But the CRA rating should not be used to determine whether the bank should keep log-sheets.

The amendment says the FDIC may require an exempt bank to keep log-sheets if the FDIC has "reason to believe" the bank has engaged in discriminatory home-loan practices. One fair-housing group and two banks said the FDIC should explain how the Board will make this determination. The Board may consider whether the bank has an unusually high frequency of consumer complaints alleging illegal discrimination, consistently low compliance or CRA ratings, indications of illegal discriminatory treatment found through the complaint or examination processes, illegally discriminatory provisions in home-loan policies (intentional or unintentional), illegally discriminatory advertising, and/or indications of illegal prescreening. Each case will be distinctive, however. The Board will no doubt have to consider other factors besides these in a given case, and will have to weigh the factors differently depending on the circumstances. Moreover, the Board will have to decide whether requiring the bank to keep log-sheets is an appropriate supervisory technique, given the nature of the bank's practices and the seriousness of the offense.

The amendment differs from the proposal of March 18, 1985, by giving an exempt bank the opportunity to submit written materials to the Board when the Board is considering whether to require the bank to keep log-sheets. The amendment guarantees fairness to the bank, and enables the Board to have the benefit of an opposing view when deciding whether to issue an order of this kind.

The banks and bankers' groups were primarily concerned with the nature of the threshold requirements, and the levels at which the thresholds should be set.

Twenty-four banks endorsed the use of application-volume as a criterion. Ten said the threshold should be set at 25 applications. Two banks preferred a threshold between 25 and 50 applications. Six banks said the threshold should be 50 applications; the two bankers' groups also agreed that, if application-volume were used as a criterion, the threshold should be 50 applications. Finally, six banks said the threshold should be fixed at between 60 to 250 applications. The other nineteen banks either rejected this criterion entirely or did not suggest any number of applications as a threshold.

Thirty-one banks said that asset-size was an appropriate criterion for setting the log-sheet exemption threshold. Twenty-five banks endorsed a threshold of $50 million in assets; six banks preferred higher limits. Twelve banks and both bankers' group rejected the use of asset-size as a criterion.

Six banks, and both bankers' groups, said the exemption should be based on the size of a bank's mortgage portfolio.

The FDIC believes that application-volume is the best criterion for fixing the exemption threshold. The essential question is whether a bank has treated an applicant less favorably than applicants in general, and whether the basis for the different treatment is one that is proscribed. The best way to answer that question—indeed, the only practical way—is to compare the bank's treatment of applicants submitted by members of the protected group with the bank's treatment of applications submitted by all applicants.

Using asset-size together with application-volume provides two main benefits. It reduces the burden of the log-sheet requirement on the banking

industry, particularly on small banks, without detracting from supervisory enforcement. It also helps stabilize the number of log-sheet banks, and gives continuity over a period of time to the group of banks keeping log-sheets.

Although portfolio-size would be an easy criterion to apply—banks keep track of their mortgage protfolios as a matter of routing—it does not correlate well with application-volume. Many banks sell their loans (in whole or in part) to the secondary market. Moreover, the same dollar-volume may represent fewer loans for banks in wealthier markets. And because mortgages have long maturities, a bank's mortgage portfolio does not necessarily reveal its current activity or practices.

In any case, even if portfolio-size correlated well with application-volume, there is no need to use a proxy for applications. The statistics on the number of applications are readily available.

One banker said the amendment would not provide any relief from the paperwork burden, because the bank would have to keep a log of applications to determine if a log-sheet should be maintained for the ensuing calendar year. A bank can use many kinds of records to determine the number of applications received in a year: *e.g.*, note registers; HMDA records; courthouse mortgage records; an index to outstanding mortgages; additions to the general ledger accounts for 1–4 family residential mortgages outstanding; and the file of rejected mortgage applications, which a bank must keep for 25 months.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board of Directors of the FDIC hereby certifies that the amendment will not have a significant economic impact on a substantial number of small entities. The amendment will ease the existing collection of information requirements. The effect of the amendment is expected to be beneficial, not adverse; small entities are expected to receive all benefits of the amendment.

Paperwork Reduction Act

The collection of information requirements prescribed herein have been approved by the Office of Management and Budget for use through April 30, 1988. OMB Control No. 3064–0046.

EFFECT OF RECOMMENDED AMENDMENTS OF SECTION 338.4 ON NUMBER OF BANKS WITH TOTAL ASSETS BETWEEN $10 AND $50 MILLION AND ON NUMBER OF HOME LOANS REPORTED IN HMDA REPORTS FOR 1982

Banks with total assets between $10 and $50 million	Home loans made per bank	
	1 to 24	25 and over
Number of banks filing HMDA report	1,033	565
Percent of banks between $10 and $50 million (1,677)	61.6	33.7
Percent all banks $10 million and over (3,033)	34.1	18.6
Number of home loans made by those banks	11,410	30,011
Average number per bank	11.0	53.1
Percent of those made by banks between $10 million and $50 million (41,421)	27.5	72.5
Percent of those made by all banks $10 million and over (177,788)	6.4	16.9

List of Subjects in 12 CFR Part 338

Advertising, Banks, Banking, Fair housing, Mortgages, Reporting and recordkeeping requirements, Signs and symbols, State nonmember banks.

The Board of Directors of the Federal Deposit Insurance Corporation amends Part 338 of title 12 of the Code of Federal Regulations as follows:

PART 338—FAIR HOUSING

1. The authority citation for Part 338 continues to read as follows:

Authority: Sec. 2, Pub. L. 86–671, 74 Stat. 547 (12 U.S.C. 1817); sec. 8, Pub. L. 797, 64 Stat. 879, as amended by sec. 202, 204, Pub. L. 89–695, 80 Stat. 1046, 1054, and sec. 110, Pub. L. 93–495, 88 Stat. 1506 (12 U.S.C. 1818); sec. 9, Pub. L. 797, 64 Stat. 881, as amended by sec. 205, Pub. L. 89–695, 80 Stat. 1055 (12 U.S.C. 1819); sec. 203, Pub. L. 89–695, 80 Stat. 1053 (12 U.S.C. 1820(b)); sec. 805, Pub. L. 90–284, 82 Stat. 83, 84, as amended by sec. 808, Pub. L. 93–383, 88 Stat. 729 (42 U.S.C. 3805, 3606); sec. 501, Pub. L. 93–495, 88 Stat. 1521, as amended by sec. 2, Pub. L. 94–239, 90 Stat. 251 (15 U.S.C. 1691, et seq.); 40 FR 49306, 12 CFR Part 202; 37 FR 3429, 24 CFR Part 110.

§ 338.4 [Amended]

2. Section 338.4(a)(2)(iv) is amended by replacing the period at the end of the first sentence thereof with a colon, and by inserting the following clause immediately thereafter: "Provided, That any bank covered by the said provision which had total assets of $50 million or less as of December 31 of the preceding calendar year and also received fewer than 25 home loan applications during that calendar year is not required to keep a log-sheet of this kind."

3. Section 338.4 is amended by redesignating paragraph (f) as paragraph (g).

4. Section 338.4 is amended by adding a new paragraph (f) reading as follows:

§ 338.4 Recordkeeping requirements.

* * * * *

(f) Notwithstanding any other provision of this section, the Board of Directors may require any bank to keep a log-sheet on its home loan applications by bank office. The log-sheet shall contain the information reflected on the sample form in Appendix A. The bank shall be able to trace each entry on the log-sheet to the relevant application file, using the name of the applicant or unique case number assigned by the bank. The Board shall afford the bank an opportunity to submit written materials to the Board prior to imposing a log-sheet requirement pursuant to this subsection.

* * * * *

By Order of the Board of Directors.

Dated: September 23, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–23359 Filed 9–30–85; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83–CE–34–AD, Amdt. 39–5139]

Airworthiness Directives; SIAI-Marchetti Models S205–18/F, S205–18/R, S205–20/F, S205–20/R, S205–22/R and all Models S208 and S208A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 75–17–23R1, Amendment 39–4612, applicable to certain serial number SIAI-Marchetti Models S205 and S208 airplanes to permit the installation of a new part as an alternate means of compliance thereby providing a level of safety equivalent to that of the original AD.

DATES: September 27, 1985.

ADDRESSES: SIAI-Marchetti Service Bulletin (S/B) No. 205B37D, dated March 15, 1985, applicable to this AD may be obtained from SIAI-Marchetti S.p.A, V–12070 via Independenza, 2, 21018 Sesto Calenda, Italy. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. M. Dearing, Aircraft Certification

Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or Mr. J. Dow, Sr., Federal Aviation Administration, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: AD 75-17-23, Amendment 39-2328 (40 FR 33008), required repetitive visual inspections of the internal wing rib brackets and, if necessary, replacement of cracked parts and associated washers on certain SIAI-Marchetti Models S205 and S208 airplanes in accordance with SIAI-Marchetti S/B No. 205B37B dated August 24, 1974. Subsequently, the manufacturer issued S/B No. 205B37C dated October 7, 1977, which extended the same inspections and replacement requirements of the previous S/B to all Models S205 and S208 airplanes and to add its S208A model airplanes. The FAA then published AD 75-17-23R1, Amendment 39-4612 (48 FR 14356) which revised AD 75-17-23 to include the additional models specified in S/B No. 205B37C. SIAI-Marchetti has again revised the S/B to include an improved part which if installed would relieve the operator from the repetitive inspection requirements of AD 75-17-23R1. This new S/B is No. 205B37D dated March 15, 1985. The Registro Aeronautico Italiano (RAI) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy has classified the actions recommended by the manufacturer in the current S/B No. 205B37D as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of SIAI-Marchetti S/B 205B37D, dated March 15, 1985, and the mandatory classification of this service bulletin by the RAI. Based on the foregoing, the FAA has determined that S/B 205B37D provides an alternative means of compliance to AD 75-17-23R1.

Consequently, this amendment revises AD 75-17-23R1 to authorize this alternate means of compliance which provides an equivalent level of safety to that AD and relieves the owner/operator from the inspection requirements of AD 75-17-23R1. Therefore, notice and public procedure hereon are unnecessary and contrary to the public interest and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this document involves an amendment which provides an alternate means of compliance consistent with current improved parts replacement. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291 and (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1969). 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 Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 75-17-23R1, Amendment 39-4612 as follows:

(1) In paragraph (a) of the AD delete "Service Bulletin No. 205B37C dated October 7, 1977" and insert "Service Bulletin No. 205B37D dated March 15, 1985."

(2) In paragraph (b)(2) of the AD delete "Service Bulletin No. 205B37C dated October 7, 1977" and insert "Service Bulletin No. 205B37D dated March 15, 1985."

(3) Revise paragraph (c) to read as follows:

* * * * *

(c) Following accomplishment of paragraph (b) of this AD continue to inspect in accordance with paragraph (a) of this AD until brackets P/N 205-3-033-18 and 205-3-034-18 are replaced by new brackets P/N 205-3-313-11 and P/N 205-3-313-12 in accordance with INSTRUCTIONS: paragraph (b) of SIAI-Marchetti Service Bulletin S/B No. 205B37D, dated March 15, 1985.

This amendment revises AD 75-17-23R1, Amendment 39-4612.

This amendment becomes effective September 27, 1985.

Issued in Kansas City, Missouri, on September 12, 1985.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 85-23428 Filed 9-27-85; 11:43 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ASO-14]

Designation of Transition Area, Sylvania, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Sylvania, Georgia, transition area to accommodate Instrument Flight Rule (IFR) operations at Plantation Airpark Airport. This action lowers the base of controller airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Sylvania Non-directional Radio Beacon (RBN), has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

EFFECTIVE DATE: 0901 G.m.t., November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Monday, August 12, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Sylvania, Georgia, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Plantation Airpark Airport (49 FR 32442). The operating status of the airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Though the map accurately depicted an arrival extension

to the northeast, it was erroneously stated as being west of the 6.5 mile radius in the notice. This has been corrected in this rule. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

THE RULE

This amendment to Part 71 of the Federal Aviation Regulations designates the Sylvania, Georgia, transition area and lowers the base of controlled airspace in the vicinity of Plantation Airpark Airport from 1,200 to 700 feet above the surface.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

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

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

2. By amending § 71.181 as follows:

Sylvania, GA—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Plantation Airpark Airport (Lat. 32°38'43" N., Long. 81°35'48" W.); within 3 miles each side of the 059° bearing from the Sylvania RBN (Lat. 32°38'56" N., Long. 81°35'38" W.), extending from the 6.5-mile radius area to 8.5 miles northeast of the RBN.

Issued in East Point, Georgia, on September 19, 1985.

William H. Pollard,

Acting Director, Southern Region.

[FR Doc. 85-23322 Filed 9-30-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-13]

Revision of Idaho Falls, ID; Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the Idaho Falls, Idaho, Control Zone to exclude the Rigby-Jefferson County Airport thereby allowing operations to continue at Rigby-Jefferson County Airport based on the weather conditions at that airport without regard to the reported weather conditions at Idaho Falls' Fanning Field.

EFFECTIVE DATE: 0901 GMT, January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, Telephone (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On May 3, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Idaho Falls, Idaho, Control Zone to exclude Rigby-Jefferson County Airport (50 FR 18877). This action will allow operations to continue at Rigby-Jefferson County Airport based on the weather conditions at that airport without regard to the reported weather conditions at Idaho Falls' Fanning Field.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Idaho Falls, Idaho, Control Zone to exclude the Rigby-Jefferson County Airport. Frequently, Rigby-Jefferson County Airport has VFR weather conditions while, based on the Idaho Falls' Fanning Field weather, the Idaho Falls Control Zone weather is officially below VFR minima; thereby requiring ATC Clearance for operation at Rigby-Jefferson County Airport. Two-way communication capabilities between FAA facilities and aircraft on the ground at Rigby-Jefferson County Airport do not exist. The Control Zone revision will still provide the controlled airspace necessary for instrument approach procedures into Fanning Field, without unduly restricting VFR operations at Rigby-Jefferson County Airport.

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

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-499, January 12, 1983); [14 CFR 11.69].

2. By amending § 71.171 as follows:

Idaho Falls, Idaho, Control Zone (Revised)

"Within a 5-mile radius of Fanning Field, Idaho Falls, Idaho, (Lat. 43°30'56" N/Long. 112°04'13" W); within 3.5 miles each side of the Idaho Falls VOR 223° radial extending from the 5-mile radius zone to 10.5 miles southwest of the VOR; within 4 miles each side of the Idaho Falls VOR 030° radial extending from the 5-mile radius zone to 8 miles northeast of the VOR."

Issued in Seattle, Washington, on July 11, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-23320 Filed 9-30-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 376, 379 and 399

[Docket No. 50840-5040]

Revisions to the Commodity Control List Based on COCOM Review

Correction

In FR Doc. 85-21328 beginning on page 37112 in the issue of Wednesday, September 11, 1985, make the following corrections:

§ 399.1 [Corrected]

On page 37116, in the first column, in § 399.1 [n], in the third line, "the" should read "and"; and in the third column, in (Advisory) Note 2, in the seventh line, "list" should read "1st".

On page 37118, in the second column, in paragraph (d), in the sixth line, insert "would" after "they".

On page 37119, in the third column, in the second line, insert "TIR" after "mm".

On page 37120, in the third column, in paragraph 30, in the fifth line, "1142A" should read "1145A"; and in the sixth line, "$1,000" should read "$2,000".

On page 37121, in the first column, in paragraph (a)(2)(ii), in the fifth line, "249°" should read "294°"; and the first "or" should read "of".

On page 37122, in the first column, in paragraph (b), in the fourth line, the figures in parentheses should read "3,452° F"; and in the second column, in the first line, "13453A" should read "1353A".

On page 37125, in the first column, in paragraph (k), "5x5=inch" should read "5x5-inch".

On page 37126, in the second column, in paragraph 55, in the fifth line, "1362A" should read "1363A".

On page 37131, in the second column, in the fourth line, the period should be a comma, and in the fifth line, "irrespective" should start with a lowercase "i".

On page 37133, in the first column, in paragraph (a), in the third and fourth lines "O" should read "0" (the figure zero).

On page 37134, in the second column, under "List of Items Controlled by ECCN 1675A", in the seventh line, insert "following" after "the"; and in paragraph (b), in the first line, "of" should read "or".

On page 37135, in the first column, in paragraph (b)(2), in the fourth line, insert a period between "9" and "5".

BILLING CODE 1505-01

15 CFR Parts 379 and 399

[Docket No. 50838-5138]

Revisions to the Commodity Control List Based on COCOM Review; Electronics and Precision Instruments

Correction

In FR Doc. 85-21327 beginning on page 37136 in the issue of Wednesday, September 11, 1985, make the following corrections:

PART 399—[AMENDED]

On page 37136, in the second column, in the first line, "optional" should read "optical".

On page 37137, in the third column, the third line should read: "Notes: 1. Reserved".

On page 37138, in the third column, in (Advisory) Note 4, paragraph (c), in the last line, "commutates" should read "commutated".

On page 37142, in the first column, in paragraph (c), in the second line, "an" should read "and".

On page 37144, in the first column, in (Advisory) Note 4, in the third line, "or" should read "of"; and in the last line in the first column, "of" should read "or".

On page 37150, in the second column, in paragraph (b)(2), in the second line, insert "or" at the end of the line.

On page 37152, in the first column, in the third line "Electric" should read "Electronic"; and in paragraph (d), in the fourth line, "with" should read "within".

On page 37155, in the second column, in paragraph (e), in the first line, "by" should read "for".

On page 37156, in the first column, in the seventh line from the bottom, the last word should read "encapsulated".

On page 37157, in the second column, in Technical Note 3, in the sixth line, add a comma after "target", and in the seventh line, after "detection".

On page 37161, in the first column, in the second line from the bottom the expression should read "1x10 $^{-7}$"; in the second column in paragraph (4), in the second line, the expression should read "1x10 $^{-9}$"; and in the third column, in 1595A, in the second line, "microgral" should read "microgal".

BILLING CODE 1505-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 302

Reduction in Benefits Under the Railroad Unemployment Insurance Act

AGENCY: Railroad Retirement Board.

ACTION: Deferral of effective date of Part 302.

SUMMARY: The Railroad Retirement Board (Board) has determined to defer the effective date of Part 302 of 20 CFR Chapter II, which was scheduled to be effective October 1, 1985. Part 302 provides for the temporary reduction in benefit payments due qualified employees and for acceleration of employer contributions under the Railroad Unemployment Insurance Act. This action by the Board will defer implementation of the accelerated contribution schedule and the reduction in benefits until such later date as the Board may, in the future, determine.

DATE: Effective October 1, 1985.

ADDRESS: Office of Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Steven A. Bartholow, Deputy General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611; (312) 751-4935 (FTS 387-4935).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Solvency Act of 1983 (Pub. L. 98-76) amended section 10(d) of the Railroad Unemployment Insurance Act to prohibit the transfer of funds from the Railroad Retirement Account after September 30, 1985 for the purpose of paying benefits under the Railroad Unemployment Insurance Act. In view of this termination of the authority to borrow from the Railroad Retirement Account, the Board adopted a new Part 302 of its regulations to describe the procedures that it would follow in order to continue the payment of unemployment and sickness benefits after September 30, 1985. Part 302, which was published as an interim final rule in the **Federal Register** on September 10, 1985 (50 FR 36870), provides for accelerated contributions from employers beginning October 1, 1985, and for reducing benefits under the Railroad Unemployment Insurance Act beginning on that date. Based on more recent financial information and projections of income and outgo from the railroad unemployment insurance account, the Board has determined that implementation of these measures can be delayed and accordingly, the October 1, 1985 effective date of Part 302 has been deferred. The Board will review the condition of the account at least monthly and will publish notice in the **Federal Register** of the effective date of Part 302 when the Board determines that it must be implemented.

This action by the Board does not change the effective date of the amendments to Parts 322 and 340 that were published in the **Federal Register** on September 10, 1985.

The Board has provided notice of this action to affected parties.

Dated: September 26, 1985.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-23394 Filed 9-30-85; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by JR Specialty Supply Co., providing for manufacture of a 20-gram-per-pound tylosin premix, in addition to currently approved 5-, 10-, and 40-gram-per-pound tylosin premixes, to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: JR Specialty Supply Co., 310 Second Ave. SW., P.O. Box 506, Waseca, MN 56093, is the sponsor of a supplement to NADA 96-780 submitted on its behalf by Elanco Products Co. The supplement provides for manufacture of a new 20-gram-per-pound tylosin premix to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). Regulations on the use of the currently approved 5- and 10-gram-per-pound premixes are revised to include additional uses in swine and use in beef cattle and chickens. The firm had previously received approval for a 40-gram-per-pound tylosin premix used to make complete swine, beef cattle, and chicken feeds. The supplemental NADA is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.625 by revising paragraph (b)(16) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(16) To 049768: 5, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Dated: September 18, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-23332 Filed 9-30-85; 8:45 am]

BILLING CODE 4160-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 208

Debarment, Suspension and Ineligibility

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development is amending Part 208 to include all AID and AID-financed agreements (e.g., grants, cooperative agreements, and host country contracts) and subagreements. The revision is necessary because the present regulation is limited in scope to only AID-financed commodity and commodity-related transactions. The revision, together with the FAR procedures for debarment and suspension, provides a uniform system of debarment and suspension covering all AID and AID-financed agreements.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Jan W. Miller, Office of the General Counsel, Room 6943 N.S., Agency for International Development, Washington D.C. 20523. Telephone: (202) 632-8874.

SUPPLEMENTARY INFORMATION: On April 19, 1985, AID requested comments on a proposed revision to 22 CFR Part 208. (50 FR 15884-88). No public comments were received during the thirty-day comment period. However, in response to comments received from the Office of Federal Procurement Policy, the regulation has been limited to nonprocurement agreements. AID's procedures for suspension and debarment for Government procurement contracts are set forth in the AIDAR, 48 CFR Chapter 7.

List of Subjects in 22 CFR Part 208

Foreign aid, Grant programs—foreign relations, Grants administration.

Accordingly, 22 CFR Part 208 is revised to read as follows:

PART 208—DEBARMENT, SUSPENSION AND INELIGIBILITY

Subpart A—General

Subpart B—Debarment

Subpart C—Suspension

Authority: Section 621 of the Foreign Assistance Act of 1961, 22 U.S.C. 2381.

Subpart A—General

§ 208.1 Scope.

(a) This part:

(1) Prescribes policies and procedures for the Agency for International Development (AID) governing the debarment and suspension of organizations and individuals from participating in AID agreements, including grants, cooperative agreements, AID-financed host country contracts, AID-financed commodity transactions under 22 CFR Part 201, and reimbursement for overseas freight charges under 22 CFR Part 202;

(2) Sets forth the causes, procedures and requirements for determining the scope, duration and effect of AID debarment and suspension actions; and

(3) Procedures for suspension, debarment and ineligibility for Government procurement contracts are set forth in 48 CFR Chapter 7.

§ 208.2 Policy.

(a) AID shall not award agreements to, or finance or consent to agreements with, organizations and individuals that are suspended or debarred as indicated on the AID List.

(b) The serious nature of debarment and suspension requires that they be imposed only in the public interest, for the Government's protection and not for purposes of punishment. Debarment and suspension shall be imposed to protect the Government's interest, and only for the causes and in accordance with the procedures set forth in this part.

(c) Offices responsible for the award and administration of agreements are responsible for reporting to the Inspector General, AID, information about possible fraud, waste, abuse, or other wrongdoing which may constitute or contribute to a cause for debarment or suspension under this Part.

§ 208.3 Definitions.

For purposes of this Part—

(a) "Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) "Affiliates" means organizations or individuals are affiliates if, directly or indirectly, (1) either one controls or can control the other; or (2) a third controls or can control both.

(c) "Agency" means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

(d) "AID agreement" means a contract, grant, cooperative agreement, loan, loan guarantee, sales agreement, donation agreement or any other agreement to which AID is a party or which AID finances or approves, except for Government procurement contracts as defined in paragraph (1) of this section. It also means any subagreement under an AID agreement. It includes AID grants and cooperative agreements, AID-financed host country contracts, AID-financed commodity transactions under 22 CFR Part 201, reimbursement of freight charges under 22 CFR Part 202, and transactions under Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480).

(e) "AID List" means the AID Consolidated List of Debarred, Suspended or Ineligible Awardees maintained by AID in accordance with this Part.

(f) "Authorized representative" means an official who has been designated by and authorized to act on behalf of the Administrator of AID for the purposes of this part including, but not limited to, acting as a debarring or suspending official.

(g) "Awardee" means any individual or legal entity that submits offers for, is awarded or performs services under, or reasonably may be expected to be awarded or perform services under an AID agreement. It includes an employee of an awardee and any person who conducts business with AID as an agent or representative of an awardee. It does not include contractors.

(h) "Contractor" means any individual or legal entity that submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government procurement contract or conducts business with the Government as an agent or representative of another contractor.

(i) "Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, and includes a conviction entered upon a plea of nolo contendere.

(j) "Debarment" means action taken by a debarring official to exclude an organization or individual from receiving Government procurement contracts or AID agreements for a reasonable, specified period. An organization or individual so excluded is "debarred".

(k) "Debarring Official" means an agency head or an official authorized by an agency head to impose debarment. The AID debarring official is the Associate Assistant to the Administrator for Management (M/AAA/SER).

(l) "Government procurement contract" means (i) an agreement to which a Federal agency is a party for the acquisition of supplies or services (including construction) for the direct benefit or use of the Federal Government or (ii) a Government-approved or financed subcontract under a Government procurement contract.

(m) "Indictment" means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(n) "Ineligible" means excluded from Government contracting (and subcontracting, if appropriate) under statutory, Executive Order, or regulatory authority other than this regulation or subpart 9.4 of the Federal Acquisition Regulation. For example, contractors excluded under the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive Orders, the Walsh-Healey Public Contract Act, the Buy American Act, and the Environment Protection Acts and Executive Orders are ineligible.

(o) "Legal proceedings" mean any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term also includes appeals from such proceedings.

(p) "Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(q) "Suspending official" means an agency head or an official authorized by an agency head to impose suspension. The AID suspending official is the Associate Assistant to the Administrator for Management (M/AAA/SER).

(r) "Suspension" means action taken by a suspending official to exclude an organization or individual temporarily from receiving Government procurement contracts or AID agreements. An organization or individual so excluded is "suspended".

§ 208.4 AID consolidated list of debarred, suspended and ineligible awardees.

The agency shall compile and maintain a list of organizations and individuals who are currently debarred or suspended under this part. At a minimum, the AID List shall contain the following information:

(a) The awardee's name and address;

(b) The cause(s) for the action;

(c) The effect of the action;

(d) The effective date of the action and, in the case of debarments, the termination date for each listing; and

(e) The name and telephone number of AID's point of contact for the action.

§ 208.5 Effect of being listed on the AID List.

AID shall not—

(a) Solicit or consider any bid or proposal for an agreement from;

(b) Award, extend, or renew any agreement with;

(c) Finance, approve or consent to the award, extension, or renewal of any agreement with—an awardee on the AID List.

§ 208.6 Waiver.

(a) The Associate Assistant to the Administrator for Management may waive the prohibitions of § 208.5 by issuing a written determination setting forth the compelling reasons justifying the waiver.

(b) Some examples of circumstances that may constitute a compelling reason include: (1) The property or services to be acquired are available only from the listed awardee; (2) the urgency of the requirement dictates that AID deal with the awardee; (3) the awardee and AID have entered an agreement covering the same events which resulted in the listing and the agreement includes a decision by AID not to debar or suspend the awardee; and (4) for such other reasons related to U.S. foreign assistance activities which require continued business dealings with the listed awardee.

Subpart B—Debarment

§ 208.7 General.

(a) The debarring official may, in the public interest, debar an awardee for any of the causes contained in § 208.8, using the procedures in § 208.9. The existence of a cause for debarment under § 208.8, however, does not necessarily require that the awardee be debarred; the seriousness of the awardee's acts or omissions and any mitigating factors should be considered in making any debarment decision.

(b) Debarment of an awardee constitutes debarment of all divisions or other organizational elements of the awardee, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. Debarment extends to affiliates of the awardee, only if they are (1) specifically named and (2) given written notice of the proposed debarment and opportunity to respond (see § 208.9).

§ 208.8 Causes for debarment.

The debarring official may debar an awardee for:

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public agreement or subagreement;

(2) Violation of Federal or State antitrust statutes relating to the submission of bids or proposals; or

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the present responsibility of an awardee.

(b) Violation of the terms of an agreement or subagreement so serious as to justify debarment, such as—

(1) Willful failure to perform in accordance with the terms of one or more agreements or subagreements; or

(2) A history of failure to perform, or of unsatisfactory performance of, one or more agreements or subagreements.

(c) Any other cause of so serious or compelling a nature that its affects the present responsibility of an AID contractor or awardee. Such cause may include but is not limited to:

(1) Failure to furnish information in accordance with the terms of one or more agreements or subagreements;

(2) Violation of AID regulations in a substantial manner; or

(3) Offer or acceptance of a bribe or other illegal payment or credit or commission of a fraud in connection with any AID-financed transaction.

(d) On the basis of a debarment for any of the above causes by another agency.

§ 208.9 Procedures.

(a) *Notice of proposal to debar.* Debarment shall be initiated by sending the awardee or affiliates, a notice containing, as appropriate, the following information:

(1) That debarment is being proposed.

(2) The reasons for the proposed debarment in terms sufficient to put the awardee or affiliate on notice of the conduct or transaction(s) upon which it is based.

(3) The cause(s) relied upon under § 208.8 for the proposed debarment, and, if applicable, under FAR Subpart 9.4.

(4) That, within 30 days after the receipt of the notice, the awardee or affiliate may (i) submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts; and (ii) request in writing a hearing.

(5) The effects of the proposed debarment and the effects of a final debarment. If a notice of proposed debarment is issued to an awardee or affiliate who is not suspended, the notice shall state that, for purposes of AID agreements, the proposed debarment shall have the effect of a suspension.

(6) The awardee's or affiliate's name and address have been placed on the AID List.

(b) *Hearing.*—(1) *Appointment.* Upon receipt of a timely request for a hearing, the debarring official will appoint a hearing officer.

(2) *Purpose.* The purpose of the hearing is to provide the awardee or affiliate an opportunity to dispute material facts, present evidence of any mitigating factors, present arguments concerning the imposition, scope, duration or effects of a proposed debarment or debarment and to provide the debarring official with proposed findings of fact.

(3) *Evidence and argument.* The awardee or affiliate shall have the opportunity to appear with counsel, to submit documentary evidence, to examine and cross-examine witnesses and to present argument.

(4) *Transcript.* The hearing officer shall make a transcribed record of the hearing and make it available at cost to the awardee or affiliate. The requirement for a transcript may be waived by mutual agreement.

(5) *Report.* Within 30 days after the hearing record is closed, the hearing officer will transmit to the debarring official and the awardee or affiliate a written report setting forth proposed findings of fact as to disputed material facts. The awardee or affiliate shall have 30 days from receipt of the report to submit written exceptions to the debarring official.

(c) *Debarring official's decision.* (1) The debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the awardee or affiliate, the hearing report and any exceptions. The debarring official may set aside findings of fact only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(2) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause

for debarment must be established by a preponderance of the evidence.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the awardee or affiliate shall be sent a notice with the following information as appropriate;

(i) A reference to the notice of proposed debarment.

(ii) Any findings of fact and conclusion of law.

(iii) The reasons for the debarment.

(iv) The period of debarment, including effective dates.

(v) The type of agreements and subagreements covered by the debarment.

(vi) If the debarment is based on one or more causes in FAR Subpart 9.4, a statement that the debarment is effective throughout the Executive Branch as provided in FAR Subpart 9.4, and that the awardee's or affiliate's name will be added to the GSA List.

(vii) The awardee's or affiliate's name and address will be or have been placed on the AID List.

(2) If debarment is not imposed, the debarring official shall so notify the awardee or affiliate.

§ 208.10 Period of debarment.

(a) Debarment shall be for a period sufficient to protect the Government's interest. Generally, a debarment should not exceed 3 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of § 208.9 above shall be followed to extend the debarment.

(c) At any time, an awardee or affiliate may submit a written request to the debarring official for review of the period or extent of debarment because of new information or changed circumstances, such as——

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which debarment was imposed; or

(5) Other reasons such as restitution and other actions in mitigation.

§ 208.11 Scope of debarment (imputed conduct).

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an awardee may be imputed to the awardee when the conduct occurred in connection with the individual's performance of duties for or on behalf of the awardee, or with the awardee's knowledge, approval, or acquiescence. The awardee's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of an awardee may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the awardee who participated in, knew of, or had reason to know of, the awardee's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one awardee participating in a joint venture or similar arrangement or with the knowledge, approval, or acquiescence of the organizations or individuals. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart C—Suspension

§ 208.12 General.

(a) The suspending official may, in the public interest, suspend an awardee for any of the causes in § 208.13, using the procedures in § 208.14.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of an investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, consideration should be given to how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the awardee, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the awardee if they are (1) specifically named and (2) given written notice of the suspension and an opportunity to respond (see § 208.14).

§ 208.13 Causes for suspension.

The suspending official may suspend an organization or individual:

(a) Indicted for or suspected, upon adequate evidence, of the causes in paragraphs (a) and (c) of § 208.8.

(b) On the basis of a suspension or debarment by another agency.

(c) On the basis of the causes, upon adequate evidence, set forth in paragraphs (a), (b), and (c) of § 208.8.

§ 208.14 Procedures.

(a) *Notice of suspension.* When a decision to suspend has been made the awardee or any affiliates shall be sent a notice of suspension containing, as appropriate, the following information.

(1) That the decision to suspend has been made.

(2) The reasons for the suspension in terms sufficient to place the awardee or affiliate on notice of the causes upon which suspension is based, except the notice shall omit any information which would prejudice an ongoing criminal or civil investigation or a pending contemplated legal proceeding.

(3) The cause(s) relied upon under § 208.13 and, if applicable, under FAR Subpart 9.4 for imposing suspension.

(4) The effects of the suspension.

(5) That, within 30 days after receipt of the notice, the awardee or affiliate may submit, in person, in writing or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over material facts.

(6) That, within 30 days after receipt of the notice, the awardee or affiliate may request a hearing; unless (i) the action is based on an indictment or (ii) a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(7) The suspension is effective as of the date of the notice.

(8) The awardee's or affiliate's name and address have been placed on the AID List.

(9) If suspended for one or more of the causes in FAR Subpart 9.4, that the awardee's or affiliate's name will be added to the GSA List.

(b) *Hearing.* When the awardee or affiliate has been given an opportunity

to request a hearing under paragraph (a)(6) of this section and upon receipt of a timely request for a hearing, the provisions for department hearings in paragraph (b) of § 208.11 will be followed.

(c) *Suspending officials decision.* The suspending official shall make a decision based on all the information in the administrative record, including any submission made by the awardee or affiliate, the hearing report and any exceptions. The suspending official may set aside findings of fact only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(d) *Notice of suspending official's decision.* (1) If the suspending official decides to sustain the suspension, the awardee or affiliate shall be sent a notice with the following information, as appropriate:

(i) A reference to the notice of suspension.

(ii) Any findings of fact and conclusion of law.

(iii) The reasons for sustaining the suspension.

(iv) The type of agreements and subagreements covered by the suspension.

(v) If the suspension is based on one or more of the causes in FAR Subpart 9.4, a statement that the suspension is effective throughout the Executive Branch as provided in FAR Subpart 9.4.

(vi) Modifications, if any, of the terms of the suspension.

(vii) The awardee's or affiliate's name and address will be or have been placed on the AID List.

(2) If the suspension is terminated, the suspending official shall notify the awardee or affiliate of that decision.

§ 208.15 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the suspending official or as provided in this section.

(b) If legal proceedings are not initiated within 12 months after the date of suspension notice, the suspension shall be terminated unless the Department of Justice requests its extension, in which case it may be extended for an additional 6 months. If legal proceedings are initiated before the period of suspension expires, the suspension may continue until legal proceedings are conducted.

(c) The suspending official shall notify the Department of Justice of the proposed termination of the suspension at least 30 days before the 12 month period expires to give it an opportunity to request an extension.

(d) At any time, an awardee or affiliate may submit a written request to the suspending official for a review of the period or extent of suspension because of new information or changed circumstances such as those listed in paragraph (c) of § 208.10.

§ 208.16 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see § 208.11), except that the procedures of § 208.14 shall be used in imposing the suspension.

Dated: September 17, 1985.

R. T. Rollis,

Assistant to the Adminstrator for Management.

[FR Doc. 85-23266 Filed 9-30-85; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 51 and 602

[T.D. 8054]

Tax Treatment of Partnership Items for Windfall Tax Purposes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the treatment of partnership items for purposes of the windfall profit tax. The Tax Equity and Fiscal Responsibility Act of 1982 changed the applicable law. The regulations provide guidance to partnerships with oil production subject to windfall profit tax, their partners, and Internal Revenue Service personnel.

DATES: The regulations extending the rules for consolidated partnership proceedings to windfall profit tax (§ 51.6232 (a)-1) and setting out the definition of partnership items (§51.6232 (a)-2) are effective for taxable periods beginning after December 31, 1982.

The final regulations relating to elections with respect to the authority of the partnership to act on behalf of partners are effective for taxable periods beginning after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Nerman Dobynes Hubbard of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) 202-566-3289, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 1984, the **Federal Register** published proposed amendments to the Excise Tax Regulations under the Crude Oil Windfall Profit Tax Act of 1980 (26 CFR Part 51) under section 6232 of the Internal Revenue Code of 1954 (49 FR 40896). Section 6232 relates to the extension of the partnership audit rules under sections 6221 through 2631 to the windfall profit tax and to the authority of a partnership to act on behalf of its partners in the determination, assessment, and collection of windfall profit tax. The amendments were proposed to conform the regulations to the changes made to the Internal Revenue Code by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

Two written comments were received on the proposed regulations. No public hearing was held because the one request for a hearing was withdrawn. The most significant points raised by the comments are discussed in the remainder of the preamble. After consideration of all comments regarding the proposed amendments, those amendments are adopted as modified by this Treasury decision.

Partnerships Subject to Consolidated Proceedings for Windfall Profit Tax Purposes

Sections 6221 through 6231 apply generally to all partnerships required to file partnership returns for income tax purposes except certain small partnerships described in section 6231(a)(1)(B). Those sections provide for consolidated partnership-level proceedings with respect to items treated under regulations as "partnership items" for income tax purposes.

Under section 6232, these provisions for consolidated partnership level proceedings also apply, with certain modifications, with respect to items treated under regulations as "partnership items" for windfall profit tax purposes. If the rules for consolidated partnership-level proceedings apply with respect to a partnership for income tax purposes, they will also apply with respect to the partnership for windfall profit tax purposes whether or not the partnership choose to act on behalf of the partners under section 6232(c).

These final regulations modify proposed § 51.6232 (a)-1(2) to alleviate a

potential administrative burden on the Service. The Austin Service Center, which will be processing windfall profit tax data received from partnerships, will not receive income tax data from all partnerships. Accordingly, final § 51.6232 (a)–1(2) provides that if the Service determines that it is impractical to use information furnished to the Service for income tax purposes for windfall profit tax purposes, the tax matters partner must furnish to the Service any information requested by it for purposes of the windfall profit tax proceedings.

Response to Comments

It was suggested that the term "partnership item" be defined for windfall profit tax purposes to include the category of crude oil. In reponse to this comment, the Service has included in final § 51.6232 (a)–2(b)(1) a parenthetical to make clear that the category of crude oil is a partnership item to the extent that it is determinable at the partnership level.

Another suggestion was that the regulations make clear that any interest allowed on an overpayment of windfall profit tax to be refunded to an electing partnership under section 6232(c) be paid to the partnership. The final regulations adopt this suggestion and provide that the partnership is entitled to any interest due with respect to any overpayment of tax. The regulations also provide that the partnership must pay any interest due with respect to any underpayment of such tax.

There was also a request for clarification as to the partnership return to be referred to for purposes of section 6611(h)(1). Section 6611(h)(1) provides that no interest will be allowed on an overpayment of tax imposed by section 4986 if the overpayment is refunded within 45 days after the later of the due date (determined without regard to any extension of time) for the return for the taxable period with respect to which the overpayment was made or the date the return was actually filed. The regulations make clear that the applicable partnership return for purposes of section 6611(h)(1) is the partnership's "first" Form 6248 which is required to be filed by the partnership with the Service for the removal year to which the return relates. The last day for filing the "first" Form 6248 (determined without regard to extensions) is May 31 of the first year following the close of the removal year in which the crude oil is removed.

Both comments on the proposed regulations pointed to the need to clarify the term "adjustment" as used in § 51.6232(c)–1 by distinguishing between "liability" adjustments and "withholding" adjustments.

Under final § 51.6232(c)–1(b)(3), the partnership is to furnish to the Service a Form 6248 which shows the amount of windfall profit tax allocable to the partner that was actually withheld and paid during the removal year and any adjustment made, that is, any tax paid or any refund claimed, by the partnership with respect to that partner to eliminate any underpayment or overpayment that would otherwise appear on the Form 6248. Once this adjustment is made, the Form 6248 will reflect the windfall profit tax liability of the partner as computed by the partnership. This is a "liability" adjustment.

Generally, the purchaser of crude oil is required to withhold from its payments made to the producer the amount of windfall profit tax imposed on the producer. If withholding errors are discovered by the purchaser during the removal year, the purchaser must make adjustments in the amount to be withheld from subsequent payments to the same person. However, no adjustments may be made by the purchaser after the annual return (Form 6248) is furnished to the producer. These adjustments are "withholding" adjustments.

A partnership that elects to represent its partners ordinarily may make only "liability" adjustments. The partnership may make "withholding" adjustments only if the partnership is a qualified disburser. The final regulations make this clear by cross references to the provision describing "liability" adjustments. Because one commentator construed the references in the proposed regulations to a "claim for credit or refund" filed by the partnership as indicating that a partnership was permitted to seek "withholding" adjustments (other than those that it could make as a qualified disburser), the final regulations refer only to a "claim for refund" filed by the partnership.

Finally, one commentator questioned the limitation placed on partners under proposed § 51.6232(c)–1(b)(5). Under this provision, a partner for whom the partnership is acting is not entitled to participate in any administrative or judicial proceedings or to receive notices or other information as to those proceedings; thus, the tax matters partner is not required to keep the partners informed of the proceedings. The commentator noted that section 6232(c)(3) provides that none of the rights granted to partners under section 6221 through 6231 are lost by virtue of the partnership's authority to act on behalf of all partners. The Service believes that the rights of the partner are sufficiently protected by the availability of an election not to be represented by the partnership. Any partner who wishes to participate personally in partnership-level proceedings may make this election and so preserve the partner's right to notices, etc. If partners who do not choose to make this election were still entitled to notices, however, the Service and the partnership would labor under a paperwork burden that section 6232(c)(1) was intended to eliminate.

Regulatory Flexibility Act and Executive Order 12291

The Secretary of the Treasury has certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation attempts to limit the paperwork burden to the minimum necessary to ensure that partners are aware of their rights and that the Service is able to administer the law efficiently. The paperwork burden will be substantial only for partnerships that have a very large number of partners. Accordingly, these proposed regulations are not subject to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6).

The Commissioner of Internal Revenue has determined that this regulation is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Nerman Dobynes Hubbard 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 Part 51

Excise taxes, Petroleum, Crude Oil Windfall Profit Tax Act of 1980.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Excise Tax Regulations under the Crude Oil Windfall Profit Tax Act of 1980 (26 CFR Part 51) and the OMB Control Number under the Paperwork Reduction Act (26 CFR Part 602) are amended as follows:

PART 51—[AMENDED]

Paragraph 1. The authority for Part 51 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sections 51.6232(a)–1, 51.6232(a)–2, and 51.6232(c)–1 through 51.6232(c)–5 also issued under 26 U.S.C. 6232.

Par. 2. In Part 51, new §§ 51.6232(a)–1, 51.6232(a)–2, and 51.6232(c)–1 through 51.6232(c)–5 are added in the appropriate place to read as follows:

§ 51.6232(a)–1 Partnership items for windfall profit tax purposes determined at the partnership level.

(a) *Sections 6221 through 6231 of the Code made applicable to windfall profit tax*—(1) *In general.* Except as otherwise provided in §§ 51.6232(c)–1 through 51.6232(c)–5 or this section, the rules and procedures for determining the tax treatment of partnership items for income tax purposes as set forth in sections 6221 through 6231 of the Code and the regulations under those sections shall apply in determining the tax treatment of partnership items (as defined in § 51.6232(a)–2) for windfall profit tax purposes. For example, the partner who is the tax matters partner for income tax purposes shall also be the tax matters partner for windfall profit tax purposes.

(2) *Information furnished for income tax purposes shall be used for windfall profit tax purposes.* Information furnished to the Service for income tax purposes by the tax matters partner or any other person under sections 6221 through 6231 (for example, information furnished to identify a previously unidentified partner or information furnished to determine whether the partner is entitled to notice) shall be used to the extent practical for windfall profit tax purposes. If the Service determines that it is impractical to use the information furnished for income tax purposes, however, the tax matters partner shall furnish to the Service any information requested by the Service for purposes of the windfall profit tax proceedings.

(3) *Periods of limitation.* The period of limitation for filing a request for an administrative adjustment of, or for assessing any tax attributable to, any partnership item for purposes of the windfall profit tax shall be determined under section 6227 or 6229, except that any reference to the partnership return shall mean the "first" Form 6248 which is required to be filed by the partnership with the Service for the removal year to which the return relates and the reference to "subtitle A" in section 6229 shall mean "Chapter 45 of subtitle D." The last day for filing the "first" Form 6248 (determined without regard to extensions) shall be May 31 of the first year following the close of the removal year in which the crude oil was removed. See § 51.6232(c)–1(b) (3) and (7) for extension of time to June 30 for taking certain actions.

(4) *Request for administrative adjustment*—(i) *In general.* Any claim for credit or refund or any return with respect to any overpayment or underpayment of windfall profit tax on partnership production shall be treated as a request for administrative adjustment within the meaning of section 6227 to the extent that the claim or return treats any partnership item in a manner that is inconsistent with the treatment of that item on the "first" Form 6248 filed by the partnership. Thus, for example, section 6228 applies in determining when a partner may file suit if the request for adjustment is not allowed.

(ii) *Certain rules as to form disregarded.* Requirements that a request for administrative adjustment for income tax purposes be filed on a particular form or in a particular manner do not apply in the case of a request for administrative adjustment for windfall profit tax purposes. The partnership or the partner may file a claim for credit or refund, or a return, of windfall profit tax with respect to partnership production in the same manner as a claim or return with respect to non-partnership production.

(b) *Other windfall profit tax regulations remain applicable.* Except to the extent otherwise provided in §§ 51.6232(c)–1 and 51.6232(c)–5, the partnership and each partner shall comply with the requirements set forth in other provisions of this part or in Part 150 of this chapter for furnishing information, filing returns, paying additional tax, or claiming a credit or refund. For example, a partnership that does not make an election to represent partners under section 6232(c) shall furnish to partners and file with the Service the Form 6248 in the time and manner prescribed in § 51.4997–2.

(c) *Income tax deduction for windfall profit tax paid.* The partner shall take the partner's share of the windfall profit tax paid or withheld with respect to partnership oil removed during the removal year as reported by the partnership into account in determining the partner's income tax deduction for windfall profit tax paid during that year. In making that determination the partner shall also take into account any statement received from the partnership regarding any additional windfall profit tax paid, or any credit or refund of windfall profit tax received, during that removal year by the partnership on behalf of that partner with respect to any earlier removal year. If the partnership, as a result of receiving additional information, furnishes the partner a revised statement with respect to the amounts described above, the partner shall amend the partner's income tax return (if already filed) to reflect the revisions.

(d) *Effective date.* The rules set forth in this section are applicable to taxable periods beginning after December 31, 1982.

§ 51.6232(a)–2 Definition of partnership item.

(a) *In general.* For purposes of section 6232 and the regulations thereunder, the term "partnership item" means any item relating to the determination of the tax imposed by chapter 45 to the extent that such item is more appropriately determined at the partnership level than at the partner level.

(b) *Partnership items.* The following items with respect to oil removed from any property in which the partnership holds an interest are more appropriately determined at the partnership level than at the partner level and, therefore, are partnership items:

(1) The tier or tiers of the crude oil (including the category of the crude oil to the extent determinable at the partnership level);

(2) The quantity of crude oil in each tier;

(3) The adjusted base price and removal price;

(4) The serverance tax adjustment;

(5) The determination of whether the oil qualifies as exempt Alaskan oil;

(6) The determination of when removal from the premises occurs and what constitutes the property;

(7) The percentage interest of each partner in the oil removed;

(8) The amount of (and each partner's share of) the windfall profit tax withheld from, or paid by, the partnership for partnership oil removed during the taxable period;

(9) The windfall profit tax liability of each partner for that partner's share of the partnership oil removed during the taxable period (computed without regard to the net income limitation and on the assumption that information furnished to the partnership by the partner with respect to the partner's status as an independent producer or exempt status is correct); and

(10) The net income limitation to the extent that the limitation can be computed at the partnership level.

(c) *Effective date.* The provisions of this section are applicable to taxable periods beginning after December 31, 1982.

§ 51.6232(c)–1 Partnership authorized to act on behalf of partners for a removal year beginning after 1984.

(a) *Overview of partnership authority and responsibilities*—(1) *In general.* Except to the extent otherwise provided in paragraph (a) (2) and (3) of this section, the partnership, acting through its tax matters partner, shall be authorized to act on behalf of the partners of that partnership in the determination, assessment, and collection of the windfall profit tax for a removal year beginning after 1984 if the partnership elects to do so in accordance with the requirements of § 51.6232 (c)–2 (b). If the partnership elects to act on behalf of the partners in this regard, the partnership's responsibilities to file with the Service and furnish to the partner any information, statement, or return are set forth in this section. If the partnership does not elect to act on behalf of the partner, it shall file with the Service and furnish to the partners any information, statement, or return required by other provisions of this part or by Part 150 of this chapter in the time and manner prescribed by those regulations.

(2) *Partnership authority negated by "5 percent election."* The authority of the partnership to act on behalf of the partners with respect to the windfall profit tax is negated if any partner or any group of partners who in the aggregate own at least a 5-percent interest in the income of the partnership make the election provided in § 51.6232(c)–3. Paragraph (d) of this section sets out the responsibilities of the partnership in the event that a 5-percent election is made.

(3) *Partnership authority negated by "individual election."* The authority of the partnership to act on behalf of a particular partner with respect to the windfall profit tax is negated if that partner makes the election provided in § 51.6232(c)–4. Paragraph (c) of this section sets out the responsibilities of the partnership with respect to a partner who makes the "individual election."

(4) *Rules applicable to partner not represented by partnership.* For rules applicable to a partner when partnership authority to act on behalf of the partner is negated by an election under § 51.6232(c)–3 or § 51.6232(c)–4, see § 51.6232(c)–5.

(5) *Cross reference.* For rules applicable to removal years 1983 and 1984; see § 150.6232(c)–1.

(b) *Partnership responsibility with respect to partner who does not elect to negate the authority of the partnership to act on its behalf*—(1) *In general.* If the partnership elects to be treated as authorized to act on behalf of the partners and no 5-percent election is made in accordance with § 51.6232(c)–3, this paragraph (b) shall apply with respect to any partner who has not made an individual election under § 51.6232(c)–4 to negate the authority of the partnership.

(2) *Information to be furnished to partner*—(i) *Information in lieu of 6248.* The partnership will not furnish the partner a Form 6248. Instead, the partnership shall furnish to the partner a statement indicating the partner's allocable share of the windfall profit tax paid or withheld during the removal year; see § 51.6232 (a)–1 (c). This statement shall be furnished to the partner by the first March 31 following the removal year to which the statement relates.

(ii) *Later adjustments.* If the partnership—

(A) Pays an additional windfall profit tax, or

(B) Receives any refund of windfall profit tax paid or withheld, with respect to a partner's share of partnership production for a removal year for which the partnership is authorized to act on behalf of the partner, the partnership shall notify the partner of the adjustment so that the partner may take the amount of the adjustment into account appropriately for income tax purposes. The partnership shall provide this notice at the same time as the partnership furnishes information to the partner with respect to windfall profit tax withheld or paid during the removal year in which the adjustment occurs.

(3) *Partnership required to file Form 6246 with Service.* The partnership shall furnish a Form 6248 with respect to the partner to the Austin Service Center (at the address specified in paragraph (e) of this section) by the first June 30 following the year to which the form relates. This Form 6248 shall show the amount of windfall profit tax allocable to the partner that was actually withheld or paid during the removal year and any adjustment made by the partnership with respect to that partner under paragraph (b)(4)(i) of this section to eliminate any overpayment or underpayment. The partnership shall furnish a separate Form 6248 for each partner, the partnership is not permitted to submit an aggregate Form 6248 for all partners.

(4) *Partnership shall pay tax or file claim for refund*—(i) *In general.* The partnership shall compute the windfall profit tax liability of the partner with respect to partnership production (taking into account the net income limitation and the partner's independent producer amounts and exemptions) for the removal year. The partnership shall file with the Austin Service Center (at the address set out in paragraph (e) of this section) a Form 720, Quarterly Federal Excise Tax Return, with Form 6047, Windfall Profit Tax, attached and pay any additional tax owed with respect to the partner. The Form 720 and any additional tax owed are due by May 31 of the first year following the close of the removal year in which the crude oil was removed. The partnership may, however, file the Form 720 and pay the additional tax owed on or before the date on which the partnership furnishes to the Service the Form 6248 with respect to a partner under paragraph (b)(3) of this section. The partnership may also, at any time within the applicable limitations period, file a Form 843, Claim, and claim any refund due with respect to the partner. An election under section 6232(c) does not authorize the partnership to seek any adjustment in withholding to offset any overpayment of windfall profit tax during the removal year.

(ii) *Partnership may file aggregate return or claim.* The partnership may file an aggregate return or claim for refund on behalf of all partners for whom the partnership is authorized to act. The partnership shall attach to the aggregate return or claim a statement showing the amount of the underpayment or overpayment allocable to each partner. If partners hold identical "unit" interests and the underpayment or overpayment with respect to each "unit" is the same, the partnership may state the underpayment or overpayment with respect to a "unit," identify each person holding a "unit by name, address, and taxpayer identification number" and specify the number of "units" held by each person.

(iii) *Partnership to assume that partner certifications are correct.* For purposes of computing the windfall profit tax liability of a partner, the partnership shall treat as correct

certifications furnished by the partner as to the partner's producer status. Accordingly, if the partner certifies that the partner is an independent producer or a qualified royalty owner, the partnership shall assume that the partner is in fact an independent producer or a qualified royalty owner in computing the partner's liability.

(iv) *Partner barred from filing claim based on partnership items.* The partnership has an exclusive right to file a claim for refund of an overpayment of windfall profit tax if the overpayment arises from partnership items. The partner may file a claim for refund only if the overpayment arises from nonpartnership items; for example, the partner may file a claim for refund on the grounds that the partner is an independent producer but failed to certify the fact to the partnership.

(v) *Interest.* The partnership that pays any additional tax owed with respect to the partner under paragraph (b)(4)(i) of this section shall also pay any interest owed with respect to that payment. The partnership that files a claim for a refund due with respect to the partner under paragraph (b)(4)(i) of this section shall be entitled to receive any interest due with respect to that refund. For purposes of section 6611(h), the return shall be the "first" Form 6248 which is required to be filed by the partnership with the Service for the removal year to which the return relates. The last day for filing the "first" Form 6248 (determined without regard to extensions) shall be May 31 of the first year following the close of the removal year in which the crude oil was removed.

(5) *Partnership shall represent partner in all proceedings.* The tax matters partner shall represent the partner in all administrative and judicial proceedings. Therefore, the partner shall not be entitled to participate in these proceedings or to receive the notices described in section 6223(a). The tax matters partner shall not be required to keep the partner informed of administrative or judicial proceedings. However, the partnership shall furnish to the partner upon request any and all windfall profit tax information necessary for the verification of the tax computed by the partnership or the determination of the partner's entitlement to independent producer lower rates or royalty owner exemptions.

(6) *Settlement authority.* Any settlement entered into by the tax matters partner is binding on the partner. The partner is not permitted to enter into separate settlement with the Service; accordingly, the partner is not permitted to request consistent settlement terms under section 6224(c).

(7) *Extension of time for certain actions.* The provisions of paragraphs (b)(3) and (b)(4) of this section that permit a return to be filed or a payment to be made later than the date otherwise prescribed for the filing of that return or the making of that payment under the Code or the applicable regulations operate as automatic extensions of the period otherwise prescribed.

(c) *Partnership responsibilities with respect to partner who has made an individual election*—(1) *In general.* If the partnership makes the election described in § 51.6232 (c)–2 to act on behalf of the partners and no 5-percent election is made, this paragraph (c) shall apply with respect to any partner who makes the individual election under § 51.6232 (c)–4 to negate the authority of the partnership.

(2) *Partnership shall furnish Form 6248.* The partnership shall furnish a Form 6248 with respect to the partner to the Austin Service Center (at the address specified in paragraph (e) of this section) and to that partner within the time period prescribed in § 51.4997–2. Since the partnership is not authorized to make any adjustment under paragraph (b)(4)(i) of this section to eliminate an overpayment or underpayment with respect to the partner, the Form 6248 will not show such adjustment made by the partnership.

(3) *Partnership may not file return or claim on behalf of partner.* The partnership may not file any return (Form 720) or any claim for credit or refund (Form 843) on behalf of the partner.

(4) *Partnership does not represent partner in proceedings.* Unless otherwise agreed upon between the partner and the partnership, the partnership shall not represent the partner in administrative or judicial proceedings to determine the proper treatment of partnership items with respect to the windfall profit tax.

(d) *Partnership responsibilities in event 5-percent election is made.* If the partnership elects to act on behalf of the partners in accordance with § 51.6232 (c)–2 but a 5 percent election is made to negate that authority, the partnership shall furnish a Form 6248 with respect to each partner in the partnership to the Service and to the partner by the time prescribed in § 51.4997–2. The Forms 6248 furnished to the Service shall be filed with the service center designated on that form. The partnership is not permitted to make any adjustment under paragraph (b)(4)(i) of this section with respect to the partners under these circumstances.

(e) *Address of Austin Service Center.* The address of the Austin Service Center to be used for purposes of this section and §§ 51.6232(c)–2 through 51.6232(c)–5 is: Internal Revenue Service Center, WPT Staff, P.O. Box 934, Austin, Texas 78767, Stop 4002.

§ 51.6232(c)–2 Election to act on behalf of partners for a removal year after 1984.

(a) *In general.* The partnership may elect to be treated as authorized to act for its partners for a removal year after 1984 by furnishing to the Service the notice described in paragraph (b) of this section. This election is an annual election. The partnership must furnish a separate notice for each removal year for which the partnership wishes to make this election. For rules with respect to removal years 1983 and 1984, see § 150.6232(c)–2.

(b) *Notice to the Service*—(1) *Content of notice.* The partnership shall furnish to the Internal Revenue Service a notice that identifies the partnership by name, address, and taxpayer identification number and is signed by the tax matters partner. The notice shall state that the partnership intends to:

(i) Act on behalf of all partners in any judicial or administrative proceeding with respect to partnership items for windfall profit tax purposes for a removal year,

(ii) Pay on behalf of the partners any additional windfall profit tax determined to be due to reflect the proper treatment of partnership items for that removal year,

(iii) Receive on behalf of the partners any refund of, any overpayment of windfall profit tax attributable to partnership items for that removal year; and

(iv) Reimburse the Service upon request for any duplicate refund made to a partner.

(2) *Time and place for filing.* The notice shall be filed with the Austin Service Center (at the address specified in § 51.6232 (c)–1 (e)) on or before September 30 of the removal year to which the election applies (on or before October 31, 1985, for removal year 1985).

(c) *Notice to the partners*—(1) *In general.* A partnership that makes an election by filing a notice under paragraph (b) of this section shall furnish to each of its partners by September 30 of the removal year to which the notice relates (on or before October 31, 1985, for removal year 1985). a notice that includes the information contained in the notice under paragraph (b) of this section.

(2) *Further information required.* The notice sent to the partners shall also—

(i) Explain the right of any partner or any group of partners holding a 5-percent or greater interest in the income of the partnership to negate the authority of the partnership to act on behalf of all partners by filing a notice in accordance with § 51.6232(c)–3; and

(ii) Explain the right of each partner individually to elect not to have the partnership act on behalf of that partner by filing a notice in accordance with § 51.6232 (c)–4.

§ 51.6232(c)–3 "5 percent" election for removal years after 1984.

(a) *In general.* Any partner or group of partners owning in the aggregate at least 5 percent of the income interest of the partnership may elect to negate the authority of the partnership to act on behalf of the partners for a removal year after 1984 by filing a written notice to that effect. For rules with respect to removal years 1983 and 1984, see § 150.6232(c)–3

(b) *Procedure for making election*—(1) *Time and place for filing.* The notice described in paragraph (a) of this section shall be filed with the Austin Service Center (at the address specified in § 51.6232 (c)–1 (e)) on or before December 31 of the removal year to which the election applies.

(2) *Content of notice.* The notice shall—

(i) Identify the partnership by name, address, and identification number;

(ii) Identify the partners forming the 5-percent group by name, address, identification number, and percentage interest in the partnership;

(iii) Be signed by all members of the group making the election; and

(iv) Be clearly identified as an election to negate the authority of the partnership to act for all partners.

Any notice not clearly identified as a notice of election under this section shall be treated as an individual election under § 51.6232 (c)–4. Thus, for example, a notice by a single partner owning a 5-percent interest that is not clearly identified as an election to negate the authority of the partnership to act for all partners shall be treated as an individual election under § 51.6232(c)–4.

(c) *Copy for partnership.* A copy of the notice shall be furnished to the partnership within the period prescribed for filing the notice.

§ 51.6232 (c)–4 Individual election for removal years after 1984.

(a) *In general.* Any partner desiring that the partnership not be authorized to act on its behalf for a removal year after 1984 shall file a notice in accordance with the rules set forth in this section. For rules with respect to removal years 1983 and 1984, see § 150.6232 (c)–4.

(b) *Procedure for making election—(1) Time and place for filing.* The notice described in paragraph (a) of this section shall be filed with the Austin Service Center (at the address specified in § 150.6232 (c)–1(e)) on or before December 31 of the removal year to which the election applies.

(2) *Content of notice.* The notice shall clearly identify the partner and the partnership by name, address, and identification number and shall state that it constitutes an election to deny the partnership the right to represent the partner in proceedings related to windfall profit tax on partnership production during the removal year. The notice shall be signed by the partner.

(3) *Copy for partnership.* A copy of the notice shall be furnished to the partnership within the period prescribed for filing the notice.

§ 51.6232 (c)–5 Partner responsibility when partnership authority is negated for removal year after 1984.

(a) *In general.* If the partnership makes an election under § 51.6232 (c)–2 to act on behalf of the partners for a removal year after 1984, this section shall apply with respect to—

(1) All partners if an election under § 51.6232 (c)–3 is made, and

(2) Any partner who makes an election under § 51.6232 (c)–4.

For rules with respect to removal years 1983 and 1984, see § 150.6232 (c)–5.

(b) *Partner shall pay additional tax or claim credit or refund.* The partner shall aggregate the Form 6248 information received from the partnership with Form 6248 information received from other sources to determine whether a net overpayment or underpayment of windfall profit tax exists for the partner's interests in oil properties. If a net underpayment exists the partner shall file Form 720 with the service center designated on that form and pay any tax due by the time prescribed in § 51.6076–1. If a net overpayment exists, the partner may file a Form 843 or any other appropriate form to claim a credit or refund in accordance with the applicable instructions.

(c) *Partner is in same position as under rules for income tax proceedings.* The partner retains any right with respect to the determination of the tax treatment of partnership items for windfall profit tax purposes that the partner would possess under sections 6221 through 6231 and the regulations under those sections. For example, the partner is entitled to receive notice of the proceedings from the tax matters partner or the Service if that partner is entitled to receive notice under section 6223 of the Code, and the partner is entitled to participate in any administrative or judicial proceeding. Similarly, a settlement agreement entered into between the Service and the tax matters partner is binding on that partner if a settlement entered into under section 6224(c) of the Code would be binding on the partner.

PART 602—[AMENDED]

Par. 3. The authority citation for Part 602 continues to read:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101 (c) is amended by inserting in the appropriate place in the table "51.6232 . . . 1545–0224."

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: September 17, 1985.

Ronald A. Pearlman,

Assistant Secretary of Treasury.

[FR Doc. 85–23458 Filed 9–27–85; 12:57 p.m.]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 191

[AH–FRL 2870–3]

Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes

Correction

In FR Doc. 85–20331, beginning on page 38066 in the issue of Thursday, September 19, 1985, make the following correction:

On page 38087, second column, § 191.18, second line, the date should read "November 18, 1985".

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 420

Medicare and Medicaid Programs; Fraud and Abuse

AGENCY: Office of the Secretary, HHS.

ACTION: Correction notice to final rule.

SUMMARY: This document corrects 42 CFR 420.101 by restoring content to that regulation provision that was unintentionally omitted when the final rule was published.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 472-5270.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-21877, published on September 13, 1985, beginning on page 37372, in the revision to § 420.101, *Bases for exclusions for fraud or abuse; exceptions.*, paragraph (c)—Exceptions—was inadvertently omitted in publication. Accordingly, we are correcting this printing error and including paragraph (c) in its entirety in 42 CFR 420.101.

§ 420.101 [Corrected]

On page 37372, in the third column, amendatory language in item 4 is corrected to read as follows"

"4. In Subpart B, § 420.101 is amended by revising paragraphs (a) and (b) to read as follows:".

Dated: September 25, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR. Doc. 85-23383 Filed 9-30-85; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 1, 2, 5, 6, 8, 9, 10, 11, 12, 59, 205, 300, 301, 303, 304, 311, 350, and 351

Technical Amendments and Modifications

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This document contains amendments to assignments, changes address, updates references and organization changes, and makes alternations in the FEMA regulations appearing in Title 44.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Office of General Counsel, (202) 646-4096.

List of Subjects in 44 CFR Part 2

Organization and functions (Government agencies).

Accordingly, Chapter 1 of Title 44 is amended as follows:

PART 1—RULEMAKING, POLICY AND PROCEDURES

1. The authority citation for Part I continues to read as follows:

Authority: 5 U.S.C. 551, 552, 553; 5 U.S.C. 601 et seq., E.O. 12291; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

§ 1.4 [Amended]

2. Paragraph (f) of § 1.4 is amended by removing the word "rule" where it appears the first time and adding "rulemaking document" in place thereof.

3. Paragraph (g) of § 1.4 is amended by removing the word "rule itself" and adding "rulemaking document" in place thereof.

Part 2—ORGANIZATION, FUNCTIONS AND DELEGATIONS OF AUTHORITY

1. The Table of Contents for Part 2 is revised to read as follows:

Subpart A—Organization and Functions

General

Sec.
2.1 Purpose.
2.2 Organization of FEMA.

FEMA Offices

2.10 Office of the Director.
2.11 Office of the Deputy Director.
2.12 Regional Offices.
2.13 State and Local Programs and Support Directorate (SLPS).
2.14 National Preparedness Programs Directorate (NPP).
2.15 (Reserved)
2.16 Training and Fire Programs Directorate/National Emergency Training Center (TFP).
2.17 Federal Insurance Administration (FIA).
2.18 Emergency Operations Directorate (OP).
2.19 Office of the Inspector General (IG).
2.20 Office of the General Counsel (GC).
2.21 Office of Program Analysis and Evaluation (PAE).
2.22 Office of Executive Administration.
2.23 Office of the Comptroller.
2.24 Office of Regional Operations.

FEMA Locations

2.30 FEMA Headquarters.
2.31 FEMA Regions.
2.32 National Emergency Training Center.

Subpart B—Delegations

General

2.50 Purpose.
2.51 Exercise of authority.
2.52 General limitations and reservations.
2.53 Delegations not included.
2.54 Redelegation of authority.
2.55 General delegations.
2.56 Designation of subordinates to act.

Delegations to Specific Officers

2.60 Deputy Director.
2.61 Associate Director, State and Local Programs and Support (SLPS).
2.62 (Reserved)
2.63 Associate Director, National Preparedness Programs (NPP).
2.64 Federal Insurance Administrator (FIA).
2.65 Associate Director, Emergency Operations (OP).
2.66 Associate Director, Training and Fire Programs (TFP).
2.67 Director, Acquisition Management.
2.68 Comptroller.
2.69 General Counsel (GC).
2.70 Inspector General (IG).
2.71 Regional Directors.
2.72 Director of Administrative Support.
2.73 Director of Personnel.

2. The authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 552; Reorg. Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

3. Section 2.2 is revised as follows:

§ 2.2 Organization of FEMA.

(a) The Director is the Chief Executive Official of the Federal Emergency Management Agency. All authorities of the Agency, whether statutory or by Executive order or assignment, are vested by law directly and solely in the Director.

(b) The Deputy Director is the Chief Operations Official of the Federal Emergency Management Agency. The Deputy Director is responsible for the planning, coordination, and execution of all agency activities, functions, programs, and authorities delegated in Subpart B to Agency Regional Directors, Administrations, Associate Directors, and Office Directors.

4. Section 2.11 is revised by adding the following text:

§ 2.11 Office of the Deputy Director.

The Office of the Deputy Director consists of the immediate office of the Deputy Director.

5. Section 2.12 is amended by removing the section heading "Office of the Executive Deputy Director" and adding the following section heading and text:

§ 2.12 Regional Offices.

The ten FEMA regional offices are headed by Regional Directors who are the primary source through which the Agency's policies and programs are determined and carried out at the State and local level. The Regional Directors are FEMA's principal representatives in contacts and relationships with Federal regional, State and local agencies, industry and other public and private groups. They are responsible for accomplishing, within their regions, the national program objectives established for the Agency by the Director and Deputy Director.

§ 2.14 [Amended]

6. Paragraph (b) of § 2.14 is amended by adding at the end thereof the following:

(b) * * *

Reviews, monitors and recommends research and development efforts and conducts a small inter-disciplinary

program in areas not covered by other FEMA offices.

7. Paragraph (c) of section 2.14 is amended by removing "Office of Mobilization Preparedness" and adding "Office of Federal Preparedness" in place thereof and by removing "including threat vulnerability assessments", by removing "and the intelligence community" and by adding "and the" after "Council".

§ 2.17 [Amended]

8. Paragraphs (d) and (e) of § 2.14 are removed.

9. The first sentence of the introductory paragraph to § 2.17 is amended by revising it to read as follows:

"FIA administers two Federal Insurance programs: The National Flood Insurance program which insures property owners against flood loss, and the Federal Crime Insurance Program."

10. Paragraph (a) of § 2.17 is amended by removing "crime and riot" and adding "and crime."

11. Section 2.21 is amended by revising it to read as follows:

§ 2.21 Office of Program Analysis and Evaluation (PAE).

This office provides information and analyses to the Director and Deputy Director and other key officials in support of their decision-making and management activities.

12. Section 2.22(a) is revised to read as follows:

§ 2.22 Office of Executive Administration.

(a) The Office of Executive Administration consists of the immediate office of the Executive Administrator who provides executive services to the Director and the Deputy Director. The Executive Administrator coordinates activities of the following staff offices:

* * * * *

13. Section 2.24 is amended by revising it to read as follows:

§ 2.24 Office of Regional Operations.

This office provides liaison between the Director, the Deputy Director, and Regional Directors.

13a. Sections 2.25 and 2.26 are removed.

§ 2.25 [Removed]

§ 2.26 [Removed]

14. Section 2.31 is amended by revising it to read as follows:

§ 2.31 FEMA Regions.

Region I, Room 442, J.W. McCormack Post Office & Court House, Boston, MA 02109.

Region II, 26 Federal Plaza, New York, NY 10278.

Region III, Liberty Square Bldg. (Second Floor), 105 South Seventh Street, Philadelphia, PA 19106.

Region IV, 1371 Peachtree Street, NE., 7th Floor, Altanta, GA 20309.

Region V, 300 South Wacker Drive, 24th Floor, Chicago, IL 60606.

Region VI, Federal Regional Center, Denton, TX 76201.

Region VII, 911 Walnut Street, Room 300, Kansas City, MO 64106.

Region VIII, Denver Federal Center, Bldg. 710, Denver, CO 80225–0267.

Region IX, Building 105, Presidio of San Francisco, CA 94129.

Region X, Federal Regional Center, 130—228th Street, S.W., Bothell, WA 98021–9796.

§ 2.52 [Amended]

15. Paragraph (a) of § 2.52 is amended by revising it to read as follows:

(a) All powers and duties not delegated by the Director in this subpart, nor otherwise provided for in Title 44, including § 2.53, which provides for internal unpublished delegations, are reserved to the Director and the Deputy Director.

* * * * *

15a. The introductory sentence to paragraph (b) of § 2.52 is amended by revising it to read as follows:

(b) The following specific authorities are reserved to the Director and the Deputy Director:

* * * * *

16. Paragraph (b) § 2.52 amended to add paragraph (7) and (8) as follows:

(7) Authority to manage the National Defense Executive Reserve Program under Section 710(e) of the Defense Production Act, 50 U.S.C. App. 2260(e).

(8) Authority to appoint Federal Coordinating Officers under Title III, Disaster Relief Act of 1974, 42 U.S.C. 5121.

17. Section 2.54, is revised to read as follows:

§ 2.54 Redelegation of authority.

(a) Authority delegated by this chapter, unless otherwise specifically provided, may be redelegated in whole or in part provided any such redelegation is in writing and approved by the officer to whom the authority is initially delegated and by the Deputy Director. This restriction does not apply to a temporary redelegation of authority to a deputy or assistant to be exercised during the officer's absence.

(b) The authority to issue regulations having general applicability and future effect designed to implement, interpret or prescribe law or policy, and which are to be published in the **Federal Register** may be delegated or redelegated only to positions for which it is required that the incumbent be confirmed by the Senate. This does not prohibit an acting official from issuing regulations. This paragraph does not apply to rules issued under Parts 64, 65, 67, or 70 of this title, and authority to take action thereunder may be redelegated.

§ 2.55 [Amended]

18. Section 2.55(b) is amended by adding before "Federal Insurance Administrator," "Deputy Director."

19. Section 2.55 (c)(1) is amended by revising it to read as follows:

(c) * * *

(1) Approve official travel as temporary duty travel on official business and allowable expenses incidental thereto for employees of their respective organizational units, in accordance with the Federal Travel Regulations; except that travel to and from points outside of the Continental United States is subject to prior notification to the Director and foreign travel (i.e., travel outside the United States, its territories and possessions) is subject to prior approval of the Director. However, no officer or employee may approve his or her own travel. Travel of officers named in paragraph (b) of this section is approved by the Deputy Director or the Executive Administrator.

20. Section 2.60 is added as follows:

§ 2.60 Deputy Director.

The Deputy Director shall plan for, coordinate, and oversee all operations, functions and activities carried out by the Regional Offices, Directorates, Administrations, and Offices contained in this Part 2. All authorities reserved in the Director under Subpart B hereof may unless otherwise stated be carried out by the Deputy Director. The Deputy Director shall perform such additional functions as the Director may prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

21. Section 2.62 is amended by removing the section heading as follows:

§ 2.62 [Reserved].

22. Section 2.68 is amended by removing paragraph (p) and reserving the paragraph designation.

§ 2.70 [Amended]

23. Section 2.70 is amended by removing from paragraph (a)(6) "§ 2.66 and adding § 2.62" in place thereof.

§ 2.81 [Amended]

24. Section 2.81 is amended by adding in the chart listing OMB control numbers in numerical sequence of 44 CFR Part numbers the following additional numbers:

CFR Part No.	OMB Control No.
11.36	3067-0122
11.54	3067-0122
11 Subpart D	3067-0167
61.3	3067-0022
61 App A(1) A(2)	3067-0022
62.23	3067-0169
71	3067-0120
150	3067-0150
151	3067-0141
205.33	3067-0113
205.34	3067-0113
205.52	3067-0124
205.200(b)	3067-0048
205.207	3067-0048
205.208	3067-0048
205 Subpart G	3067-0066
302.2	3067-0138
302.3(b)	3067-0123
360	3067-0100

PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: 5 U.S.C. 552; Reorganization Plan No. 3 of 1978; and E.O. 12127.

§ 5.26 [Amended]

2. Section 5.26(a)(2) is revised to read as follows:

(a) * * *

(2) *Regional Offices*

Region I, Room 442, J. W. McCormack Post Office & Court House, Boston, MA 02109;

Region II, 26 Federal Plaza, New York, NY 10278;

Region III, Liberty Square Bldg. (Second Floor), 105 South Seventh Street, Philadephia, PA 19106;

Region IV, 1371 Peachtree Street, N.E., 7th Floor, Atlanta, GA 30309;

Region V, 300 South Wacker Drive, 24th Floor, Chicago, IL 60606;

Region VI, Federal Regional Center, Denton, TX 76201;

Region VII, 911 Walnut Street, Room 300, Kansas City, MO 64106;

Region VIII, Denver Federal Center, Bldg. 710, Denver, CO 80225-0267;

Region XI, Building 105, Presidio of San Francisco, CA 94129;

Region X, Federal Regional Center, 103-228th Street, S.W., Bothell, WA 98021-9796.

§ 5.41 [Amended]

3. Section 5.41 is amended by removing 31 U.S.C. 483a and adding 31 U.S.C. 9701.

§ 5.52 [Amended]

4. Paragraph (h) of § 5.52 is amended by removing "within 10 days (excepting Saturdays, Sundays and legal public holidays)" and adding "within 10 workdays."

§ 5.54 [Amended]

5. Section 5.54 is amended by removing and reserving paragraph (a)(2); and by removing from paragraph (a)(5) "Director, Emergency Operations" and adding "United States Fire Administrator" in its place.

6. Paragraph (b) of § 5.54 is amended by removing "days (excepting Saturdays, Sundays and legal public holidays)" and adding "workdays" in its place.

7. Paragraph (b) of § 5.54 is amended by removing "section 5.52" and adding "section 5.51" in its place.

§ 5.55 [Amended]

8. Paragraph (b) of § 5.55 is amended by removing "access in case of a total denial, or 30 calendar days after receipt by the requestor of records made available in case of a partial denial."

9. Paragraph (c) of § 5.55 is amended by removing "days (except Saturday, Sundays, and legal public holidays)" and adding "workdays" in place thereof.

§ 5.60 [Amended]

10. Section 5.60 is amended by removing "5.58", and adding "5.59" in its place.

PART 6—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 552a, Reorganization Plan No. 3 of 1978; and E.O. 12027.

§ 6.3 [Amended]

2. Section 6.3, paragraph (b) is amended by removing "Associate Director, Resource Management and Administration" and adding "Director, Office of Administrative Support."

§ 6.20 [Amended]

3. Paragraph (c) of § 6.20 is amended by removing "annual".

4. Paragraph (f) of § 6.20 is amended by removing "General Services" and adding "The National Archives and Records Administration."

§ 6.33 [Amended]

5. In § 6.33, paragraph (b)(2) is removed and the number reserved, and subparagraph (b)(5) is amended by removing "Director, Emergency Operations" and adding "United States Fire Administrator" in place thereof.

PART 8—NATIONAL SECURITY INFORMATION

The authority citation of Part 8 continues to read:

Authority: Reorganization Plan No. 3 of 1978; Executive Orders 12148 and 12356.

§ 8.1 [Amended]

1. Paragraph (b) of § 8.1 is amended by removing the comma after "information" and adding "pursuant to".

§ 8.4 [Amended]

2. Paragraph (g)(3) of § 8.4 is amended by removing "their" and adding "its" in place thereof.

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

1. The authority citations for Part 9 is revised to read as follows, and the authority citation to sections within Part 9 are removed.

Authority: E.O. 11988; E.O. 11990; Reog. Plan No. 3 of 1978; E.O. 12127; E.O. 12148; 42 U.S.C. 5201.

§ 9.4 [Amended]

2. Section 9.4 is amended by adding in the definition of Coastal High Hazard Area after V1-30, "VE or V".

§ 9.7 [Amended]

3. Section 9.7 is amended by removing "Flood Hazard Floodway Boundary May (FHFBM)" where such appears in paragraph (c)(1) and adding "Flood Boundary Floodway May (FBFM)" in paragraph (c)(1) in place thereof.

4. Section 9.7 is amended by removing "FHFBM" in paragraph (c)(2) and adding "FBFM" in its place.

PART 10—ENVIRONMENTAL CONSIDERATIONS

1. The authority citation for Part 10 is revised to read as follows and the authority citatioin in any section of Part 10 is removed.

Authority: 42 U.S.C. 4321 *et seq.*; E.O. 11514 as amended by E.O. 11991; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

§ 10.3 [Amended]

2. Paragraph (c) of § 10.3 is amended by removing "Chief, Mitigation Assistance Division" and adding "Chief, Public Assistance Division".

PART 11—CLAIMS

1. The authority citation for Subpart C continues to read as follows:

Authority: 31 U.S.C. 3711 *et seq.*

§ 11.34 [Amended]

2. Paragraph (a)(1)(v) of § 11.34 is amended by removing "41 CFR Subpart 1–1.4" and adding "489 CFR 1.603–3."

3. Paragraph (b) of § 11.34 is amended by removing "CO" and adding "ACO" in place thereof.

§ 11.45 [Amended]

4. Paragraph (c)(1) of § 11.45 is amended by removing "GM–14" and adding "GS/GM–14" in its place.

§ 11.57 [Amended]

5. Section 11.57(a) is amended by removing "(41 CFR Part 1)" and adding "(48 CFR Part 44)" in place thereof.

PART 12—ADVISORY COMMITTEES

The authority citation for Part 12 is revised to read as follows:

Authority: Federal Advisory Committee Act, 5 U.S.C. App. 1; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148; E.O. 12024.

§ 12.1 [Amended]

1. Paragraph (a) of § 12.1 is amended by removing "Executive Order 11769" and adding "Executive Order 12024" in its place.

PART 59—GENERAL PROVISIONS

The authority citation for Part 59 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 59.1 [Amended]

Section 59.1 is amended by adding at the end of the definition of "Start of Construction" the following:

For mobile homes within mobile home parks or mobile home subdivisions, the "actual start" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including at a minimum the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

PART 205—FEDERAL DISASTER ASSISTANCE (PUB. L. 92–288)

1. The authority citation for Part 205 is revised to read:

Authority: 42 U.S.C. 5201, Reorganization Plan Number 3 of 1978, Executive Order 12127, Executive Order 12148.

§ 205.2 [Amended]

2. Paragraph (a)(10) of § 205.2 is amended by adding the following words preceding "Associate Director", "Director, or in his absence, the Deputy Director, or alternatively the".

PART 300—DISASTER PREPAREDNESS ASSISTANCE

The authority citation for Part 300 is revised as set forth below and the authority citation for any sections in Part 300 are removed:

Authority: 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

§ 300.5 [Amended]

2. Paragraph (i)(2)(i) of § 300.5 is amended by removing "certification of A–95 clearance."

PART 301—CONTRIBUTIONS OF CIVIL DEFENSE EQUIPMENT

1. The authority citation for Part 301 is revised as set forth below and the authority citations for any sections in Part 301 are removed.

Authority: 50 U.S.C. App. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

§ 301.2 [Amended]

3. Section 301.2(b) is amended by removing "attachment H of".

§ 301.3 [Amended]

2. Section 301.3(f) is amended by removing "set forth in Part 309 of this chapter."

4. Section 301.4(c)(1) is amended by removing "Appendix C of".

§ 301.4 [Amended]

5. Section 301.4(d)(1) is amended by removing "Appendix D of".

6. Section 301.4(d)(2) is amended by removing "Under Appendix D".

7. Section 301.4(e) is amended by removing "Appendix F of".

§ 301.9 [Amended]

8. Section 301.9 is amended by removing "Appendix E of".

PART 303—PROCEDURES FOR WITHHOLDING PAYMENTS FOR FINANCIAL CONTRIBUTIONS UNDER THE FEDERAL CIVIL DEFENSE ACT

1. The authority citation for Part 303 is revised to read as follows:

Authority: 50 U.S.C. App. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

§ 303.2 [Amended]

2. Section 303.2(a) is amended by removing "50 U.S.C. App. 2251–2297" and adding "50 U.S.C. App. 2251 *et seq.*" in its place.

PART 304—CONSOLIDATED GRANTS TO INSULAR AREAS

1. The authority for Part 304 is revised to read as follows and the authority citation for any sections in Part 304 are removed.

Authority: 50 U.S.C. App. 2251, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

§ 304.3 [Amended]

2. Section 304.3(a) is amended by removing "(FEMA Form 856)".

PART 311—FEDERAL EMPLOYEE EMERGENCY IDENTIFICATION CARD

1. The authority citation for Part 311 is revised to read as follows and any authority citation in a section of Part 311 is removed.

Authority: 50 U.S.C. App. 2251, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

§ 311.4 [Amended]

2. Section 311.4 is amended by removing from paragraph (a) "Civil Aeronautics Board".

§ 311.6 [Amended]

3. Paragraph (c) of § 311.6 is amended by removing "FEMA Resource Management and Administration Directorate" and adding "Director, Administrative Support" in its place.

PART 350—REVIEW AND APPROVAL OF STATE AND LOCAL RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS

1. The authority citation for Part 350 is revised to read as follows:

Authority: 42 U.S.C. 5131, 5201, 50 U.S.C. Ap. 2253(g); sec. 109 Pub. L. 96–295; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 350.3 [Amended]

2. Section 350.3(d) is amended by removing the last two sentences and by adding the following in their place:

The FRERP was published as an interim plan on September 12, 1984, 49 FR 35896.

PART 351—RADIOLOGICAL EMERGENCY PLANNING AND PREPAREDNESS

1. The authority citation for Part 351 is revised to read as follows, and any authority citation to a section in Part 351 is removed.

Authorities: 5 U.S.C. 552; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148; E.O. 12241.

§ 351.3 [Amended]

2. Paragraph (a) of § 351.3 is amended by removing "National Radiological Emergency Preparedness/Response Plan for Commercial Nuclear Power Plant Accidents (master plan), 45 FR 84910, December 23, 1980" and adding "Federal Radiological Emergency Response Plan (FRERP) 49 FR 38596 in place thereof.

Dated: September 26, 1985.

Spence Perry,

Acting General Counsel.

[FR Doc. 23324 Filed 9-30-85; 8:45 am]

BILLING CODE 6716-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD83-070]

Revision of Tonnage Measurement Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule clarifies, consolidates, and reorganizes simplified tonnage measurement regulations. Tonnage measurement is necessary to qualify a vessel for documentation, which provides evidence of nationality and qualification for employment in a specified trade, and for regulatory and other purposes. The rule neither changes the present substantive law nor affects any vessel presently documented under the laws of the United States. The revised subpart at 69.01 provides a synopsis of each measurement system, describes when and what vessels are required to be measured, defines the method to appeal adverse measurement decisions, and identifies measurement sources. The new subpart at 69.05 combines two simplified measurement regulations. The rule provides for minor coefficient changes that will have minimal impact on vessel tonnages but may preclude some small pleasure vessels from qualifying for documentation under the simplified method. This rule enables the public to better understand tonnage measurement requirements and provides a uniform simplified measurement system, while preserving the character of the present systems.

EFFECTIVE DATE: This rule is effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis A. Lamont, Office of Merchant Marine Safety, Tonnage Survey Branch, G-MVI-5, Room 1316, U.S. Coast Guard Headquarters, (202) 426-2192, between 7.00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published on 18 March 1985 (50 FR 10803). In response to this Notice the Coast Guard received thirteen comments which identified perceived negative impacts as a result of the proposed rule. The Coast Guard seriously considered these comments and feels the concerns raised are the result of a misunderstanding as to the intent of the rule. These comments are discussed in detail in paragraph entitled Discussion of Comments.

Drafting Information

The principal persons involved in drafting this rule are Mr. Dennis A. Lamont, Project Manager, Office of Merchant Marine Safety, and CDR Ronald Zabel, Project Attorney, Office of the Chief Counsel.

Background

Before a vessel may be documented it must first be measured for tonnage. Although pleasure vessels are not required to be documented, many owners request documentation (and hence, measurement). In most cases the document is used to reflect a recorded, perfected lien or mortgage in accordance with the Ship Mortgage Act of 1920. This recordation is a convenience to lenders and frequently a prerequisite to acquiring loans on a vessel.

Because of the large number of pleasure craft that were being documented, and the lack of personnel available to provide measurement services, Congress in 1966 authorized a new system for optional measurement of pleasure vessels. It provides an owner of a pleasure vessel with the option to have a vessel measured under a much-simplified method than that normally employed to determine a vessel's tonnage. Tonnages are determined from owner-supplied information of the vessel's length, breadth, and depth as modified by a coefficient. The formulae take into account variations in vessel construction and the resulting tonnages, so far as practical, reflect the internal volumes of a vessel. The statute does not eliminate a vessel owner's option of requesting formal measurement.

The regulations currently found at 46 CFR Part 69 require the depth of a vessel to be measured to the bottom skin of the hull, excluding the keel unless the keel is covered by the skin. Experience has demonstrated that the definition of this overall depth has often been misinterpreted, resulting in inaccurate tonnages, and many small sailing vessels have qualified for documentation that would not qualify for documentation if they were formally measured.

The use of a 0.75 depth coefficient when the keel is covered by the skin was introduced into regulation in 1982 (based on Pub. L. 96-594) when regulations governing the simplified measurement of commercial vessels were published. During the past three years this method has proven to reflect a more accurate tonnage when applied to commercial sailing vessels that are designed with keels covered by the "skin" such as in molded fiberglass boats. Therefore, in the combined simplified regulations this depth coefficient is retained for application also to pleasure vessels.

Discussion of Comments

Thirteen commenters questioned the intent to use the 0.75 depth coefficient when calculating the tonnages of pleasure sailing vessels that have keels covered by the skin. They state that this coefficient will result in lower tonnages and will thereby eliminate many vessels from qualifying for documentation. This in turn hampers the ability of lenders to perfect vessel liens under the Ship Mortgage Act. Further, some commenters related the 0.75 depth coefficient directly to vessel length, stating the rule will disqualify all vessels of less than 35 feet in length for documentation. They assert this will seriously impact the availability of retail financing for purchasers of these products and in turn adversely affect sales.

The tonnage requirement for eligibility for documentation is that a vessel measure 5 net tons or greater. Existing law at 46 App. U.S.C. 71 requires that measurement of vessels under the optional simplified system result in gross tonnages that reasonably reflect the relative internal volumes of the vessels, with the resulting net tonnages being in approximately the same ratios to the corresponding tonnages of comparable vessels measured under the formal systems. Vessel length is not in itself the qualifying factor for documentation but is only one of several variables in the formula used for approximating a vessel's internal volume. A review of simplified measurement records indicates that most sailing vessels of 27 feet and larger with molded keels (and many less than 27 feet, depending on the other variables in the formula) will continue to qualify for documentation under this rule.

This rule will not impact the availability of retail financing for any vessel that is qualified for documentation under U.S. law. The commenters' concerns in this area appear to be based on a misconception that the use of the 0.75 coefficient would be mandatory for all sailing vessels. The use of the 0.75 coefficient would only be used when the owner found it impossible or inconvenient to obtain the actual hull depth. Manufacturers of

small sailing vessels can ensure that this coefficient is not applied by including the actual hull depth (less keel) in specifications provided to the owner. Also the rule still provides the flexibility, in cases of disputed tonnage, for the owner to obtain formal measurement to determine a more precise tonnage. The Coast Guard believes that the application of the 0.75 coefficient to sailing vessels, in circumstances where the actual hull depth is not reasonably obtainable, is necessary to carry out the Congressional intent in establishing an effective simplified measurement system.

Because of the apparent confusion reflected by the comments, this final rule has been adjusted to more clearly explain that the overall depth of a sailing vessel should be measured to the bottom of the hull. A depth that includes the keel may be used only when the actual hull depth is not easily obtainable. The 0.75 coefficient is used only in those cases where a depth provided by an owner includes the keel.

Finally, the rule has been altered to reflect a change of mailing address for submitting applications for simplified measurement, and expanded to inform vessel owners of documentation procedures required upon measurement.

Regulatory Evaluation

This final rule is considered to be non-major under Executive 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

This rule consolidates the two current informational subparts at 69.01 and 69.05 into one subpart. This subpart is a guide to the measurement process and is located at 69.01. This new subpart reduces the time required to review regulatory requirements, indicates which procedure to follow, and how to apply that procedure. While this rule does not change the intent of the law regarding measurement of vessels, it places the regulations in a logical sequence, makes them more understandable and clearly identifies the various systems and sources. This rule presents no new burden on the public.

This rule also consolidates the two simplified measurement systems now located at 69.17 and 69.19 into a new subpart at 69.05. It eliminates minor coefficient differences between ship-shaped commercial and pleasure vessels. It eliminates a minor coefficient difference between barge-shaped commercial vessels and barges. It also changes the method for measuring the depth of a pleasure sailing vessel to coincide with the method presently applied to commercial sailing vessels. This latter action may result in precluding an extremely small number of small vessels from documentation.

All vessels presently documented as U.S. vessels will remain unaffected by this rule. The combining of the two simplified systems eases the overall regulatory burden on the public, which is in keeping with this administration's regulatory policy.

Regulatory Flexibility Analysis

The regulations have been evaluated under Pub. L. 96-354 (94 Stat. 1168) and are certified as having no significant economic impact on a substantial number of small entities. As discussed above the regulations will condense those already imposed, while giving the public clearer and more concise directions to the various systems of measurement, resulting in time-savings to the public.

Paperwork Reduction Act

The information collection requirements contained in the amended regulations have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 [Pub. L. 96-511] and have been assigned the control numbers contained in the listing in the proposed amendment to Subpart 69.01 at 69.01-21.

Environmental Statement

The Coast Guard has determined that this action does not constitute a major federal action that significantly affects the quality of the human environment. If it has been determined that this action is categorically excluded from further environmental documentation.

List of Subjects in 46 CFR Part 69

Vessels, Measurement standards.

In consideration of the foregoing the Coast Guard has amended Part 69 of Title 46 Code of Federal Regulations as set forth below.

1. The authority citation to Part 69 is revised to read as follows:

Authority: 46 App. U.S.C. 71, 83h; 49 CFR 1.46(b).

2. In the table of contents for Part 69 of the portion for Subparts 69.01 and 69.05 are revised to read as follows and the portion for Subparts 69.17 and 69.19 are removed.

PART 69—MEASUREMENT OF VESSELS

Subpart 69.01—General Provisions

Subpart 69.05—Optional Simplified Measurement

3. 46 CFR Subpart 69.01 is revised to read as follows:

Subpart 69.01—General Provisions

§ 69.01-1 Purpose.

(a) Tonnage measurement is the process used to determine vessel tonnages. Tonnages are used, among other things, to document a vessel, to apply commercial vessel safety regulations, to meet various international requirements, and as a base for operational charges. Tonnages are determined by physical measurement of a vessel (formal measurement) or, in most cases, by application of a formula based on vessel's overall dimensions (simplified measurement). This subpart indicates the appropriate measurement system or systems applicable to a vessel, identifies measurement sources and explains appeal processes.

§ 69.01-3 Applicability.

(a) All vessels of five net tons and larger that are to be documented as vessels of the United States and vessels of 79 feet in length and longer that engage on an international voyage between nations party to the International Convention on Tonnage Measurement of Ships, 1969 (1969 Tonnage Convention) are required to be measured.

(b) Vessels that transit the Panama Canal and the Suez Canal may be measured on request.

(c) The Commandant may upon request or at his option measure any vessel to determine its tonnage.

§ 69.01-5 Public vessels.

(a) Public vessels that are to be documented must meet the same measurement requirements as private vessels. Public vessels not intended to be documented may be measured upon request.

(b) Ships of war are not subject to measurement under the provisions of the 1969 Tonnage Convention nor are they assigned Panama Canal tonnages.

§ 69.01-07 Definitions.

(a) "Ton" as calculated under the United States, Panama and Suez Canal rules is equivalent to 100 cubic feet. A "ton" as used in the 1969 Tonnage Convention system varies from vessel to vessel dependent upon a logarithmic function of the vessel's volume.

(b) "Gross tonnage" is intended to reflect a vessel's approximate volume. In U.S., Panama Canal and Suez Canal formal systems it represents the total volume of all enclosed spaces less certain spaces permitted to be exempted from inclusion in gross tonnage. Under the simplified measurement system it is the product of a vessel's length, depth, and breadth as modified by a coefficient. Under the 1969 Tonnage Convention it is based on a modified volume of all enclosed spaces.

(c) "Net tonnage" is intended to be a measure of a vessel's earning capacity. In U.S., Panama Canal and Suez Canal formal measurement systems it is the result of subtracting from gross tonnage the volumes of spaces allotted to crew, propelling power, etc. Under the simplified measurement system it is the result of applying a coefficient to the gross tonnage. Under the 1969 Tonnage Convention it is the result of a formula based on the actual cargo volume and a passenger coefficient.

§ 69.01-09 Measurement systems.

(a) Some vessels may require tonnage assignments under the provisions of more than one measurement system. Listed below are the systems used for determining vessel tonnages.

(1) *Standard System of Measurement* (46 CFR 69.03). This is the basic measurement system that may be applied to all United States vessels.

(2) *Optional Dual-Tonnage Method of Measurement* (46 CFR 69.15). This system allows certain special exemptions and deductions for ships and may be employed as an option to the Standard System of Measurement.

(3) *Optional Simplified Measurement Method* (46 CFR 69.05). This system may be employed as an option to the Standard System of Measurement. It may be applied in measuring:

(i) Commercial vessels less than 79 feet (24 meters) in overall length that will not engage in international voyages;

(ii) Barges of any length that will not engage on international voyages;

(iii) Pleasure vessels (yachts) of any length, whether or not intended to engage in international voyages.

(4) *International Convention on Tonnage Measurement of Ships, 1969.* This system (1969 Tonnage Convention) applies to vessels, whether or not documented, that measure 79 feet in length or longer and engage on international voyages between nations party to this Convention (NVIC 6-83).

(5) *Panama Canal Rules* (35 CFR Part 135). This system applies to vessels that will transit the Panama Canal.

(6) *Suez Canal Rules* (Rules of Navigation, Part IV). This system applies to vessels that will transit the Suez Canal.

(b) Combining the regulatory provisions of separate and distinct systems is not permitted.

(c) The following chart may be used as a guide to determine tonnage requirements:

Length, type vessel, and operation	Tonnage certificates			
	Required		Optional	
	United States	1969 tonnage convention	Panama Canal	Suez Canal
Under 79 ft				
Commercial self-propelled:				
International	[1] X		X	X
Domestic	X			
Commercial barges:				
International	[1] X		X	X
Domestic	[1] X			
Pleasure vessels (all)				
International	[1] X		X	X
Domestic	[1] X			
79 ft. and longer				
Commercial self-propelled:				
International	[1] X	X	X	X
Domestic	X			
Commercial barges:				
International	[1] X	X	X	X
Domestic	[1] X			
Pleasure vessels (all):				
International	[1] X	X	X	X
Domestic	[1] X			

[1] Certificate required only when owner elects to document vessel.

(d) A vessel of the United States, not measured under the provisions of the 1969 Tonnage Convention, that has exempted passenger spaces and engages on an international voyage will be issued a "Special Appendix to Certificate of Registry of American Passenger Vessels" (Form CG-1265-A).

§ 69.01-11 Measurement sources.

(a) The Coast Guard and the American Bureau of Shipping (ABS) perform measurement of U.S. vessels. For vessels to be measured by the Coast Guard in the United States, other than for vessels measured under the simplified systems, owners shall apply to the nearest marine inspection or marine safety office. For vessels outside the United States, owners shall apply directly to the Commandant (G-MVI-5), U.S. Coast Guard, 2100 Second St., SW., Washington, D.C. 20593. All applications for simplified measurement shall be directed to Commandant (G-MVI-5/SM) at the above address.

(b) All applications for measurement services performed by ABS shall be directed to that organization.

§ 69.01-13 Applications.

(a) Vessel owners or their agents shall include in their application the vessel particulars, the measurement system(s) requested, ownership information, vessel location, agreement to reimburse, etc. as described separately under the various measurement systems.

(b) Applications for measurement under more than one system may be combined.

(c) Measurement will commence when the vessel is sufficiently advanced in construction, usually when decks are laid, the holds clear or encumbrances, the engine and boilers installed, and accommodations partitioned.

§ 69.01-15 Remeasurement and adjustment of tonnage.

(a) Once measured a vessel retains its tonnage until structural or arrangement changes are made that require a new measurement. The owner shall immediately report these changes to the measurement office nearest the vessel or to ABS. The owner will be advised if remeasurement is necessary.

(b) When there is a preceived error in the application of a regulation or in the calculation of the tonnage, the owner should contact the responsible measurement office. If the claim of error is verified the tonnage will be adjusted. Unaltered spaces or spaces for which no error is claimed need not be remeasured.

(c) After remeasurement or adjustment of tonnage a new tonnage certificate will be issued. If documented, the vessel's Certificate of Documentation shall be surrendered to the appropriate documentation office

with submissions required by Appendix C of Subpart 67.

§ 69.01-17 Appeals.

(a) The Commandant is solely responsible for tonnages assigned and for determining the appropriate application and interpretation of domestic and international measurement regulations as they are applied to U.S. vessels.

(b) Appeals of Coast Guard field decisions must be submitted to the Commandant via the appropriate district commander. Appeals of decisions made by authorized measurement organizations must be submitted directly to the Commandant.

(c) In an appeal the owner or his agent must recite the facts in letter form and include appropriate supporting data. While an appeal is in progress, the initial decision remains in effect. The decision of the Commandant is final.

§ 69.01-19 Reimbursable costs or fees.

(a) When the Coast Guard measures a vessel at a location other than a U.S. port of entry or customs station the owner shall agree in writing to reimburse the Coast Guard for the measurement officer's compensation, travel and subsistence expenses.

(b) Information on fees for measurement services performed by an organization authorized by the Coast Guard should be obtained directly from that source.

§ 69.01-21 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and record keeping requirements in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this part comply with 44 U.S.C. 3507(f) which requires that agencies display the current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
69.01-13	2115-0060 and 2115-0066.
69.01-15	Do.
69.01-17	Do.
69.05-5	2115-0066
69.05-9	Do.
69.15-3	2115-0060
69.15-39	Do.
69.15-41	Do.

4. 46 CFR Subpart 69.05 is revised to read as follows:

Subpart 69.05—Optional Simplified Measurement

§ 69.05-1 Purpose.

(a) This system may be employed as an option to the formal tonnage measurement systems described in Subpart 69.03 (Standard System of Measurement) and Subpart 69.15 (Optional Dual Tonnage Method for Measurement of Vessels). It may be applied only to the following vessels:

(1) Commercial vessels less than 79 feet (24 meters) in overall length that will not engage in international voyages,

(2) Barges of any length that will not engage in international voyages, and

(3) Pleasure vessels (yachts) of any length, whether or not intended to engage in international voyages.

Note:—A commercial vessel must be measured or remeasured under the provisions of Subparts 69.03 or 69.15 if a registry is required.

§ 69.05-3 Definition of terms.

(a) *Overall length, breadth and depth.*

(1) For single hull vessels:

(i) "Overall length" means the horizontal distance between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments).

(ii) "Overall breadth" means the horizontal distance (excluding rub rails) from the outside of the skin (outside planking or plating) on one side to the outside of the skin on the other, taken at the widest part of the hull.

(iii) "Overall depth" means the vertical distance taken at or near midships from a line drawn horizontally through the uppermost edges of the skin at the sides of the hull (excluding the cap rail and trunks, cabins, or deckhouses) to the outboard face of the bottom skin of the hull, excluding the keel. In the case of a vessel designed for sailing having its keel faired to the hull, the distance to the bottom of the keel is included in the overall depth only if the distance to the actual bottom of the hull (less keel) cannot be reasonably determined.

(2) For multi-hulled vessels each hull is separately measured for its overall length, breadth, and depth.

(b) *Register length, breadth, and depth.* (1) For single-hull vessels the register length, breadth, and depth are the vessel's overall length, breadth, and depth.

(2) For multi-hulled vessels the register length is the horizontal distance between the foremost part of the stem of the foremost hull and the aftermost part of the stern of the aftermost hull (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments). The register breadth is the horizontal distance taken at the widest part of the complete vessel between the outboard skin of the outboard-most hulls (excuding rub rails). The register depth is the overall depth of the deepest hull as determined under paragraph (a)(1)(iii) of this section.

(c) *Vessel designed for sailing.* The term "vessel designed for sailing" means a vessel, whether or not equipped with an auxiliary motor, which has the fine lines of a sailing craft and is in fact propelled by sail or capable of being propelled by sail (other than a mere steadying sail).

§ 69.05-5 Application for Simplified Measurement.

(a) Applications for measurement under this subpart are obtainable from any marine inspection or marine safety office or from the American Bureau of Shipping. They shall be completed by the owner and include the following information:

(1) Owner's name, address, and phone number;

(2) Name of vessel;

(3) Official number, state or Coast Guard number, if any;

(4) Name of builder;

(5) Builder's hull number, serial number, or model number;

(6) Place built;

(7) Year built;

(8) Port of documentation;

(9) Vessel's intended use (pleasure or commercial);

(10) Dimensions of disproportionate deckhouse (see 69.05-7(a)(4));

(11) Is vessel designed for sailing;

(12) Is propelling machinery in hull;

(13) Shape of hull (ship-shaped or barge-shaped);

(14) Type of vessel (towboat, barge, trawler, yacht, etc.);

(15) Overall length, breadth and depth (for multi-hulled vessel indicate number of hulls, overall dimensions of each hull, and the register dimensions of complete vessel); and

(16) Sketches (not necessarily to scale) showing all required dimensions in plan, profile, and cross-section views.

(b) All lengths and depths must be measured in a vertifcal plane at centerline and breadths must be measured in a line at right angles to that plane. All dimensions shall be expressed in feet and inches or in feet and tenths of a foot.

(c) Applications must be signed by the owner or agent and contain a statement that all information is correct.

(d) The Coast Guard reserves the right to verify dimensions of vessels measured under this subpart.

Note.—Under the provisions of 18 U.S.C. 1001, any person making a false or fraudulent statement in an application may be fined up to $10,000 or imprisoned for up to five years, or both.

§ 69.05-7 Calculation of Tonnages.

(a) Gross tonnage. (1) Except as provided in paragraphs (a) (2) and (3) of this section, the gross tonnage of a vessel designed for sailing shall be .50(LBD/100) and the gross tonnage of a vessel not designed for sailing shall be .67(LBD/100). LBD being the product of its overall length, breadth, and depth.

(2) The gross tonnage of a vessel whose hull approximates in shape a rectangular geometric solid (barge-shape) shall be .84(LBD/100).

(3) The gross tonnage of a multi-hulled vessel shall be the sum of all the hulls as calculated under this section.

(4) When the volume of a vessel's principal deck structure is as large or larger than the volume of its hull (disproportionate), as in the case of certain houseboats, the volume of that structure, expresed in tons of 100 cubic feet, shall be added to the tonnage of the hull as previously calcuated to establish the vessel's gross tonnage.

(5) In cases where the owner provides an overall depth of a vessel designed for sailing that includes the keel, only 75% of that depth will be used for calculating purposes.

(b) *Net tonnage.* (1) For a vessel having propelling machinery in its hull:

(i) If designed for sailing the net tonnage is 90% of its gross tonnage;

(ii) If not designed for sailing the net tonnage is 80% of its gross tonnage.

(2) For a vessel having no propelling machinery in its hull, the net tonnage is the same as its gross tonnage.

§ 69.05-9 Remeasurement.

(a) A vessel must be remeasured if it is physically altered so that its dimensions or tonnage is changed.

(b) A vessel measured or remeasured under the provisions of this subpart may, upon application, be remeasured under the provisions of Subpart 69.03 or 69.15.

§ 69.05-11 Assignment of like tonnages to like vessels.

(a) Tonnages of vessels measured under this subpart which are representative of a designated class, model or type may be assigned to identical vessels of the same designated class, model or type.

Subparts 69.17 and 69.19 [Removed]

5. Subparts 69.17 and 69.19 consisting of §§ 69.17-1 through 69.17-9 and §§ 69.19-1 through 69.19-17 of Title 46 are removed.

Dated: September 25, 1985.

J. W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-23282 Filed 9-30-85; 8:45 am]

BILLING CODE 4910-4-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 73, 74, 76, and 78

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This Order amends broadcast station regulations in Parts 0, 1, 73, 74, 76, and 78 of the rules of the FCC. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

DATE: October 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 0

Commission organization.

47 CFR Part 1

Practice and procedure.

47 CFR Part 73

Radio broadcast services.

47 CFR Part 74

Experimental, auxiliary and special broadcast services.

47 CFR Part 76

Cable TV service.

47 CFR Part 78

Cable TV relay service.

Order

In the matter of oversight of the radio and TV broadcast rules

Adopted: September 25, 1985.

Released: September 27, 1985.

By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio, TV broadcast and Cable TV rules. Modifications are made herein to update, delete, clarify or correct FCC regulations as described in the following amendment summaries:

(a) When the Broadcast Bureau-CATV Bureau were reorganized into the Mass Media Bureau in December, 1982, references to either of the former Bureau names were removed from the rules. Some few survived, however, and those are corrected in this order to reflect the Mass Media Bureau designation. Four corrections are made here: §§ 0.453(a), 1.1209(g), 1.1227(b) and 78.20(a). (See appendix items 2, 3, 4 and 22).

(b) In § 73.24, Broadcast facilities; showing required, there is an incorrect cross reference in paragraph (j). The second sentence states, in part, "For Class II-C and II-S stations on the 14 frequencies listed in § 73.24(c) . . .". The 14 frequencies are listed in § 73.25(c); correction is made herein. (See appendix item 5).

(c) In Docket 20817, the Radio Operator Licensing Program,[1] the Commission combined the operator requirements found in the separate service subparts (Subparts A-AM, B-FM; C-NCE-FM and E-TV) into three new rules. They were placed in Subpart H, Rules applicable to all Broadcast Stations, and designated § 73.1860 Transmission duty operator requirements, 73.1870, Chief operator requirements and 73.1580 Transmission system inspection requirements. Left behind, in the separate service subparts, were cross references to the three new rules in Subpart H as a finder's aid to rule users.

These cross references, after four years in the service subparts, have achieved their purpose and can now be removed. The "new" combined rules (adopted in 1981) are clearly identified in both the alphabetical index and the table of contents so rule users will have no difficulty in finding them. And removing them from the separate subparts rids the rule book of extraneous information (clutter). Therefore, §§ 73.93, 73.265, 73.565 and 73.661 are removed herein (See Appendix items 6, 7, 11 and 12).

(d) Certain of the FCC rules were amended in 1983 to give licensees greater freedom to choose a method for monitoring aural modulation levels.[2] The

[1] Report and Order, D. 20817, Radio Operator Licensing Programs, 46 FR 35450, July 8, 1981.

[2] Report and Order, BC Docket 81-698, Radio Broadcast Services; Amendment of the FCC's Rules

Continued

amendments eliminated "the requirement that aural modulation monitors . . . be type approved," and the requirement that "the operator on duty [has] continuous access to modulation level indications." These rules were no longer considered necessary because licensees must obey the general FCC rules governing modulation levels and must install whatever equipment is necessary to ensure compliance. Thus, greater operational freedom was accorded licensees.

These amendments required many changes in the rules. We failed to make one pertinent revision in § 73.317, Transmission system requirements in paragraph (a)(5) which reads:

"Means should be provided for connection and continuous operation of an approved modulation monitor."

This text is excised herein (See appendix item 8).

(e) Two other such incorrect rule texts relating to modulation monitoring are found in §§ 73.340(c) and 73.540(c), both titled "Use of Automatic transmission systems (ATS)." The offending sentences state, "Continuous operation of the station modulation monitor is not required." This incorrect text was also eliminated in BC Docket 81-698,[3] but was inadvertently re-entered into the rules via the editorial corrections (or "Erratum") adopted in BC Docket 82-537 pertaining to the elimination of operating and maintenance log requirements.[4] This incorrect text is herein removed from §§ 73.340 and 73.540. (See appendix items 9 and 10).

(f) There are four cross references in paragraph (a)(1) of § 73.687, Transmission system requirements, directing the rule user to paragraph (a)(4) of this rule. In the Report and Order in Gen. Docket 83-114, A Re-Examination of Technical Regulations, 49 FR 48305, December 12, 1984, paragraph (a)(4) was redesignated as (a)(2). The failure to modify the rule, redesignating (a)(4) as (a)(2), is corrected here. (See appendix item 13).

(g) When § 73.764, International Broadcast Station Operator Requirements, was revised in General Docket 83-322,[5] we modified the rule to allow operators holding "a commercial radio operator license (any class . . .)" to be in charge of operating the transmitter apparatus. We did not use the term "operator permit" as used formerly in "operator license or permit" since the terms license and permit are synonomous.

Dropping "permit," as we found in § 73.1860, Transmitter duty operators, and in § 73.1870, Chief operators, caused some of our licensees to assume the non-use of "permit" to mean the elimination of Radiotelephone Operator *Permit*. It, of course, does not mean this. But since non-use of the term permit, in conjunction with license, is causing confusion, we will add it to the text of § 73.764, paragraph (a), to read "operator license or permit . . ." (as we previously did in §§ 73.1860 and 73.1870). Reducing redundancy has raised some confusion so we revise the rule herein. (See appendix item 14.)

(h) Pursuant to paragraph (c) of § 73.1690, Modification of transmission systems, certain "FM and TV station modifications may be made and operation commenced without prior authorization from the FCC," provided specific, stated requirements are followed. Further, the licensee must file an application for license modification within 10 days after completion of the changes. The FCC, upon approval of the change, issues a modified station authorization. Occasionally, our field inspectors find licensees, having made such changes, are unable to produce copies of the applications containing change descriptions. Usually this happens where the station's chief engineer is absent during the inspection and station personnel are unable to discover the application in the files. This scenerio unfolds more frequently with stations using contract engineers as Chief Operators, wherein the files are located at the contract engineers office or are otherwise in his possession.

The FCC field inspector must, of course, have the application in hand to complete his review of station technical operation.

Licensees are clearly required to post the station authorization at the principal control point of the transmitter as required by § 73.1225. This obviously includes the application for a permissive change made pursuant to § 73.1690(c). In order to certify the matter for licensees and also save our field personnel the hours lost while station staffs search for such applications, we will supplement the text of § 73.1225, Station inspections by FCC, stating that a copy of the application must be posted at the control point, along with the station's current authorization, until the amended authorization is received from the FCC and can be posted. (See appendix item 15.)

(i) The Report and Order in MM Docket 84-110,[6] revised the section title of § 73.1560 to read "Operating power and mode tolerances." In an Order adopted June 11, 1985,[7] the title of this section was inadvertently changed to its original form as "Operating power tolerances." It is revised herein to correctly read as stated in the Report and Order of December 1984. (See appendix 16.)

(j) Also, in the Report and Order in Mass Media Docket 84-110, described in Paragraph (i) above, § 73.3548, Applications to operate by remote control, was removed. Two new rules, applicable to AM, FM and TV stations, were added via this Order: Section 73.1400 Remote control authorization and § 73.1410 Remote control operation. A cross reference to the removed § 73.3548 remains in § 73.1690(d)(2). It is corrected herein to cross reference the new remote control authorization and operation rule sections described above. (See appendix item 17.)

(k) With the adoption of the Report and Order in the rule making which revised the Commission's license renewal procedures,[8] year round announcements requiring licensees to give local public notice of their public interest obligations were removed from the rules. (§ 73.1202.) Requirements to file letters received from the public were retained; the rule was rewritten and retitled "Retention of letters received from the public."

In § 73.3580, Local public notice of filing of broadcast applications, subparagraph (d)(4)(v) reads in part:

". . . . (v) During the period beginning on the first full calendar month . . . . the public notice [announcement] requirements under § 73.1202 do not apply."

This reference to "public notice requirements under § 73.1202" is removed from § 73.3580 herein. (See appendix item 18.)

(l) The Report and Order in General Docket 83-322 [9] eliminated or modified rules that required licensed commercial radio operators on duty during broadcast operation. Two such rules

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to Eliminate the Requirement for Type Approval of Aural Modulation Monitors, 48 FR 36459, August 11, 1983.

[3] *Id.*

[4] Final Rule; Correction (to report and Order in BC Docket 82-537), In the Matter of Operating and Maintainance Logs for Broadcast and Broadcast Auxiliary Stations, 48 FR 44804, September 30, 1983.

[5] Report and Order, General Docket 83-322, Requirements for Licensed Operators in the Various Radio Services, 49 FR 20658, May 16, 1984.

[6] In the Matter of Remote Control Operation of AM, FM And TV Broadcast Stations, 49 FR 47608, December 6, 1984.

[7] Order, 50 FR 26567, June 27, 1985.

[8] Report and Order in BC Docket 80-253, In the Matter of Revision of Applications for Renewal of License of Commercial and Non-commercial AM, FM and TV Licensees, 46 FR 26236, May 11, 1981.

[9] See n. 5.

were removed in Part 74: In Subpart F, TV Broadcast Auxiliary Stations (§ 74.665), and in Subpart I, Instructional TV Fixed Service (§ 74.966).

Both of these Subparts contain a rule section pertaining to the posting of station and operator licenses. (§§ 74.664 and 74.965 respectively.) The operator license posting was not removed when the operator requirements were eliminated. The posting rules are amended herein to correct this inadvertent reference to posting operator licenses. (See appendix items 19 and 20).

(m) The Notice of Proposed Rule Making in Docket 20561 announced the Commission's intention to review the definition of a cable television system found in § 76.5. In the Report and Order to this proceeding,[10] the Commission stated "The principal change is to delete from the definition the *Note* following it [the CATV definition] which specifies that each community will be treated as having a separate cable system."

Through inadvertence, the note was *not* deleted from § 76.5, probably due to the manner in which the amendatory language was drafted. It states, "In § 76.5, paragraph (a) is amended . . . ." and fails to state that the *Note* following (a) is deleted. After the rule in modified paragraph (a), wherein the newly adopted definition of a Cable Television System was stated, the Order writer followed with the drafting language of five asterisks. This tells the editor that all parts of the rule following remains, and the textually excised *Note* stayed in the rule section. We correct this oversight herein and remove the *Note* following paragraph (a) as directed in the Report and Order. (See appendix item 21.)

(n) Where removal of paragraphs in rule sections takes place via rule makings, the paragraph designation may be allowed to remain and, with the text removed, the paragraph will be denoted "[Reserved]." As shown in the attached appendix, a number of these [Reserved] designations are removed since they serve no purpose and simply clutter the rule volume. Where succeeding paragraphs remain, they will be appropriately redesignated. (See appendix items 23 through 32).

2. In General Docket 85–75 [11] the Commission gave Notice of the list of its rules to be reviewed in this, the final year of scheduled rules review pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The review was initiated in 1981 in the Notice in General Docket 81–706, 46 FR 56466, November 17, 1981, to determine if our rules imposed a significant economic impact on a substantial number of small entities. With the finalization of this year's survey of regulations, and actions theron, the Mass Media Bureau completes the regulatory review of all rules' sections in Parts 73, 74, 76, 78 and 100.

3. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

4. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of proposed rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

5. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

6. Therefore, it is ordered, That pursuant to section 4(1), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and section 0.61 and 0.283 of the Commission's Rules, Parts 0, 1, 73, 74, 76 and 78 of the FCC Rules and Regulations are amended as set forth in the attached appendix, effective upon publication in the **Federal Register.**

7. For further information on this *Order*, contact Steve Crane, (202) 632–5414, Mass Media Bureau.

Federal Communication Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix

47 CFR Parts 0, 1, 73, 74, 76 and 78 are amended as follows:

1. The authority citation for Parts 0, 1, 73, 74, 76 and 78 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 0.453 is amended by revising paragraph (a) introductory text to read as follows:

§ 0.453 Public reference rooms.

* * * * *

(a) The *Mass Media and Dockets Reference Room.* The following documents, files and records are available for inspection at this location.

* * * * *

3. 47 CFR 1.1209 is amended by revising paragraph (g) to read as follows:

§ 1.1209 Decision making Commission personnel (restricted rule making proceedings).

* * * * *

(g) The Chief of the Mass Media Bureau and his staff when participating in proceedings involving service by common carriers to cable televisions systems.

* * * * *

4. 47 CFR 1.1227 is amended by revising paragraph (b) to read as follows:

§ 1.1227 Permissible ex parte communications.

* * * * *

(b) Such ex parte communications initiated by the staff of the Common Carrier Bureau or the Mass Media Bureau as may be necessary for the adduction of record evidence in restricted rulemaking proceedings.

* * * * *

5. 47 CFR 73.24 is amended by revising paragraph (j) to read as follows:

§ 73.24 Broadcast facilities; showing required.

* * * * *

(j) the 5 mV/m contour (or, at night, the interference-free contour, if of a higher field strength) encompasses the entire principal community to be served. For Class II–C and II–S stations on the 14 frequencies listed in § 73.25(c) it is not necessary to demonstrate the ability to provide such coverage during nighttime operation.

* * * * *

§ 73.93 [Removed]

6. 47 CFR 73.93, AM operator requirements, is removed in its entirety.

§ 73.265 [Removed]

7. 47 CFR 73.265, FM operator requirements, is removed in its entirety.

§ 73.317 [Amended]

8. 47 CFR 73.317, Transmission system requirements, is amended by removing paragraph (a)(5) and redesignating paragraphs (a)(6) through (a)(9) as (a)(5) through (a)(8).

9. 47 CFR 73.340 is amended by revising paragraph (c) to read as follows:

[10] Report and Order, Docket 20561, Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems, 63 FCC 2d 956, Adopted March 9, 1971.

[11] Notice, in General Docket 85–75, 50 FR 13394, April 4, 1895; and Further Notice, in General Docket 85–75, 50 FR 26593, June 27, 1985.

§ 73.340 Use of automatic transmission systems (ATC).

* * * * *

(c) Upon receipt of notification from the FCC, the station can commence full ATS operation.

* * * * *

10. 47 CFR 73.540 is amended by revising paragraphs (c) to read as follows:

§ 73.540 Use of automatic transmission systems (ATC).

* * * * *

(c) Upon receipt of notification from the FCC, the station can commence full ATS operations.

* * * * *

§ 73.565 [Removed]

11. 47 CFR 73.565, NCE–FM operator requirements, is removed in its entirety.

§ 73.661 [Removed]

12. 47 CFR 73.661, TV operator requirements, is removed in its entirety.

13. 47 CFR 73.687 is amended by revising paragraph (a)(1) to read as follows:

§ 73.687 Transmission system requirements.

(a) *Visual transmitter.* (1) The field strength or voltage of the lower sideband, as radiated or dissipated and measured as described in paragraph (a)(2) of this section, shall not be greater than −20 dB for a modulating frequency of 1.25 MHz or greater and in addition, for color, shall not be greater than −42 dB for a modulating frequency of 3.579545 MHz (the color subcarrier frequency). For both monochrome and color, the field strength or voltage of the upper sideband as radiated or dissipated and measured as decribed in paragraph (a)(2) of this section shall not be greater than −20 dB for a modulating frequency of 4.75 MHz or greater. For stations operating on channels 15–69 and employing a transmitter delivering maximum peak visual power output of 1 kW or less, the field strength or voltage of the upper and lower sidebands, as radiated or dissipated and measured as described in paragraph (a)(2) of this section, shall depart from the visual amplitude characteristic (Figure 5a of § 73.699) by no more than the following amounts:

−2 dB at 0.5 MHz below visual carrier frequency;

−2 dB at 0.5 MHz above visual carrier frequency;

−2 dB at 1.25 MHz above visual carrier frequency;

−3 dB at 2.0 MHz above visual carrier frequency;

−6 dB at 3.0 MHz above visual carrier frequency;

−12 dB at 3.5 MHz above visual carrier frequency;

−8 dB at 3.58 MHz above visual carrier frequency (for color transmission only).

The field strength or voltage of the upper and lower sidebands, as radiated or dissipated and measured as described in paragraph (a)(2) of this section, shall not exceed a level of −20 dB for a modulating frequency of 4.75 MHz or greater. If interference to the reception of other stations is caused by out-of-channel lower sideband emission, the technical requirements applicable to station operating on Channels 2–13 shall be met.

* * * * *

14. 47 CFR 73.764 is amended by revising paragraph (a) to read as follows:

§ 73.764 International broadcast station operator requirements.

(a) One or more operators holding a commercial radio operator license or permit (any class, unless otherwise endorsed) must be on duty where the transmitting apparatus of each station is located and in actual charge thereof whenever it is being operated.

* * * * *

15. 47 CFR 73.1225 is amended by adding new paragraph (c)(2)(iv) and by adding new paragraph (c)(3)(iii) to read as follows:

§ 73.1225 Station inspections by FCC.

* * * * *

(c) * * *

(2) * * *

(iv) Application for modification of the transmission system made pursuant to § 73.1690(c).

(3) * * *

(iii) Application for modification of the transmission system made pursuant to § 73.1690(c).

* * * * *

16. 47 CFR 73.1560 is amended by revising the section title to read as follows:

§ 73.1560 Operating power and mode tolerances.

17. 47 CFR 73.1960 is amended by revising paragraph (d)(2) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(d) * * *

(2) Commencement of remote control operation pursuant to §§ 73.1400 and 73.1410.

* * * * *

§ 47.3580 [Amended]

18. 47 CFR 73.3580, Local public notice of filing of broadcast applications, is amended by removing paragraph (d)(4)(v) in its entirety.

19. 47 CFR 74.664 is amended by removing paragraph (b) and the Note which follows it; by revising paragraph (c), and redesignating it paragraph (b); and by revising the section title to read as follows:

§ 74.664 Posting of station license.

(a) * * *

(b) Posting of the station license and any other instruments of authorization shall be done by affixing the license to the wall at the posting location, or by enclosing it in a binder or folder which is retained at the posting location so that the document will be readily available and easily accessible.

20. 47 CFR 74.965 is amended by removing paragraph (d); by revising paragraph (e) and redesignating it paragraph (d); and by revising the section title to read as follows:

§ 74.965 Posting of station license

* * * * *

(d) Posting of station license and any other instruments of authorization shall be done by affixing the license to the wall at the posting location, or by enclosing it in a binder or folder which is retained at the posting location so that the document will be readily available and easily accessible.

§ 76.5 [Amended]

21. 47 CFR 76.5, Definitions, is amended by removing the *Note* following paragraph (a) *Cable Television System.*

22. 47 CFR 78.20 is amended by revising paragraph (a) to read as follows:

§ 78.20 Acceptance of applications; public notice.

(a) Applications which are tendered for filing in Washington, D.C., are dated upon receipt and then forwarded to the Mass Media Bureau where an administrative examination is made to ascertain whether the applications are complete. Applications found to be complete, or substantially complete, are accepted for filing and are given a file number. In case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications which are not substantially complete will be returned to the applicant.

* * * * *

§ 73.188 [Amended]

23. 47 CFR 73.188, Location of transmitters, is amended by removing paragraphs (c) and (d) [Reserved] and redesignating paragraphs (e) through (m) as (c) through (k).

§ 73.658 [Amended]

24. 47 CFR 73.658, Affiliations agreements and network program practices; territorial exclusivity in non-network program arrangements, is amended by removing Note 2 [Reserved] following paragraph (m) and redesignating Notes 3, 4 and 5 as Notes 2, 3 and 4.

§ 73.682 [Amended]

25. 47 CFR 73.682, Transmission standards, is amended by removing paragraph (a)(23) [Reserved] and redesignating paragraphs (a)(24), as (a)(23).

§ 73.1210 [Amended]

26. 47 CFR 73.1210, TV/FM dual language broadcasts in Puerto Rico, is amended by removing paragraph (b)(4) [Reserved] and redesignating paragraph (b)(5) as (b)(4).

§ 73.1550 [Amended]

27. 47 CFR 73.1550, Extension meters, is amended by removing paragraph (b)(1)(iii) [Reserved] and redesignating paragraph (b)(1)(iv) as (b)(1)(iii).

§ 73.1800 [Amended]

28. 47 CFR 73.1800, General requirements related to the station log, is amended by removing paragraph (f) [Reserved] and redesignating paragraph (g) as (f).

§ 73.3533 [Amended]

29. 47 CFR 73.3533, Application for construction permit or modification of construction permit, is amended by removing paragraph (a)(4) [Reserved] and redesignating paragraphs (a) (5) through (8) as (a) (4) through (7).

§ 73.3536 [Amended]

30. 47 CFR 73.3536, Application for license to cover construction permit, is amended by removing paragraph (b)(4) [Reserved] and redesignating paragraphs (b) (5) through (8) as (b) (4) through (7).

§ 73.3615 [Amended]

31. 47 CFR 73.3615, Ownership reports, is amended by removing paragraph (d) [Reserved] and redesignating paragraphs (e) through (h) as (d) through (g).

§ 76.501 [Amended]

32. 47 CFR 76.501, Cross ownership, is amended by removing paragraph (a)(3) [Reserved].

[FR Doc. 85-23398 Filed 9-30-85 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 2

[General Docket No. 85-113; FCC 85-517]

Amendment of the Rules To Permit Land Mobile Use of the Band 421-430 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The Commission has changed Part 2 of its Rules, adding a primary allocation in portions of the 421-430 MHz band to the private land mobile radio services within 50 miles of Detroit, Cleveland and Buffalo. No change was made to the current secondary amateur allocation. This action will help to meet the communications capacity needs of the land mobile service in these areas.

DATE: Allocation is effective November 4, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Don Precure, (202) 653-8170.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 2

Frequency allocations, Treaties, Radio.

Report and Order

In the matter of amendment of Part 2 of the Commission's rules to permit land mobile use of the band 421-430 MHz in Detroit, Cleveland and Buffalo; Gen. Docket 85-113, FCC 85-517.

Adopted: September 20, 1985.
Released: September 26, 1985.

By the Commission.

Introduction

1. The purpose of this *Report and Order* is to help satisfy communications capacity needs of the private land mobile radio services in the vicinities of Detroit, Cleveland and Buffalo by allocating portions of the band 421-430 MHz for land mobile use near these cities. This allocation is desirable because it will reduce land mobile channel congestion near these cities and is possible without further disrupting amateur operations beyond that already proposed in other proceedings.

Background

2. Prior to the 1979 World Administrative Radio Conference ("WARC"), the 420-450 MHz band was allocated on a primary basis to the Radiolocation radio service and was shared on a secondary basis by the amateur radio service. The 420-430 and 440-450 MHz bands were reallocated at the WARC for primary use by the Fixed and Mobile radio services, subject to a modification to International Footnote 651 showing continued primary Radiolocation use in the United States of the 420-430 and 440-450 MHz bands and to new Footnote 652, which continued the secondary amateur allocation in the United States on the same bands.

3. An Arrangement [1] was entered into between the United States and Canada by exchange of diplomatic notes on April 7, 1982. Although the Arrangement was developed mainly to permit interference-free operation by both nations of their primary services in the border areas, it also allows non-Government land mobile operations in Detroit, Cleveland and Buffalo ("the cities"). On April 15, 1985, the Commission adopted a *Notice of Proposed Rulemaking* ("*Notice*") [2] proposing to allocate portions of the 421-430 MHz band in the cities for land mobile use. Comments and replies supporting the proposed allocation were filed by five private land mobile frequency coordinator groups while three amateur groups filed in opposition.

4. Shared primary use of these bands by both the private land mobile radio services and the Government Radiolocation service is made possible by an agreement reached in discussions between the Commission and NTIA. NTIA has agreed to allow the United States portion of this band to be used for non-Government purposes in these three cities while retaining the primary United States allocation for Radiolocation. It will do this by avoiding use of these frequencies, to the extent possible and except in emergencies, within interference range of the three cities.[3]

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[1] "Arrangement Between the Department of Communications of Canada and the National Telecommunications and Information Administration and the Federal Communications Commission of the United States Concerning the Use of the 406.1 to 430 MHz Band in Canada/United States Border Areas." *See* footnote 1 of the *Notice*.

[2] *See Notice of Proposed Rulemaking* in Gen. Docket No. 85-113, FCC 85-188, 50 FR 16109, (adopted April 15, 1985).

[3] Although the U.S. Government reserves the right to operate radiolocation stations in the 420-430 MHz band on board fixed-wing aircraft, the government will minimize use of this band on flights within interference range of land mobile operations.

5. Comments were filed by the Special Industrial Radio Service Association ("SIRSA"), the Land Mobile Communications Council ("LMCC"), the Utilities Telecommunications Council ("UTC"), the Manufacturers Radio Frequency Advisory Committee ("MRFAC"), the National Association of Business and Educational Radio ("NABER"), the American Radio Relay League ("ARRL"), the Southern California Repeater and Remote Base Association ("SCRRBA"), and by Spec-Com. Spec-Com is a journal for radio amateurs using specialized communications such as amateur television. Several individual amateurs endorsed the Spec-Com comments. Reply comments were filed by MRFAC.

6. The comments of SIRSA, LMCC, MRFAC, UTC and NABER ("land mobile") are similar in several respects. They support the proposed allocation, suggest that the area where land mobile operations would be permitted be enlarged, and that the area be described as a "point and radius" rather than by naming the counties which make up the area as was proposed in the *Notice*. They state that other cities need similar relief, that the amount of relief proposed is insufficient to meet the projected spectrum shortfall, and that the proposed allocation should be made promptly because radio channels in these three cities are congested.

7. ARRL, SCRRBA, and Spec-Com ("amateurs") were negative toward the proposal. They oppose the proposed allocation, saying that amateur use of the 420 MHz band in the United States is permitted by international rules, that the proposed allocation would conflict with these rules, and that amateur use of this band near the Canadian border has not been prohibited but can continue through use of rule waivers issued on a case-by-case basis. Amateurs also say the proposed land mobile allocation would greatly alter their use of the band because the current primary service (radiolocation) has few stations, whereas the proposed land mobile service would heavily utilize the band. Further, they say that land mobile could meet its needs through other means, that land mobile has not shown it has a shortage in Detroit, Cleveland and Buffalo, and that land mobile will be unable to use the 420 MHz band because no equipment is available.

8. The Commission's *Notice* only proposed the allocation of this spectrum for land mobile use in these cities and left the development of usage rules to subsequent rulemaking. Several commenters raise usage issues, such as how the spectrum should be administered, and how amateur waiver requests should be coordinated with Canada, which are outside the scope of this proceeding and will not be considered here.

Discussion

9. Since the main issue in making the proposed allocation is the impact on existing amateur use of the spectrum, the following paragraphs focus primarily on those points raised by commenters with amateur interests.

Conflict with International Rules

10. Both ARRL and Spec-Com comment that the proposed allocation conflicts with international rules. In support of their argument, ARRL says that although the band is allocated internationally for Fixed and Mobile Services, the United States achieved a footnote which allows continued amateur use of the band. "International Footnote 652 noted that the bands 420–430 MHz and 440–450 MHz will be allocated in, *inter alia*, the United States to the Amateur Radio Service." [4] Spec-Com states in its comments that "WARC proceedings clearly state the 420–430 MHz Amateur band was to be used as a PRIMARY user service." [5] (emphasis in original)

11. However, ARRL's paraphrasing of International Footnote 652 is incomplete. The full text of the footnote is quoted in paragraph 4 of the *Notice*. It reads:

> Additional allocation: In Australia, the United States, Jamaica, and the Philippines, the bands 420–430 MHz and 440–450 MHz are also allocated to the amateur service on a secondary basis.

The international allocation of the 420–430 MHz band to the amateur service is clearly secondary, not primary as Spec-Com maintains, and is in addition to other allocations.

Amateur Operation North of Line A

12. A "coordination zone" approximately 100 miles wide on each side of the U.S.-Canadian border was established by an Agreement with Canada in 1962. This coordination zone is bounded on the north by "Line B" in Canada and on the south by "Line A" (defined in § 2.1 of the Commission's rules) in the United States. On April 7, 1982, an Arrangement with Canada was effected, allowing both nations to operate their respective primary services in the band 406.1–430 MHz in the border areas. As part of this Arrangement, the United States has agreed that in the coordination zone north of Line A:

> The Amateur Service is excluded from the band 420–430 MHz. Additionally, airborne operations associated with the fixed and mobile stations are excluded from this band.[6]

13. When the Final Acts of the 1979 WARC were implemented into the Commission's Table of Allocations in 1983, a new footnote, NG135, was added to the United States Table:

> In the 420–430 MHz band the amateur service is not allocated north of Line A (def. § 2.1). All amateur radio stations shall operate north of Line A in accordance with the Agreement between the United States and Canada.[7]

14. Later, in a *Notice of Proposed Rulemaking* seeking to update the service rules, the Commission proposed the following change to its amateur rules in Part 97:

> The 420–430 MHz band is not allocated to the Amateur Radio Service north of Line A. An amateur radio station may operate north of Line A in the 420–430 MHz band only with a waiver, and only on a secondary basis to Canadian fixed and mobile operations in this band.[8]

15. This proposal is apparently the basis for ARRL's and Spec-Com's belief that amateur operation on this band north of Line A will be continued and that amateur operation is secondary only to Canadian fixed and mobile operation. However, the rule finally adopted in the proceeding (*Second Report and Order* in PR Docket 84–960) reads:

> No station shall operate north of Line A (see § 97.3(i)) in the 420–430 MHz band.

16. ARRL says "it is anticipated that waivers for such amateur operation at 420–450 MHz will be routinely processed and granted, following Canadian coordination."[9] It may be argued that exceptions to rules could be made upon obtaining official clearance from Canada. However, to date Canada has declined to provide clearance for any amateur operation in the 420–430 MHz band north of Line A. On this basis, the contention that waivers "will be routinely processed and granted, following Canadian coordination" is speculative, especially considering the rule adopted in PR Docket 84–960. (See para. 15 *supra*)

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[4] ARRL Comments, par 2, pg 2.

[5] Spec-Com comments, pg 1.

[6] Para. 2.2 of the Arrangement. See footnote 1 of the *Notice*.

[7] *See Second Report and Order* in Gen. Docket 80-739, FCC 83-511, 49 FR 2357, (adopted Nov. 8, 1983).

[8] *Notice of Proposed Rulemaking* in PR Docket 84-960, FCC 84-471, 49 FR 40611, para. 15.

[9] ARRL Comments, para. 3, pg. 4.

Change in Amateur Operations

17. South of Line A, the current amateur allocation at 420–430 MHz is secondary. As a secondary service in this band, amateur operation shall neither cause interference to nor claim interference protection from "stations of primary or permitted services to which frequencies are already assigned or to which frequencies may be assigned at a later date."[10] Amateur stations are therefore secondary to the Government Radiolocation Service and will be secondary to the Land Mobile Service in Detroit, Cleveland and Buffalo.

18. Amateurs are concerned that their communications would be severely disrupted by the proposed reallocation. The land mobile allocation in Cleveland and Buffalo means amateurs south of Line A, but within interference range of those cities, will have to avoid interfering with the primary land mobile service. However, amateur stations south of Line A may continue to operate in the 421–430 MHz spectrum as long as they do not cause interference to land mobile or Government radiolocation users. We believe that the disruption to amateur radio will be minimal since the principal use of land mobile radio occurs during business hours and the principal use of amateur radio occurs during non-business hours. A listing of 420–430 MHz amateur television repeaters, included in Spec-Com's comments, does not show the existence of any repeaters which would clearly be affected.[11] While the reallocation may preclude some amateur operation during business hours, the history of amateur radio points to innovativeness and flexibility in the resolution of any disruptive effects resulting from its operation. Our solution, to retain the amateur secondary allocation in the contested areas where it is not otherwise prohibited by the Canadian Arrangement, provides the regulatory flexibility to enable land mobile and amateurs to satisfy their operational needs.

Land Mobile's Need for and Usability of the Proposed Band

19. ARRL notes that Detroit and Cleveland received 420 channels and Buffalo received 180 channels at 80. MHz in 1982, and states "It cannot be said, therefore, that the need for land mobile spectrum is so great that it is necessary to disrupt amateur operation so severely."[12] ARRL goes on to say the Commission "has merely assumed that the Amateur Radio Service has no need for these frequencies, *vis-a-vis* land mobile need for additional channels."

20. As ARRL notes, we have provided some recent spectrum relief to land mobile radio in these areas. However, land mobile's further communications needs in Detroit, Cleveland and Buffalo have not been merely assumed, as ARRL alleges. Projections of the communications shortfall in the Cleveland and Detroit areas are published in the Report "Future Private Land Mobile Telecommunications Requirements."[13] The allocation we proposed in our *Notice* will not meet the projected shortfall but will contribute to the satisfaction of some of the growing requirements.

21. SCRBBA comments that the proposed allocation would prevent amateurs from using a planned nationwide packet data system in the three cities, that there are other solutions for land mobile in these three cities, and that land mobile equipment in these bands would be too expensive for land mobile users. Given these points, SCRBBA concludes no case has been made for the proposed land mobile allocation in Detroit, Cleveland and Buffalo. Further, SCRBBA suggests land mobile use ACSB systems with a bandwidth of 3 kHz in current allocations rather than continue to use systems with bandwidths of 25 kHz.

22. SCRRBA's first point has already been addressed in paragraph 16, *supra*. Should a nationwide packet data system be developed for amateur use, it could not be operated north of Line A using frequencies in the 420–430 MHz band. Concerning the other points, land mobile equipment for use in the 420–430 MHz band has been in domestic production by at least one manufacturer for some time for use in Canada, and costs no more than similar equipment in current land mobile bands. Finally, this proceeding does not address actual usage or channelization of land mobile spectrum but only whether the 420–430 MHz band should be allocated in the three cities.

23. For the reasons discussed above, we believe that the proposed additional allocation can be accommodated with only minor inconveniences and not the wholesale disruption the amateur community fears. Comments from LMCC, SIRSA, NABER, MRFAC and UTC emphasize that the need for additional land mobile communications capacity in Detroit, Cleveland and Buffalo as identified by the Commission's monitoring programs and in the Commission's reports has not been satisfied by other Commission actions. We are therefore convinced that it is in the public's benefit to proceed with the proposed allocation.

Conclusion

24. Our proposal to delineate by counties the area where land mobile base stations could be located was opposed by all who commented on the approach. Since the commenters who were the intended beneficiaries of our suggested approach have expressed their preference for a "point and radius" delineation, we will use this method. The method is currently used in major cities were the 470–512 MHz band is shared by land mobile with UHF–TV. Coordinates are specified for the center of each city and base stations are permitted within a 50 mile radius of that point. This approach has worked well and will be duplicated here. The geographic coordinates for Detroit, Cleveland and Buffalo are already specified in § 90.635. Therefore, we will allocate spectrum for primary operation of land mobile base stations within 50 statute miles of these three points.[14]

25. Land mobile commenters point out there are many applications where licensees must operate over wider areas than we proposed, and ask that the land mobile allocation be expended, perhaps to include an entire state. While this approach would not conflict with the Canadian Arrangement, it conflicts with the other primary allocation in the band, Government Radiolocation, and therefore is not being adopted.

26. This action has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements; and it will not increase or decrease burden hours imposed on the public.

27. The Commission has certified in accordance with section 605 of the Regulatory Flexibility Act that these rules do not have a significant impact on a substantial number of small entities because both government users and

[10] Section 2.105(c)(3)(i) and (ii).

[11] Spec-Com states that there are an additional 25 repeaters not on the list which might be affected, but does not indicate where they are located.

[12] ARRL Comments, para. 5 & 6, pg. 6.

[13] *Future Private Land Mobile Telecommunications Requirements*. Published August 1983. PR Docket 82–10. Available from International Transcription Service, Washington, DC, and Fairfax, VA.

[14] The Arrangement requires Canadian coordination if portions of the band allocated in this proceeding for use in the Cleveland area are to be used east of 81 degrees west longitude.

users in the amateur radio service are excluded in the Regulatory Flexibility Act.

28. In view of the foregoing, it is ordered that Part 2 is amended as set forth in the attached Appendix. This action is taken pursuant to the authority contained in sections (i) and 303(r) of the Communications Act of 1934 as amended (47 U.S.C. section 154(i) and 303(r)).

29. It is further ordered that these amendments are effective November 4, 1985.

30. For further information concerning this proceeding, contact Don Precure, Federal Communications Commission, Office of Science and Technology, Washington, DC 20554, (202) 653–8170.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended: 47 U.S.C 154, 303.

2. Section 2.106 is amended by adding footnote designator US230 at columns 4 and 5 and adding "LAND MOBILE (90)" at column 6 in the 420–450 MHz band, and by adding the text of footnote US230 in numerical sequence to the list of footnotes following the Table of Frequency Allocations.

§ 2.106 Table of frequency allocations.

United States Table		FCC use designators	
Government	Non-Government	Rule Part(s)	Special use frequencies
Allocation (MHz)	Allocation (MHz)		
(4)	(5)	(6)	(7)
* * * * *			
420–450 RADIOLOCATION 664 668 US7 US87 US217 US228 US230 G2 G8 G105 G105	420–450 Amateur 664 668 US7 US87 US217 US226 US230 NG135	LAND MOBILE(90) Amateur (97)	

* * * * *

US230 Non-government land mobile service is allocated on a primary basis in the bands 422.1875–425.4875 and 427.1875–429.9875 MHz within 50 statute miles of Detroit, MI, and Cleveland, OH, and in the bands 423.6125–425.4875 and 428.8125–429.9875 MHz within 50 statute miles of Buffalo, NY.

* * * * *

[FR Doc. 85–23441 Filed 9–30–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 25

Routine Licensing of Earth Stations in the 6 GHz Band Using Antennas Less Than 9 Meters in Diameter for Narrowband Transmissions

AGENCY: Federal Communications Commission.

ACTION: Declaratory Order.

SUMMARY: This action authorizes the routine processing of applications for satellite earth stations using antennas larger than 4.5 meters in diameter and providing Single Channel Per Carrier services where the power density into the antenna does not exceed a prescribed level. This action was prompted by the Commission's *Report and Order*, 54 Rad. Reg. 2d 577 (1983), to apply the analysis in Appendix B where it is determined that when the power density into the earth station antenna does not exceed specified levels that it does not cause unacceptable levels of interference when proper coordination and frequency planning is undertaken.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joseph F. Harcarufka, Satellite Radio Branch, (202) 634–1624.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 25

Satellite radio communications, Satellite earth stations, Communications common carriers, Radio, Satellites.

Declaratory Order

In the matter of routine licensing of earth stations in the 6 GHz band using antennas less than 9 meters in diameter for narrowband transmissions.

Adopted: September 17, 1985.

Released: September 25, 1985.

By the chief, Common Carrier Bureau.

Introduction

1. The Commission has applications on file for approximately 100 domestic satellite earth stations to transmit both analog and digital single channel per carrier (SCPC) signals in the 6 GHz band (i.e., 5.925–6.425 GHz) employing antennas whose diameters are less than 9 meters. Each of these applications must be reviewed with respect to the potential interference caused to adjacent satellites, as well as interference received from adjacent satellites. This review is made using the standards established in *American Broadcasting Companies* [1] and *Reduced Orbital Spacing*.[2] Because of the numerous applications now before us, and the disparity among analyses contained in these applications, we issue this declaratory ruling to remove uncertainty on the terms and conditions under which these and similar applications will be routinely processed.[3]

Discussion

2. The Commission authorized the first use of 5 meter transmit/receive antennas on a regular basis over 5 years ago for transmission and reception of 64 Kbps digital data.[4] The Commission

[1] *American Broadcasting Companies*, 62 FCC 2d 901 (1977).

[2] Licensing of Space Stations in the Domestic Fixed-Satellite Service, 54 Rad. Reg. 2d 577 (1983), *recons in part*, Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, 99 FCC 2d 737 (1985) (hereinafter *Reduced Orbital Spacing*).

[3] 47 CFR 1.2, Declaratory rulings.

[4] *American Satellite Corporation*, 72 FCC 2d 750–759 (1979). The maximum power density into the antenna for the 64 Kbps service is −2.7 dBW/4 KHz. Other transmission rates of 72 Kbps and 132 Kbps with power densities of −3.0 and −2.8 dBW/4 KHz, respectively, were simultaneously authorized. In *American Satellite Company*, Mimeo No. 001120 (released May 28, 1981) we extended the −2.7 dBW/4 KHz value to transmission rates up to 1120 Kbps for 5 and 7 meter antennas.

subsequently authorized the transmission of analog SCPC signals from earth stations with 4.5 meter antennas.[5] The authorization of these and similar small antenna facilities has resulted in the provision of efficient and economical communications services to the public without causing unacceptable interference to other satellite users. Additional SCPC authorizations were granted after the applicants submitted a detailed technical showing that satisfied *American Broadcasting Companies*.[6] These additional authorizations have been reviewed on a case-by-case basis requiring specific approval for each new type of transmission.

3. In Appendix B of *Reduced Orbital Spacing* the staff originally computed the amount of interference produced and received using the matrix of the 60 r.f. carriers. This analysis has been updated to include some new services that have been recently authorized.[7] The SCPC services described in paragraph 2 are included in this evaluation of potential interference with satellites operating at 2° orbital spacing. The analysis performed during this updated evaluation confirms the results given in Appendix B of *Reduced Orbital Spacing*, that is, the desired interference objectives are not met in every case. In particular, special consideration must be given to cases of potential interference to companded single sideband carriers (CSSB) and co-frequency SCPC carriers that are operated in the co-polarized portion of the transponder. However, the conclusion was reached in Appendix B that all of these potential interference problems can be resolved, and that satellites can be operated with 2° spacing with essentially the same conditions applied to these new services as those applied to other SCPC services in previous authorizations.

4. Because of the variety of transmission parameters proposed in the pending applications, a separate review for each application using the *American Broadcasting Companies* and *Reduced Orbital Spacing* standards would place large demands on limited staff resources. However, the interference analysis in Appendix B contains sufficient parameters to allow us to apply the results to those pending applications that do not vary significantly from those reviewed in Appendix B. In particular, a single parameter, the power density into the earth station antenna, can be used to determine whether many of the pending applications can be granted. This parameter best characterizes the many variables contained in the pending applications.[8]

5. We note that no parties have objected to these applications on the basis of interference to adjacent satellites, nor have we received comments on the analyses performed by applicants in support of their pending applications. Taken together with the Commission's analyses in Appendix B to *Reduced Orbital Spacing*, and the considerations set forth below, we find that applications for SCPC transmissions from antennas larger than 4.5 meters in diameter at 6 GHz satisfy the requirements of *American Broadcasting Companies* and *Reduced Orbital Spacing*. We will therefore routinely grant such applications without requiring the submittal of a detailed technical showing if the power densities do not exceed +0.5 dBW/4 KHz for analog SCPC carriers with bandwidths up to 200 KHz, and do not exceed −2.7 dBW/4 KHz for digital SCPC carriers with gross bit rates up to 4.839 Mbps.[9] The values proposed are workable values for routine application processing purposes. Operations at these levels do not appear to cause unacceptable levels of interference when proper coordination and frequency planning is undertaken by the licensee. Therefore, we see no purpose to be served by prohibiting such SCPC transmissions.

6. The above power density levels are based on the assumption that the transponder is being operated in a power limited mode. Under such circumstances, SCPC services can often be characterized by higher power density over limited segments of the transponders compared to the lower spectral density over the entire transponder of single carrier per transponder (SCPT) as well as many types of frequency-division-multiple-access (FDMA) transmissions.[10] In most such cases, a transponder full of SCPC carriers causes no greater interference than a SCPT transponder, although the particular SCPC carrier frequencies must be chosen with care to avoid high power density spikes of SCPT transmissions.

7. However, because SCPC services between small antennas often operate with higher power density levels than SCPT services and bandwidth-limited transmissions over portions of the transponder, certain conditions must be applied to SCPC transmissions to permit their operation with domestic satellites to obtain reasonable orbital spacings.[11] Because these higher power density SCPC transmissions imply power-limited transponder operation, the total power of all earth stations accessing the particular SCPC transponder will be less than that transmitted under any other conditions. Moreover, practical considerations will ensure that, on the average, the total off-axis EIRP from all earth stations operating up to the above declared levels will not cause

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[5] *Public Broadcasting Service*, 70 FCC 2d 1853 (1979). The maximum power density into the antenna for the 200 KHz SCPC-FM carrier is calculated to be +0.5 dBW/4 KHz. As noted in footnote 15 below, analog transmissions are characterized by a higher peak-to-average power density than digital SCPC carriers. Hence, the difference in authorized maximum power density.

[6] Several examples of additional authorizations include Alascom, Inc., Mimeo No. 00171 (released October 10, 1980); Cylix Communications Network, Inc., released November 13, 1980; and RCA American Communications, Inc., Mimeo No. 000295 (released April 14, 1981). The power density for Alascom, Inc. is −1.4 dBW/4 KHz into a 4.5 meter antenna for analog SCPC; and −10.8 dBW/4 KHz for Cylix Communications Network, Inc. into a 4.6 meter antenna and −4.3 dBW/4 KHz for RCA American Communications, Inc. into a 5 meter antenna for digital SCPC. These respective power densities are less than the analog SCPC level authorized in *Public Broadcasting Service* and the digital SCPC level authorized in *American Satellite Corporation, supra*.

[7] These transmission services added to the matrix given in Appendix B of *Reduced Orbital Spacing* include earth stations operated with 1.2 meter antennas (Equatorial Communication Services, Mimeo No. 2831, released March 13, 1984) and 3.0 meter antennas (The Associated Press, Mimeo No. 1010, released December 28, 1984). These services have modulation and transmission parameters substantially different from the SCPC services proposed in the applications being addressed by this order.

[8] These variables include transmitted power (EIRP) and bandwidth; antenna diameter; types of modulation, i.e., analog (FM) and digital (QPSK and BPSK); and quality of performance expected. Details of all these variables are described in more detail in Appendix B of *Reduced Orbital Spacing*.

[9] Until recently, all earth station applications used parabolic antennas. Consequently, the circular antenna size was referenced to its diameter. Recently, applications have been filed using non-circular or rectangular antennas. For the purposes of applying this *Declaratory Order*, the diameter of these non-circular antennas will be taken as the diameter of a circular antenna which provides an equivalent area as the effective area of the non-circular antenna.

[10] The exception to this characteristic exists within ±3 MHz of the transponder center frequencies where very high power density results from FDM/FM carrier spikes and an undispersed FM/TV signal. Outside of this frequency range, power densities do not usually exceed −10 dBW/4 KHz for most forms of transmission except for other SCPC transmissions.

[11] A standard condition routinely applied to SCPC services is that the licensee, in using multiple carrier frequencies within a transponder, retain sufficient flexibility to make frequency changes within its own system to avoid unacceptable interference with individual r.f. carriers on adjacent satellites. This flexibility to interleave carrier frequencies results from the limited power available from the transponder for the associated downlink r.f. carriers. This power limited transponder operation permits higher EIRP levels within portions of the transponder than would be the case if the entire transponder bandwidth were occupied by SCPC carriers.

unacceptable levels of interference into full transponder transmissions.

8. Transmissions at the declared levels are likely to cause unacceptable interference over portions of a transponder on an adjacent satellite if the co-channel transponder carried CSSB or bandwidth-limited SCPC or other frequency division multiple access carriers. In such cases, the transmitting earth station would have to coordinate its use of these power density levels with the adjacent satellite user. It may become necessary to reduce power or change frequency or transponder to keep interference levels to acceptable values.[12] Nevertheless, even under such circumstances, we believe that use of 4.5 meter and larger antennas for SCPC transmissions at 6 GHz can be accomplished in a manner compatible with 2° orbital separations.

9. One of the recurring difficulties encountered in reviewing these applications is the different methods used by the applicants to calculate the power density level. We will rely, on an interim basis, on the following formula for the purposes of applying these guidelines: [13]

Power Density (dBW/4 KHz) = P_t + 36 dB–Hz – 10 $\log_{10}$B + PF

Where:

P_t = total carrier power into the antenna in dBW

B = SCPC r.f. bandwidth in Hz [14]

Peaking Factor = 0 dB, 3.5 dB or 5.5 dB, as appropriate.[15]

Conclusion

10. Power density into earth station antennas that do not exceed the levels specified in paragraph 5 above will be presumed not to cause unacceptable interference into other satellite systems. The Commission will routinely grant licenses to all pending and future applications proposing 4.5 meter or larger transmit antennas at 6 GHz that satisfy these power density criteria.[16] Pending applications that request a power density greater than these values will be granted with power densities limited to the values established in this *Declaratory Order*. Requests for higher power densities may be filed, but they will require an adequate showing to be made pursuant to *American Broadcasting Companies* and *Reduced Orbital Spacing* as specified above. All licenses granted under procedure established here will be subject to the conditions set forth in paragraph 8 and the licensee will be required to make any necessary changes within his system to resolve any interference conflicts.

11. Accordingly, pursuant to § 0.291 of the Commission's rules on delegations of authority, it is ordered that pending applications proposing use of SCPC transmissions at 6 GHz from transmitting antennas 4.5 meters or greater in diameter will be granted in accordance with the conditions specified above, and that future applications will be routinely processed in accordance with these procedures.

12. This order shall be published in the **Federal Register**.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 85-23425 Filed 9-30-85; 8:45 am]

BILLING CODE 6712-01-M

[12] We expect that our Reduced Spacing Advisory Committee will develop specific recommendations addressing such coordination situations.

[13] The power density calculation incorporates a spreading factor that is determined in accordance with equation (11) of CCIR Report 792-1, "Calculation of the Maximum Power Density Averaged over 4 KHz of an Angle-Modulated Carrier."

[14] For digital transmissions, B = bandwidth occupied by the symbol rate (symbols/second) including error correction bits (Hz) for a phase shift keyed (PSK) SCPC carrier modulated by a digital energy dispersal signal of a pseudo noise (PN) sequence.

[15] A peaking factor of 5.5 dB is assigned to account for low modulation levels for the case where the residual carrier tends to dominate and the energy dispersal is consequently very low. (Alascom Engineering Report, AER 79-1220-003, October 1979 and Western Telecommunications, Inc. "Low Power SCPC Spectrum Analysis," March 11, 1982.) For those systems which employ a sinusoidal spreading function, a peaking factor of 3.5 dB may be applied in lieu of 5.5 dB. (RCA American Communications, Inc., File No. 768-DSE-P/L-78, K166, Amendment dated August 10, 1978). For digital carriers, the peaking factor is 0 dB.

[16] These conditions subject the applicant to bear the risk that future changes in satellite locations or transponder use assignments will require earth station operations at frequencies for which coordination cannot be effected with terrestrial assignments; and to maintain an inherent flexibility to make adjustments in one's r.f. carrier frequency to avoid unacceptable interference with r.f. carriers on adjacent satellites.

47 CFR Part 73

[MM Docket No. 85-78; RM-4892]

TV Broadcast Station in Jacksonville, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 35 to Jacksonville, North Carolina, as that community's first local commercial service, at the request of Jacksonville Broadcasting Company.

EFFECTIVE DATE: November 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Jacksonville, North Carolina), MM Docket No. 85-78, RM-4892.

Adopted: September 19, 1985.

Released: September 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 14268, published April 11, 1985, requesting comments on the assignment of UHF TV Channel 35 to Jacksonville, North Carolina, at the request of Jacksonville Broadcasting Company ("petitioner"). The assignment could provide Jacksonville with its first local commercial television service. Channel 35 can be assigned in compliance with the Commission's minimum distance separation and other technical requirements. Petitioner filed comments reiterating its intention to apply for the channel.

2. We believe the public interest would be served by assigning Channel 35 to Jacksonville as its first local commercial service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's rules, it is ordered, That effective November 1, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Jacksonville, NC	*19, 35

3. It is further ordered, That this proceeding is terminated.

4. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–23440 Filed 9–30–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85–66; RM–4874]

TV Broadcast Station in Klamath Falls, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 31 to Klamath Falls, Oregon, as that community's second local commercial assignment, at the request of Sunshine Television, Inc.

EFFECTIVE DATE: November 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of amendment of § 73.606(b), table of assignments, TV broadcast stations (Klamath Falls, Oregon); MM Docket No. 85–66, RM–4874.

Adopted: September 19, 1985.

Released: September 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 14953, published April 16, 1985, requesting comments on the assignment of UHF TV Channel 31 to Klamath Falls, Oregon, at the request of Sunshine Television, Inc. ("petitioner"). Petitioner filed comments reiterating its intention to apply for the channel, if assigned. No other comments were received. Channel 31 can be assigned to Klamath Falls in compliance with the Commission's minimum distance separation and other technical requirements.

2. We note that the petitioner wishes to utilize Channel 31 at Klamath Falls as a satellite station for its Medford television station, KDRV. In order for the petitioner to file an acceptable application for this channel, it should be aware that its proposed facilities may not provide a contour which would overlap the coverage now provided by its Medford operation.

3. We believe the public interest would be served by assigning Channel 31 to Klamath Falls as its second local commercial service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 1, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Klamath Falls, OR	2-, *22 +, and 31

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–23427 Filed 9–30–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85–76; RM–4900]

TV Broadcast Station in Wolfforth, TX

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This action assigns UHF TV Channel 22– to Wolfforth, Texas, as that community's first commercial television facility, at the request of Randy Chandler Ministries, Inc.

EFFECTIVE DATE: November 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Wolfforth, Texas); MM Docket No. 85–76, RM–4900.

Adopted: September 19, 1985.

Released: September 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 14271, published April 11, 1985, proposing the assignment of UHF TV Channel 22 to Wolfforth, Texas, as that community's first commercial television facility. The *Notice* was adopted in response to a petition filed by Randy Chandler Ministries, Inc. ("petitioner"). Petitioner filed supporting comments reaffirming its interest in the proposed channel.

2. Wolfforth (population 1,701)[1] in Lubbock County (population 211,651) is located in northern Texas approximately 16 kilometers (10 miles) southwest of Lubbock, Texas. It has no local TV service.

3. The channel can be assigned in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

4. We believe the public interest would be served by assigning UHF TV Channel 22 to Wolfforth, Texas, as that community's first commercial television facility. Accordingly, pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 1, 1985, the TV Table of Assignments, § 73.606(b) of the Commission's Rules, is amended as follows:

[1] Population figures are taken from the 1980 U.S. Census.

City	Channel No.
Wolfforth, TX	22-

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–23426 Filed 9–30–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 81, 83 and 87

[PR Docket No. 83–431, RM–2946]

Digital Selective Calling System in the Maritime Mobile Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects paragraph designators and two incomplete paragraphs contained in final regulations implementing the Digital Selective Calling System which were published August 22, 1985 (50 FR 33942).

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 81

Coast Stations, Communications equipment, Radio.

47 CFR Part 83

Communications equipment, Marine safety, Radio, Ship stations.

47 CFR Part 87

Aeronautical stations, Radio.

Erratum

In the Matter of Digital Selective Calling System in the Maritime Mobile Service (PR–DOCKET NO. 83–431, RM–2946).

Released: September 25, 1985.

1. On August 15, 1985, the Commission released a Report and Order in the above-captioned proceeding, FCC 85–441, FR Doc. 85–19397. In the Appendix, paragraphs 12, 14, 25 and 26 contained incorrect paragraph designators and paragraphs 19 and 34 were incomplete. Accordingly these paragraphs are corrected as indicated below.

2. On page 33948, paragraph 12 of the Appendix is corrected to read as follows:

§ 81.356 [Corrected]

12. In § 81.356, paragraph (a) is amended by adding the symbol "5" to the "Conditions of use" column of the frequency table opposite all frequency entries to the State Control, Commercial and Noncommercial categories. A new category, "Digital Selective Calling", and frequency information opposite channel designator "70" are added to the frequency table below the Noncommercial category, paragraphs (b)(5) and (b)(6) are added to read as follows and paragraph (b)(12) is removed.

(a) * * *

Digital Selective Calling				
70	156.525	156.525	Coast to ship	5,6

(b) * * *

(5) Authorized for general purpose calls to ships by means of digital selective calling.

(6) Authorized for alerting purpose related to distress and safety using digital selective calling techniques.

* * * * *

3. On page 33948, in the Appendix, the first two lines of paragraph 14 are corrected to read as follows:

14. Section 81.365 is added to read as follows:

§ 81.365 Digital selective calling operating procedures.

4. On page 33949, in paragraph 19 of the Appendix, the introductory text of paragraph (f) of § 83.147 is corrected to read as follows:

§ 83.147 [Corrected]

* * * * *

(f) When the following conditions are met, tone or synthesized selective calling equipment not in conformance with the technical characteristics of CCIR Recommendation 493 may be operated until a date to be established by FCC Order. The date will be a minimum of three years from the date subsequent to which DSC equipment is required for new selective calling installations. The conditions are:

§ 83.351 [Amended]

5. On page 33950, in paragraph 25 of the Appendix, seven paragraph designators in § 83.351 are corrected to read "83.352(e)" in lieu of "83.352(d)" where they appear opposite the frequencies 2187.5 kHz, 4188.0 kHz, 6282.0 kHz, 8375.0 kHz, 12563.0 kHz, 16750.0 kHz and 156.525 MHz.

6. On page 33951, paragraph 26 of the Appendix is corrected to read as follows:

26. In § 83.352, paragraph (e) is added to read as follows:

§ 83.352 Frequencies for use in distress and search and rescue operations.

* * * * *

(e) The frequencies identified in Section 83.351(b)(54) are available for use by ship stations for distress and safety calls using DSC.

7. On page 33951, paragraph 34 of the Appendix is corrected to read as follows:

34. Section 87.183 is amended by revising the first sentence of paragraph (j)(3) to read as follows:

§ 87.183 Frequencies available.

* * * * *

(j) * * *

(3) The frequencies 156.300, 156.375, 156.400, 156.425, 156.450, 156.625, 156.800 and 156.900 MHz may be used by aircraft stations to communicate with ship stations under these conditions:

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–23420 Filed 9–30–85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 509

[Docket No. 83–17; Notice 2]

OMB Control Number Display for Information Collection Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Technical amendment.

SUMMARY: The Office of Management and Budget (OMB) has promulgated a regulation requiring all agencies to display the OMB control number assigned to all regulations that contain information collection requirements, by publishing those control numbers in the **Federal Register.** Accordingly, NHTSA published those control numbers in November 1983. This amendment updates that publication to reflect the changes which have occurred since that time. This update is intended to ensure that the public will be informed of the current OMB control numbers assigned to NHTSA regulations.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–2992).

SUPPLEMENTARY INFORMATION: OMB is authorized by the Paperwork Reduction Act of 1980 (44 U.S.C. 3516) to promulgate rules, regulations, or procedures necessary to carry out the purposes of the Paperwork Reduction Act. Pursuant to this authority, OMB promulgated 5 CFR Part 1320, *Controlling Paperwork Burdens of the Public.* 5 CFR 1320.7(f)(2) requires all agencies to display the OMB control number for regulations that contain information collection requirements, by publishing those control numbers in the **Federal Register.**

In response to this regulation, NHTSA published a new Part 509 on November 8, 1983 (48 FR 51310). Part 509 set forth all the OMB control numbers which had been assigned to NHTSA's regulations as of that date. Since that time, there have been many changes and additions to the OMB control numbers assigned to this agency's regulations. This technical amendment updates Part 509 to reflect those changes, so that the public will be accurately informed of the OMB control numbers currently assigned to NHTSA's regulations.

Publication of this technical amendment updating Part 509 simply satisfies the requirements of 5 CFR Part 1320. It imposes no obligations or responsibilities on any party, nor does it alter any existing obligations. Accordingly, NHTSA finds for good cause that notice and opportunity for comment are unnecessary, and this technical amendment is effective on the date this notice is published.

NHTSA has analyzed the impacts of this action and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This update does not affect any existing duties or obligations under agency regulations, and will have no cost impacts. Therefore, a full regulatory evaluation has not been prepared.

For the same reasons, NHTSA has determined that this update will not significantly affect the human environment, after considering the environmental implications in accordance with the National Environmental Policy Act. Likewise, I hereby certify that this update will not have a significant impact on a substantial number of small entities, after making the evaluation required by the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 509

Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 509 is amended as follows:

1. The authority citation for Part 509 is revised to read as follows:

Authority: 44 U.S.C. 3507.

2. Section 509.2 is revised to read as follows:

§ 509.2 Display.

49 CFR Part or section containing information collection requirement	OMB control number
Part 512	2127-0025
Part 537	2127-0019
Section 551.45	2127-0040
Part 552	2127-0046
Part 556	2127-0045
Part 557	2127-0039
Part 566	2127-0043
Consolidated labeling requirements for Tires and Rims (Parts 569 and 574, sections 571.109, 571.110, 571.117, 571.119, and 571.120)	2127-0503
Consolidated labeling requirements for Vehicles excluding VIN (Part 567, sections 571.105, 571.205, and 571.209	2127-0612
VIN requirements (Parts 542 and 565, section 571.115	2127-0510
Section 571.108	2127-0052
Section 571.115 (Report)	2127-0051
Section 571.116	2127-0521
Section 571.125	2127-0506
Section 571.126	2127-0516
Section 571.205	2127-0038
Section 571.208	2127-0535
Section 571.213	2127-0511
Section 571.217	2127-0505
Section 571.218	2127-0518
Part 573	2127-0004
Part 574	2127-0050
Part 575 excluding UTQGS	2127-0049
Section 575.104 (UTQGS)	2127-0519
Part 576	2127-0042
Part 580	2127-0047

Issued on September 26, 1985.

Jeffrey R. Miller,

Chief Counsel.

[FR Doc. 85–23409 Filed 9–30–85; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246; Sub-3]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Service—1985 Update

AGENCY: Interstate Commerce Commission.

ACTION: Final Rules.

SUMMARY: In 1983 the Commission conducted a comprehensive study of its user fee program. The culmination of that study was the Commission's decision in Ex Parte No. 246 (Sub-No. 2), *Regulations Governing Fees For Services.* See 49 FR 18491, (5–1–84) and 49 FR 39548 (10–9–84). Our revised user fee regulations require us to update our user fee schedule annually to reflect the Commission's current costs of providing services and benefits. See 49 CFR 1002.3. Through this decision we will update our fee schedule to reflect our 1985 costs of providing services and benefits. We will make a minor change in the fee schedule which will facilitate payment and collection of fees for motor operating rights applications and the BOC–3 agent for service of processing filing. The fee relating to informal opinions for the Office of Compliance and Consumer Assistance will be eliminated. Inasmuch as these changes will not prejudice the rights of parties before the Commission, comment is unnecessary and not in the public interest.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King (202) 275–7428

or

Paul Meder (202) 275–5360.

SUPPLEMENTARY INFORMATION: The Commission's revised user fee regulations require annual updating of the user fee schedule to reflect current costs of providing services and benefits. 49 CFR 1002.3. This decision updates the fee schedule to reflect the 1985 costs, and also notices several minor modifications and editorial changes to the schedule.

Modification of the Fee Schedule

The current fee schedule provides for separate fees for an application for motor carrier authority (49 CFR 1002.2(f)(1)) and BOC–3 designation of agents for service of processing filings (49 CFR 1002.2(f)(81)). Applicants for motor carrier authority or a broker's license must now submit those two separate filing fees before their certificate, permit, or license can be issued. The issuance of separate checks for those two items is an added expense to the applicant. The processing of the separate BOC–3 fee is also an administrative burden to the Commission because of the volume of such filings.

We will combine these two fees so that the resulting fee for motor carrier and broker applications will be $158. We have followed a similar approach in Ex Parte No. 55 (Sub-No. 65) *Applications for Certificates of Registration for Certain Foreign Carriers,* 50 FR 20773, (May 20, 1985).

Since water carrier or freight forwarder applicants are not required to submit BOC–3 agent filings, this fee change will not affect them. We will rephrase 49 CFR 1002.2(f)(1) to provide for separate fees for motor carrier and broker applications and water carrier and freight forwarder applications. This change will also apply to fee 49 CFR 1002.2(f)(2) for owner operator motor carrier authority which will also be increased by $8. The resulting fee will be $78.

Our modification of the motor carrier and broker application fee will not have any effect on the current procedures that allow these applicants to submit the BOC–3 filings after they receive notification that their application has been granted. On the effective date of these rule changes we will accept BOC–3 filings without separate fees.[1]

We find that this procedural change in our rules will not have an adverse or substantial effect on small entities, or regulated carriers applying for new authority. The amount paid by these parties will not increase, only the timing of the payment will change. By paying for both the application and BOC–3 filing fee at the time of the application, applicants will not have to write separate checks, and the administrative burden on the Commission in processing multiple checks will be eliminated. Moreover, notice and public comment are unnecessary because the change involved is minor and involves a matter in which the public is not particularly interested.

Our current fee schedule at 49 CFR 1002.2(f)(82) requires a $200 filing fee for an informal opinion from the Commission's Office of Compliance and Consumer Assistance. A review of the requests received shows that most are from individuals, and seldom; involve substantial research by our staff. In about 94% of the cases the fee is waived because a determination is made that waiver of the fee is in the best interest of the public, or that payment of the fee would impose an undue hardship upon the requestor (see 49 CFR 1002.2(e)(2)(ii)). Further, if these inquiries were made by phone or addressed to another Commission office or bureau, no fee would be required.

Consequently, we believe that the public interest would be best served if fee item 49 CFR 1002.2(f)(82) was removed from our fee schedule. This action is consistent with the Independent Offices Appropriation Act of 1952, 31 U.S.C. 483a, recodified at 31 U.S.C. 9701, which allows an agency to consider the fairness and the public policy or interest served when establishing charges for services.

In our view, there is good cause for not requiring public comment before elimination of the informal opinion fee. Elimination of the fee removes a barrier on public use of Commission expertise by private citizens and will not prejudice the rights of parties before the Commission. Inasmuch as the vast majority of the cases now result in waiver of the fee on public interest grounds, we believe to require comment on the change is unnecessary and would delay the change contrary to the public interest.

Editorial Changes in Fee Schedule

Several editorial changes are required. We will eliminate an outdated reference to reporter services used by the Commission in 49 CFR 1002.1(i). Fee item 49 CFR 1002.2(f)(21) will be rephrased to include references to water carriers to emphasize that the applicability of that fee to water carrier transactions. We also are adding explanatory information to fee item 49 CFR 1002.2(f)(75) to reflect the fact that no fee is charged for requests involving $5,000 or less, as these latter requests are processed under procedures outlined in No. 37130 (Sub-No. 2), *Special Docket Proceedings—Exemption From Letter-of-Intent Requirements Involving Amounts of $5,000 or less*, 50 FR 15900, (1985).

Updated Fees

Appendix A contains revisions to the fee schedule which were developed using the formula outlined in 49 CFR 1002.3(d). Appendix B is a discussion of the methodology. Appendix C shows the calculations for each fee item, and Appendix D is a comparison of the 1984 and 1985 costs and fees. Appendices C and D are not being published in the **Federal Register** due to time constraints. They are available in the Commission's served decision upon request from the Office of the Secretary.

It should be noted that while our costs for providing services to the public have increased for all activities because of increased labor expenses, there will not be a change in every fee because of our rounding procedures. Also, there will be no change in fees for such items as complaints and other items which have capped fees.

Effective Date of These Fees

Our regulations at 49 CFR 1002.3(b) state "Updated fees shall be published in the **Federal Register** on October 1, 1985 and shall become effective 30 days after publication." To facilitate the transition from the 1984 fee schedule to the 1985 fee schedule we will make these rules effective on, November 4, 1985. In subsequent years, we anticipate that updates will become effective on October 1st.

This decision will not have a significant effect on a substantial number of small entities because it only updates the Commission's User Fee schedule to reflect 1985 costs and make editorial and operational changes.

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

It is ordered:

The final rules set forth in Appendix A are adopted. These rules will be effective on November 4, 1985.

Lists of Subjects in 49 CFR Part 1002

Administrative Practice and Procedure; Freedom of Information.

Decided: September 19, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Simmons commented with a separate expression. Commissioner Sterrett did not participate.

James H. Bayne,

Secretary.

Commissioner Simmons, Commenting:

As I stated last October in Ex Parte No. 246 (Sub-No. 2), I am still concerned about the possible chilling effect of complaint fees at the $500 level. The Secretary's Office should provide further evidence on this issue for consideration with our next annual fee update.

Appendix A

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. Part 1002 is amended by removing the authority citations that appear under §§ 1002.1, 1002.2, and 1002.3, and by adding a new authority citation for the Part to read as follows:

Authority: 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

§ 1002.1 [Amended]

2. In § 1002.1, the dollar amount of "$16.00" in paragraph (b) is revised to read "$17.00."

3. In § 1002.1 paragraphs (e)(1) is revised to read as follows:

[1] In the event that an application is denied, applicants may request refund of the $8 process agent filing fee since the filing would not be necessary.

§ 1002.1 Fees for records search, copying, certification, and related services.

(e) * * *

(1) A fee of $30.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

4. In § 1002.1 the table in paragraph (f)(1) is revised to read as follows:

GS–1	5.07
GS–2	5.52
GS–3	6.22
GS–4	6.94
GS–5	7.82
GS–6	8.71
GS–7	9.68
GS–8	10.72
GS–9	11.84
GS–10	13.04
GS–11	14.33
GS–12	17.17
GS–13	20.42
GS–14	24.13
GS–15 and over	28.38

5. In § 1002.1 paragraph (i) is removed.

6. In § 1002.2 paragraph (f) is revised to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of Filing fees.*

Type of proceedings	Fees
Part I.—Non-Rail-Applications for Operating Authority or Exemptions	
(1) (a) An application for motor carrier operating authority, or a certificate of registration including a certificate of registration for certain foreign carriers or broker authority	$158
(b) An application for water carrier operating or exemption authority or freight forwarder authority	150
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products	78
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.64	1,600
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by application, a change in the name of the shipper or owner of a plantsite or the change of a highway name or number	27
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	27
(6) An application to remove restriction or broaden unduly narrow authority under 49 CFR 1165	150
(7) An application for authority to deviate from authorized regular route authority 49 U.S.C. 10923(a)	90
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b)	70
(9) An application for motor carrier emergency temporary authority 49 U.S.C. 10928(c)(1)	50
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue	13
(11) Request for name change of carrier, broker or freight forwarder	5
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated incorporate hauling including an updated notice required by 49 CFR 1167.4	70
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5)	70
(14) [Reserved]	
(15) [Reserved]	
(16) [Reserved]	
Part II—Non-Rail-Applications To Discontinue Transportation	
(17) A notice of petition to discontinue ferry service 49 U.S.C. 10908	6,400
(18) A petition to discontinue motor carrier of passenger transportation in one state	500
(19) [Reserved]	
Part III—Non-Rail-Applications To Enter Upon A Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic	1,200
(21) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343	650
(22) An application for approval of a non-rail rate association agreement. 49 U.S.C. 10706	7,800
(23) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant Amendment	3,500
(ii) Minor Amendment	27
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349	100
(25) An application to transfer, or lease of a certificate or permit, including a certificate of registration, and a broker license or change of control of companies holding broker's license. 49 U.S.C. 10926 or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544	150
(26) An application for approval of a motor vehicle rental contract. 49 CFR 1057.41(d)	100
(27) A petition for exemption under 49 U.S.C. 11343(e)	150
(28) [Reserved]	
(29) [Reserved]	
(30) [Reserved]	
(31) [Reserved]	
(32) [Reserved]	
Part IV—Rail-Applications for Operating Authority	
(33) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	2,100
(34) Feeder Line Development Program application filed under 49 U.S.C 10910 (b)(1)(A)(i)	2,500
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii)	1,400
(36) [Reserved]	
(37) [Reserved]	
Part V—Rail-Applications To Discontinue Transportation Services	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation, bankrupt railroads or exempt abandonments under 49 CFR 1152.50)	1,600
(39) An application for authority to abandon all or a portion of a line or railroad or operation thereof filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act	100
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40	500
(41) Exempt abandonments. 49 CFR 1520.50	650
(42) A notice or petition to discontinue passenger train service	6,400
(43) [Reserved]	
Part VI—Rail-Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other application. 49 U.S.C. 11103	5,400
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342	3,700
(46) An application for two or more carriers to consolidate or merge their properties or franchises or a part thereof, into one corporation for ownership, management, and operation of the properties, previously in separate ownership:	
(i) Major transaction	100,000
(ii) Significant transaction	20,000
(iii) Minor transaction	1,800
(iv) Exempt transaction (49 CFR 1080.2)	450
(v) Responsive application	1,800
(47) An application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343(a)(1):	
(i) Major transaction	100,000
(ii) Significant transaction	20,000
(iii) Minor transaction	1,800
(iv) Exempt transaction (49 CFR 1080.2)	450
(v) Responsive application	1,800
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343:	
(i) Major transaction	100,000
(ii) Significant transaction	20,000
(iii) Minor transaction	1,800
(iv) Exempt transaction (49 CFR 1080.2)	450
(v) Responsive application	1,800
(49) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise:	
(i) Major transaction	100,000
(ii) Significant transaction	20,000
(iii) Minor transaction	1,800
(iv) Exempt transaction (49 CFR 1080.2)	450
(v) Responsive application	1,800
(50) An application for a determination of fact of competition. 49 U.S.C. 11321(a)(2) or (b)	20,000
(51) An application for approval of, or to amend a rail rate association agreement. 49 U.S.C. 10706	19,700
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C.:	
(i) Significant Amendment	3,700
(ii) Minor Amendment	27
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322	200
(54) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization, or an application for exemption for competitive bidding requirements of Ex Parte No. 158, 49 CFR 1175.10. 49 U.S.C. 11301	950
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505	550
(56) An application for forced sale of bankrupt railroad lines	1,100
(57) [Reserved]	
(58) [Reserved]	
(59) [Reserved]	
Part VII—Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers	500
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription of division of joint rates, fares or charges 49 U.S.C. 10705(f)(1)(A)	1,400
(62) A petition for declaratory order, except petitions alleging unlawful rates or practices	500
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increase	4,300
(64) A petition for exemption from filing tariffs by water and bus carriers	100
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	2,000
(66) Petition for review of state regulations of intrastate rates, rules or practices filed by interstate rail carriers. 49 U.S.C. 11501	500
(67) Petition for review of state regulations of intrastate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501	500
(68 [Reserved]	
(69) [Reserved]	

Type of proceedings	Fees
(70) [Reserved]	
(71) [Reserved]	
Part VIII—Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster	300
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements	30
(74) The filing of tariff and rate schedules including supplements	(1)
(75) Special docket application from rail and water carriers. (There is no fee for requests involving sums of $5,000 or less)	40
(76) Informal complaint about rail rate application	100
(77) An application for original qualification as self-insurer	60
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance or surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity. (There is a $50 annual minimum)	(2)
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR 1057	200
(80) A petition for reinstatement of revoked operating authority	30
(81) [Reserved]	
(82) [Reserved]	
(83) Petition for reinstatement of a dismissed operating rights application	150
(84) Filing of documents for recordation 49 U.S.C. 11303 and 49 CFR 1177.3(c) (3)	
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceedings	800
(86) Informal opinions about rate applications. (all modes)	40
(87) [Reserved]	
(88) [Reserved]	
(89) [Reserved]	
(90) [Reserved]	
(91) [Reserved]	
(92) [Reserved]	
(93) [Reserved]	
(94) [Reserved]	
(95) [Reserved]	
Part IX—Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC agent	(4)
(97) Request for service list for proceedings	(5)
(98) Requests for copies of the one-percent carload waybill sample	60
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation	(6)
(100) Application fee for Interstate Commerce Commission Practitioners' Exam	50

[1] 5 per series transmitted.
[2] 10 per accepted certificate.
[3] 10 per document.
[4] 8 per delivery.
[5] 5 per list.
[6] 10 per movement verified.

Appendix B—Cost Restatement Procedures

In accordance with requirements promulgated in Ex Parte No. 246 (Sub-No. 2) *Regulations Governing Fees For Services Performed in Connection With Licensing and Related Services*, served May 1, 1984, regarding the annual update of user fees, Section 1002.3, the attached table [Appendix C] is provided reflecting the restatement of cost data to the April 1985 level and to set new fee levels in Ex Parte No. 246 (Sub-No. 2), *supra*.

The following statements are provided explaining the contents in the attached table relative to the restated cost data and resulting restated user fee items.

Column 1 headed Fee Number and Fee Amount provide the current fee number and dollar amount (except as noted). These data are in the same sequential order as provided in Appendix B of the final decision—Part 1002—FEES—pages 1, 2, 3, and 7 through 16.

The exceptions are as follows:

a. Fee item 1 includes the addition of fee item 81 rounded to $160.00.

b. Fee items 46 through 49 are only shown once since the fees are identical. For data processing purposes we have listed the fee numbers sequentially.

c. Fee items 101 through 105 relate to Section 1002.1, Parts (a)(b)(c)(d) and (e).

Column 1 provides the cost data as shown in Appendix E of the final decision, pages 2 through 6. It is noted that the cost data in Column 1 is at the fully distributed cost level except for fee items 1002.1 (b), (c), (e), (i), 60, 61, 62(i), 62(ii), 76, 86, and 100 which are limited to direct labor costs as explained in the final decision. The only exception is fee item 1 which is combined with fee item 81.

Columns 2 through 7 provide cost data relative to the five (5) cost categories.

Column 8 provides the total costs resulting from the user fee study exclusive of labor increases incurred on January 1, 1984, of 4.0 percent.

It is noted that cost based fees adopted in the final decision were based on cost factors that only included the impact resulting from the 3.5 percent general schedule wage increase which became effective January 1, 1984. Moreover, our approach was based on weighted average cost increase factors applied to the fully distributed costs. The restatement procedure is outlined on page 1 of Appendix E in the final decision.

In an effort to provide a more accurate assessment of the cost increases applicable to the individual cost categories of direct and indirect labor, governmental fringe benefit, general and administrative and publication costs, cost data reflected in Columns 2, 3, 5, and 6 of the attached table was utilized as a base to reflect cost increases occurring in January 1984 and from April 1, 1984, through April 1, 1985.

Cost restatement procedures were based on the following:

A. Direct labor costs for each individual fee item was increased by 7.66 percent. The increase factor is based on the following general schedule labor increases:

(1) January 1, 1984—3.50 percent.
(2) January 1, 1984—.50 percent.
(3) January 1, 1985—3.50 percent.

Increase Factor developed as follows:
[1.0350 × 1.0050 = 1.0402 × 1.0350 = 1.0766]

B. Governmental Fringe Benefit (GFB) costs in Column 3 did not change between April 1984 and April 1985. Therefore, GFB Costs remain at the April 1984 level.

C. General and Administrative (G&A) and operations overhead costs in Columns 5 and 6 were restated on the basis of changes in the existing relationship in the 1985 Commission budget.

The G&A expense relationship based on the 1985 budget, increases the G&A and operational overhead ratios from 19.92 percent to 20.11 resulting in a 1.00 percent increase.

[1985 Commission Budget data increased from 9.10 percent to 9.29 percent or .19 percent increase. .19 percent + 19.92 percent = 20.11 percent or 1.00 percent increase. [20.11 ÷ 19.92 = .95 percent or 1.00 percent)]

D. Publication costs in Column 5 are restated on the basis of known changes in the Federal and I.C.C. Register costs rather than the Consumer Price Index. No significant cost increases were experienced during the restatement period; therefore, publication costs were not increased.

E. The fully distributed costs at the April 1985 level resulting from the restatement procedures addressed above are provided in Column 13 of the attached table.

[FR Doc. 85-23404 Filed 9-30-85; 8:45 am]
BILLING CODE 7035-01-M

49 CFR Part 1003

Listing of Commission Forms

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: Through this notice the Commission is updating its listing of forms currently used by the Commission which appears at 49 CFR Part 1003. Obsolete forms are being removed from the forms listing. A new reference is being added to Form OP-2 "Application for Certificate of Registration for Certain Motor Carriers of Property Under Section 10530 of the Interstate Commerce Act," which the Commission adopted in Ex Parte No. 55 (Sub-No. 62) *Application for Certificates of Registration for Certain Foreign Carriers*, 50 FR 20773, May 20, 1985.

Form number and statutory reference also are being updated through this notice.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King (202) 275-7428.

SUPPLEMENTARY INFORMATION: Inasmuch as these final rules only update the listing of Commission's forms and all these forms have been previously approved by the Commission in various decisions, we believe that it would be unnecessary to require notice and comment on these revisions. Also, it is in the public interest to have this updated reference material available. Therefore, these final rules will be issued without notice and comment.

These final rules will not have a significant effect on a substantial number of small entities because they only update the listing of Commission forms which appears in the Code of Federal Regulations.

This decision will not have a significant impact upon the quality of

the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1003

Brokers, Freight Forwarders, Maritime Carriers, Motor Carriers, Securities.

Decided:

By the Commission.

James H. Bayne,

Secretary.

Title 49 of the Code of Federal Regulations is amended by revising Part 1003 to read as follows:

PART 1003—LIST OF FORMS

Sec.

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c), 49 U.S.C. 10321.

§ 1003.1 General information.

(a) The forms listed in this part are prescribed for various applications under the Interstate Commerce Act and the Commission's regulations contained in Subchapters A and B of this chapter.

(b) Other printed forms are prescribed in the Commission's regulations governing accounts, records, and reports contained in Subchapter C of this chapter.

(c) All prescribed forms listed in this part and Subchapter C include instructions for their completion.

(d) Copies of all prescribed forms except insurance forms are available upon request from the Office of the Secretary, Publications Unit, Interstate Commerce Commission, Washington, DC 20423.

§ 1003.2 Motor and water carrier, broker and freight forwarder forms.

BOC–3 Designation of Agent for Service of Process.

This form is required to be filed by all motor carriers and brokers prior to issuance of operating authority. See 49 U.S.C. 10330(b).

Cross Reference: 49 CFR Part 1044.

OP–1 (Rev. 12/83).

Application for motor carrier authority, broker or freight forwarder authority, and water carrier operating or exemption authority.

Cross Reference: 49 CFR Part 1160.

OP–FC–1.

An application requesting transfer of a motor carrier certificate of registration, motor carrier of passenger operating authority, water carrier operating or exemption authority under 49 U.S.C. 10931, 10932, 10924 or 10926 which does not require approval under 49 U.S.C. 11343.

Cross Reference: 49 CFR Part 1181.

OP–F–44.

Application for authority under 49 U.S.C. 11343 to consolidate, merge, purchase, or lease operating rights and properties, or any part thereof, of a motor carrier.

Cross Reference: 49 CFR Part 1183.

OP–F–45.

Application for authority under 49 U.S.C. 11343 to acquire control of a motor carrier or motor carriers through ownership of stock, or otherwise.

Cross Reference: 49 CFR Part 1183.

OP–F–46.

Application for approval under 49 U.S.C. 11349, Interstate Commerce Act, of the temporary operation of motor carrier properties sought to be acquired under separately filed application under 49 U.S.C. 11343.

Cross Reference: 49 CFR Part 1183.

OP–OR–110.

Application for certificate of exemption under 49 U.S.C. 10525 covering motor carrier operations in interstate or foreign commerce lawfully conducted solely within a single State.

OCCA–95 (Rev. 8/84).

Application under 49 U.S.C. 10928 for temporary authority to operate as a common or contract carrier by motor vehicle.

Cross Reference: 49 CFR Part 1162.

OP–TA–19.

Request for extension of emergency temporary authority.

Cross Reference: 49 CFR Part 1162.

OP–TA–19(a).

Certificate of continuing need for emergency temporary authority.

Cross Reference: 49 CFR Part 1162

BOP–79.

Application for approval of contract carrier rental contract.

Cross Reference: 49 CFR 1057.41(d).

OCP–100.

Your Rights and Responsibilities When You Move.

OCP–101.

Annual Performance Report.

Cross Reference: 49 CFR Part 1056.

OCP–102.

Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers Under 49 U.S.C. 10526(a)(5), to be used by cooperative associations or federations of cooperative associations which intend to perform interstate transportation for nonmembers who are neither farmers, other cooperative associations, nor federations of cooperative associations.

Cross Reference: 49 CFR 1047.23.

§ 1003.3 Insurance and surety bond forms.

B.M.C. 32.

Endorsement for Motor Common Carrier Policies of Insurance for Cargo Liability under section 10927, Title 49 of the United States Code.

B.M.C. 34.

Motor Carrier Cargo Liability Certificate of Insurance.

B.M.C. 35.

Notice of Cancellation Motor Carrier Policies of Insurance under 49 U.S.C. 10927.

B.M.C. 36.

Notice of Cancellation Motor Carrier and Broker Surety Bonds.

B.M.C. 40.

Application for Authority to Self-Insurer under 49 U.S.C. 10927.

B.M.C. 82.

Motor Carrier Bodily Injury Liability and Property Damage Liability Surety Bond under 49 U.S.C. 10927.

B.M.C. 83 (Rev. 1976).

Motor Common Carrier Cargo Liability Surety Bond.

B.M.C. 84.

Broker's Surety Bond under Section 49 U.S.C. 10927.

B.M.C. 90 (Rev. 1982).

Endorsement for Motor Carrier Policies of Insurance for Automobile Bodily Injury and Property Damage Liability under 49 U.S.C. 10927.

B.M.C. 91 (Rev. 1982).

Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance.

B.M.C. 91X (1/1982).

Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance.

Cross Reference: 49 CFR 1043.

§ 1003.4 Forms for issuance of Securities and Assumption of Obligations.

(a) Application forms:

OP–F–210.

Special application for authority to sell securities without competitive bidding.

(b) Report Forms:

OP–F–220.

Certificate of notification under 49 U.S.C. 11301. Disposal of pledged or Treasury securities.

OP–F–230.

Certificate of notification under 49 U.S.C. 11301. Issuance of short-term notes.

OP–F–240.

Special report under 49 U.S.C. 11301. Issuance of securities or assumption of obligations.

Cross Reference: 49 CFR Part 1175.

[FR Doc. 85–23408 Filed 9–30–85; 8:45 am]

BILLING CODE 7035–01–M

49 CFR Parts 1003, 1043 and 1171

[Ex Parte No. MC-5 (Sub-No. 7)]

Foreign Motor Private Carriers of Nonhazardous Commodities Certificates of Insurance

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its existing regulations concerning minimum levels of financial responsibility and prescribing a new form BMC 91MX in order to cover foreign motor private carriers of nonhazardous materials, thereby implementing section 226 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 10503) which requires certain foreign motor carriers and foreign motor private carriers to obtain annually a certificate of registration from the Commission to conduct described interstate operations in the United States.

Section 226 of the Act requires that described carriers provide proof of minimum financial responsibility. The Commission does not presently have a uniform procedure for such carriers conveniently to provide such proof, as it now does for all other foreign and domestic carriers. The form gives carriers a means to fulfill this requirement.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT:

Alice K. Ramsay (202) 275-0854
or
Margaret Richards (202) 275-1538.

SUPPLEMENTARY INFORMATION: Section 226 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 10530) requires certain foreign motor carriers and foreign motor private carriers to obtain annually a certificate of registration from the Commission to conduct described interstate operations in the United States. Regulations implementing this statutory provision were promulgated in Ex Parte No. 55 (Sub-No. 62), *Applications For Certificate of Registration For Certain Foreign Carriers* (not printed), served May 17, 1985.

Section 226 of the Act requires that described carriers provide proof of minimum financial responsibility. In the case of a foreign motor *private* carrier of *nonhazardous* materials, the carrier must provide proof that it meets the minimum financial responsibilityu requirements under the laws of the State or States in which the carrier will operate. See 49 U.S.C. 10530(e)(2)(B). The Commission does not presently have a uniform procedure for such carriers conveniently to provide such proof, as it now does for all other foreign and domestic carriers.[1] In regulations implementing the Act, we indicated that carriers must demonstrate compliance with "either 49 CFR Part 1043 (insurance) or State insurance requirements, as applicable under the Act." 49 CFR 1171.6(b)(2). However, we did not specify how carriers might demonstrate compliance with State insurance requirements. In this proceeding, we are prescribing a new form, Form BMC 91MX, which is a slight modification of existing Form BMC 91X. Using this form to achieve the insurance filing requirement will have two advantages over the present system. First, it will achieve uniformity in reporting of insurance coverage of the involved foreign motor private carriers, thereby speeding the issuance of Certificates of Registration to such carriers. Secondly, at present, the Commission is at a severe handicap because it has no way of knowing if a foreign motor private carrier cancels its insurance coverage after receiving a Certificate of Registration. The filing of the form prescribed here will place the burden on the insurance company to notify the Commission in the event of such cancellation (as is presently the case for all other motor carriers).

The new Form BMC 91 MX prescribed in this proceeding is set forth in Appendix B. As with other Commission-prescribed insurance forms of a similar nature, Form BMC 91MX will be supplied by the carrier's insurance company, and will be subject to the format and specification guidelines set forth in Ex Parte No. MC-5 (Sub-No. 1), *Motor Carriers of Property Minimum Amounts of Bodily Injury and Property Damage Liability Insurance* (not printed), served September 23, 1983, except that the forms shall be printed on white paper. Appendix B will not be printed in the Code of Federal Regulations.

The regulations set forth in Appendix A revise our insurance regulations (Part 1043), by stating the statutory insurance requirement for foreign motor private carriers of nonhazardous commodities and by extending the usual specifications for insurance certification forms to the new Form BMC 91MX. In addition, we have revised 49 CFR 1171.6(b)(2) by eliminating any specific reference to State insurance requirements, since revised 49 CFR Part 1043, which is cross-referenced in that section, will now cover the insurance compliance requirements of all foreign carriers.[2]

Because the changes to the regulations are technical in nature and clarify and simplify insurance filing requirements which are already in effect, they will be adopted as final rules without public notice and opportunity for comment. The rules modified here apply to the practice and procedure of the Commission and public notice and comment are not required. 5 U.S.C. 553(b)(A). No regulatory flexibility analysis is required in this proceeding because it falls within the above-cited exception to the notice requirements of the Administrative Procedure Act. 5 U.S.C. 603(a).

As we have done in the past with Forms BMC 91 and BMC 91X, because of the expense to insurers of printing too few forms or having obsolete stock on their hands after printing, we are specifically authorizing the Form BMC 91 MX to be printed and used without showing an expiration date until it has been submitted to OMB and approved.

This decision does not significantly affect the quality of the human environment or conservation of energy resources.

We adopt the rules set forth in Appendix A to this decision. The rules promulgated here shall be codified in the Code of Federal Regulations, Title 49, Parts 1003, 1043 and 1171. We also prescribe a new Form BMC 91MX, as set forth in Appendix B.

Copies of this notice of final rules are available to the public and may be obtained from TS Infosystems, Interstate Commerce Commission Building, Room 2229, Washington, DC 20423.

A copy of this notice will be served on the Chief Counsel for Advocacy of the Small Business Administration, the Director of the Office of Management and Budget, and the Federal Highway Administrator of DOT.

The subjects involved in this proceeding are:

List of Subjects

49 CFR Part 1003

Motor carriers.

49 CFR Part 1171

Administrative practice and procedure, Motor carriers, Insurance, and Safety.

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[1] These carriers provide such proof by having their insurance companies file either Form BMC 91 or 91X with the Commission.

[2] Foreign motor carriers and foreign motor private carriers of hazardous commodities will continue to comply with the existing provisions of 49 CFR Part 1043, and foreign motor private carrier of nonhazardous commodities will comply with the newly adopted provisions.

49 CFR Part 1043

Motor carriers, Insurance, Surety bonds.

Decided: September 9, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Sterrett did not participate.

James H. Bayne,

Secretary.

Appendix A

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

(1) The authority citations following §§ 1043.1, 1043.2, 1043.4, 1043.5, 1043.6, 1043.7 and 1043.8 are removed and the authority citation for Part 1043 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10927; 5 U.S.C. 553.

(2) Section 1043.2 is amended by adding a new paragraph (b)(4) to read as follows:

§ 1043.2 Security for the protection of the public: Minimum limits.

* * * * *

(b) * * *

(4) *Foreign motor private carriers of nonhazardous commodities.* Foreign motor private carriers of non-hazardous commodities subject to § 1043.1(a)(1) are required to have security for the required minimum limits under the laws of the States in which the carrier is operating under a certificate of registration.

* * * * *

§ 1043.6 [Amended]

(3) Section 1043.6 is amended by adding the following two sentences to the end of paragraph (a):

(a) * * *

Each Form BMC 91MX certificate of insurance filed with the Commission will represent the security limits of coverage as indicated on the face of the form. The Form BMC 91MX must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.

§ 1043.7 [Amended]

(4) Section 1043.7 is amended by adding the following flush paragraph to following the existing flush paragraph at the end of paragraph (a)(2):

(a)(2) * * *

For aggregation of insurance for foreign motor private carriers of nonhazardous commodities to cover security limits under § 1043.2(b)(4), a separate Form BMC 90 with the specific amounts of underlying and limits of coverage shown thereon or appended thereto, or Department of Transportation prescribed form endorsement, and Form BMC 91MX certificate is required for each insurer.

(5) Section 1043.7 is amended by adding the following form listing to the end of the listing in paragraph (a)(3):

(a)(3) * * *

Form BMC 91MX certificate of insurance will be filed to represent any level of aggregation for the security limits under § 1043.2(b)(4).

PART 1171—RULES GOVERNING APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

(6) The authority citation for 49 CFR Part 1171 continues to read as follows:

Authority: 49 U.S.C. 10922 and 10530, 5 U.S.C. 553.

(7) Section 1171.6 is amended by revising paragraph (b)(2) to read as follows:

§ 1171.6 Commission review of the application.

* * * * *

(b) * * *

(2) If the employee board grants all or part of the application, the Commission will issue a certificate of registration authorizing specified operations for the registrable year for which the authority is sought provided that applicant has demonstrated compliance with (i) 49 CFR 1044 (designation of process agent), and (ii) 49 CFR Part 1043 (insurance). If applicant has not complied with these requirements, the Commission will issue a notice stating that a certificate of registration will be issued upon such compliance. No certificate of registration shall be issued prior to compliance.

* * * * *

PART 1003—LIST OF FORMS

(8) The authority citation for 49 CFR Part 1003 continues to read as follows:

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c), 49 U.S.C. 10321.

(9) Section 1003.3 is amended by adding the following form to the end of the list of forms in that section to read as follows:

§ 1003.3 Insurance and surety bond forms.

BMC 91MX (1985)

Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance for Foreign Motor Private Carriers of Nonhazardous Commodities.

Appendix B will not be printed in the Code of Federal Regulations.

APPENDIX B

MOTOR CARRIER AUTOMOBILE BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE
FOR FOREIGN MOTOR PRIVATE CARRIERS OF NONHAZARDOUS COMMODITIES

Filed (in Triplicate) with: INTERSTATE COMMERCE COMMISSION I.C.C. DOCKET NO.
INSURANCE BRANCH
WASHINGTON, D.C. 20243

Received:
Date_____

Approved by OMB
MC 3120-0103
Through 9/30/86

This is to certify, that the _____
(Name of Company)

(hereinafter called Company) of _____
(Home Office Address of Company)

has issued to _____
(Name of Motor Carrier)

of _____
(Address of Motor Carrier)

insurance under bases described on the back of this form to provide coverage, as follows:

COMPLETE As APPLICABLE:

Security Limits Required under Section 1043.2, Title 49 of the Code of Federal Regulations as follows:

[ ] This insurance is primary and the company shall not be liable for amounts in excess of $_____ for each accident.

[ ] This insurance is excess and the company shall not be liable for amounts in excess of $_____ for each accident, or amounts below the underlying limit of $_____ for each accident.

Effective from .....(12:01 a.m. standard time at the address of the Insured as stated in said policy or policies) and continuing until cancelled as provided in the rules and regulations under Section 10927 of Title 49 of the United States Code.

Signed at _____ _____ _____ Date _____
Street City State

_____
(Issuing Office - Full Name of Agency or Branch)

_____
(Signature of Authorized Company Representative)

Insurance Company Policy No. _____
Form BMC 91MX(1985)

The receipt of this certificate by the Commission certifies that a policy (or policies) of Public Liability (or Automobile Bodily Injury and Property Damage Liability) insurance has been issued by the company identified on the face of this form and that the company is qualified to make this filing under § 1043.8 of Title 49 of the Code of Federal Regulations.

It also certifies that, by the attachment of endorsement BMC 90, prescribed by the Interstate Commerce Commission, and/or an endorsement prescribed by the U.S. Department of Transportation (its MCS 90 endorsement) that policy (or policies) is *amended* to provide the coverage of security for the protection of the public required under § 1043.2 of title 49 of the Code of Federal Regulations.

The amendment governs the operation, maintenance, or use of motor vehicles under certificate of registration issued to the Insured by the Commission or otherwise in transportation subject to Subchapter II of Chapter 105 of Title 49, United States Code, and the pertinent rules and regulations of the Commission, regardless of whether such motor vehicles are specifically described in the policy or policies. The liability of the Company extends to all losses, damages, injuries, or deaths occurring within the territory covered by the certificate of registration issued to the Insured by this Commission or elsewhere in the United States.

The endorsement(s) described may not be cancelled without notification to the Commission. Such cancellation may be affected by the Company or the Insured giving thirty (30) days' notice in writing to the Interstate Commerce Commission at office in Washington, DC., said thirty (30 days' notice to commence to run from the date notice is actually received at the office of the Commission.

Falsification of this document can result in criminal penalties prescribed under 18 U.S.C. 1001.

[FR Doc. 85-23407 Filed 9-30-85; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 50, No. 190
Tuesday, October 1, 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.

SMALL BUSINESS ADMINSTRATION

13 CFR Part 121

Small Business Size Standards; Wholesale Trade Size Standard

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: SBA is proposing to amend its size standards for the wholesale trade industry sector from the present 500 employees to 100 employees for all SBA programs. This proposed action is based on a careful study of the structure or this industry group, which shows wholesale trade has the highest size standard of any major industry group, in terms of percentage of concerns defined as small. Interviews are conducted with Federal procurement officials, and public comments on previous size standards proposals were reviewed and analyzed.

DATE: Written comments must be submitted on or before December 2, 1985.

ADDRESS: All comments to: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street, NW., Room 500, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Alan Odendahl, Size Standards Staff (202) 653-6373.

SUPPLEMENTARY INFORMATION:

On February 9, 1984, the Small Business Administration published a final rule in the **Federal Register** (49 FR 5023) in which its size standards were comprehensively revised. Prior to that date the 61 separate industries comprising the wholesale trade sector all had a 500-employee size standard for procurement. For loans, the standards were expressed in dollar volume of annual receipts and varied among the wholesale industries, being either $9.5, $14.5 or $22 million.

In the proposed rule dated May 6, 1983, SBA proposed that dollar standards of $15, $25, and $35 million, depending on characteristics of the specific wholesale industry, be used for all programs. In effect, this would have meant a lower size standard for procurement purposes than the existing 500 employees limit. Comments from the public and from a number of Federal agencies, which favored a single employee-based size standard in order to simplify purchasing procedures, led SBA to retain the 500 employee standard for procurement and to apply it also to loans and other programs. In that Final Rule publication, SBA stated that "We will continue to study wholesale trade to determine whether future changes should be proposed."

An internal study of size standards in the wholesale trade sector has now been completed. The study reviewed available data on wholesale trade and Federal procurement, analyzed the structure of the wholesale trade industry group, and analyzed public comments on previous proposals (1980 and 1982 as well as the May 1983 proposed rule).

Although there are over 230,000 merchant wholesaler firms in the United States with total sales approximating $1.2 trillion, the average firm is quite small, with only 14.6 employees. The median employment size is ever lower, only 6.5 persons.

Though no firm figures are available, Federal procurement from merchant wholesalers is estimated to be a little over $5 billion per year. According to procurement officials, most of this is not set-aside, and must comes from purchases under $10,000 each. However, no data exists to verify the latter two points.

Only 0.13 percent of all merchant wholesaler firms (or exactly 309 companies out of 230,234) had more than 500 employees in 1977 and would be defined as large. The remaining 99.27 percent (or 744 out of every 745 firms) are defined as small.

This percentage of firms defined as small is the highest of any major industry group. The overall average for all nonfarm industries combined is 98.70 percent of concerns defined as small.

The following table shows the percentage of small firms among merchant wholesalers at various possible size standards levels:

Employees:	Small (percent)
500	99.87
250	99.63
200	99.27
150	98.92
100	98.56
50	95.89

It is clear that the wholesale size standard which would conform most closely to the overall average is 100 employees. The report emphasizes that 100 employees or any intermediate level—150, 200 or 250 employees—can easily be justified in terms of industry structure.

The report text reviewed the public comments which were received after each of the advance notices of March 1980 and May 1982, and the proposed rule of May 6, 1983. These public comments were viewed as representing almost the only indicator the Agency has of possible adverse economic impact from projected changes in a size standard.

Public comments indicated there would be absolutely minimal impact from a reduction from 500 to 200 employees. At a possible standard of 150 employees, there might be a small adverse impact, and at a standard of 100 employees, some impact might be expected.

The report recommended continuing a single employee-based size standard for all programs involving wholesale trade. The recommended level was 200 employees.

SBA's Size Policy Board reviewed the written report plus an oral presentation of its findings. They noted that a standard of 100 employees promoted the maximum in equity across industry groups, and hence, was justifiable in terms of industry structure. They believed that Federal procurements from wholesalers usually involve small purchases (under $10,000) and are seldom set aside in any case. In the loan programs, very few borrowers in the wholesale trade industries ever have over 100 employees. Since a major reduction is being proposed in any case, the Board voted to carry the reduction in wholesale trade size standards from the present 500 employees to a new standard of 100 employees.

In theory, this proposed rule, if adopted in final form, may be a major rule as defined in Executive Order 12291. In this regard, it might have an economic impact in excess of $100,000,000 per year. The number of companies which theoretically would be eliminated from set-aside competition by this reduction in size standard is 3,002 (based on 1977 data). However, it is probable that only a very few of these firms actually receive, or are interested in receiving, set-aside government contracts. The number of loans in SBA's portfolio which went to firms having 101 to 500 employees is 96 out of 13,406 loans, or 0.72 percent of total loans to wholesalers. Despite the likelihood of the economic impact being under $100 million, SBA cannot certify that this regulation is a nonmajor rule, because of the lack of data in this area.

The economic effect of this regulation would be to channel contracts and loans to smaller firms than at present. The universe of companies eligible for various forms of SBA assistance will contract by about 3,000 firms. Accordingly, this regulation is not likely to result in a major increase in costs or prices or have a significant adverse effect on the United States economy.

The economic benefit of promulgation of this rule is to insure that SBA's size standard properly reflects the make-up of the wholesale industry. In this way, SBA can assure that the benefits of the Government's small business programs go to truly small businesses. There are no costs inherent in the promulgation of this rule. The significant alternatives to the standard proposed by SBA, and the reasons for their rejection, have been discussed above.

SBA also certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

However, this regulation is likely to have a significant economic impact on at least a few currently small firms active in the Federal marketplace and on a few small firms seeking to enter the Federal marketplace. This rule defines the maximum size a firm may be to bid on contracts set aside for small firms in this industry. Therefore, in compliance with the Regulatory Flexibility Act, SBA offers the following analysis:

We have indicated above in this supplementary material a description of the reasons why this action is being considered, a statement of the reasons for and objectives of this proposal, and a description of the significant alternatives to this proposal. The legal basis for this proposal is section 5(b) of the Small Business Act, 15 U.S.C. 634(b).

There are no Federal rules which duplicate, overlap, or conflict with the proposed rule. There are no reporting, recordkeeping or other compliance requirements of the proposed rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

Accordingly, SBA proposes to amend Part 121 of 13 CFR as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 of 13 CFR continues to read as follows:

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

2. In § 121.2(c)(2), Division F—Wholesale Trade is revised as follows:

§ 121.2 Standard industrial classification and size standards.

* * * * *

(c)(2) * * *

DIVISION F—WHOLESALE TRADE

Major Group 50—Wholesale Trade—Durable Goods

5012	Automobiles and other motor vehicles.	100 employees.
5013	Automotive parts and supplies.	Do.
5014	Tires and tubes	Do.
5021	Furniture	Do.
5023	Home furnishings	Do.
5031	Lumber, plywood, and millwork.	Do.
5039	Construction materials, N.E.C.	Do.
5041	Sporting and recreational goods and supplies.	Do.
5042	Toys and hobby goods and supplies.	Do.
5043	Photographic equipment and supplies.	Do.
5051	Metals service centers and offices.	Do.
5052	Coal and other minerals and ores.	Do.
5063	Electrical apparatus and equipment, wiring supplies and construction materials.	Do.
5064	Electrical appliances, television and radio sets.	Do.
5065	Electronic parts and equipment.	Do.
5072	Hardware	Do.
5074	Plumbing and heating equipment and supplies (hydronics).	Do.
5075	Warm air heating and air conditioning equipment and supplies.	Do.
5078	Refrigeration equipment and supplies.	Do.
5081	Commercial machines and equipment.	Do.
5082	Construction and mining machinery and equipment.	Do.
5083	Farm and garden machinery and equipment.	Do.
5084	Industrial machinery and equipment.	Do.
5085	Industrial supplies	Do.
5086	Professional equipment and supplies.	Do.
5087	Service establishment equipment and supplies.	Do.
5088	Transportation equipment and supplies, except motor vehicles.	Do.
5093	Scrap and waste materials.	Do.
5094	Jewelry, watches, diamonds and other precious stones.	Do.
5099	Durable goods, N.E.C.	Do.

Major Group 51—Wholesale Trade—Non-durable Goods

5111	Printing and writing paper.	100 employees.
5112	Stationery supplies	Do.
5113	Industrial and personal service paper.	Do.
5122	Drugs, drug proprietaries and druggists' sundries.	Do.
5133	Piece goods (woven fabrics).	Do.
5134	Notions and other dry goods.	Do.
5136	Men's and boy's clothing and furnishings.	Do.
5137	Women's children's and infants' clothing and accessories.	Do.

5139	Footwear	Do.
5141	Groceries, general line.	Do.
5142	Frozen foods	Do.
5143	Dairy products	Do.
5144	Poultry and poultry products.	Do.
5145	Confectionery	Do.
5146	Fish and seafoods	Do.
5147	Meats and meat products.	Do.
5148	Fresh fruits and vegetables.	Do.
5149	Groceries and related products, N.E.C.	Do.
5152	Cotton	Do.
5153	Grain	Do.
5154	Livestock	Do.
5159	Farm product raw materials, N.E.C.	Do.
5161	Chemicals and allied products.	Do.
5171	Petroleum bulk stations and terminals.	Do.
5172	Petroleum and petroleum products wholesalers, except bulk stations and terminals.	Do.
5181	Beer and ale	Do.
5182	Wines and distilled alcoholic beverages.	Do.
5191	Farm supplies	Do.
5194	Tobacco and tobacco products.	Do.
5198	Paints, varnishes, and supplies.	Do.
5199	Nondurable goods, N.E.C.	Do.

* * * * *

James C. Sanders,

Administrator.

Dated: March 29, 1985.

[FR Doc. 85-23342 Filed 9-30-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-93-AD]

Airworthiness Directives: British Aerospace Aircraft Group Model HS 748 Airplanes

AGENCY: Federal Aviation Administrtion (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require wiring changes to the emergency lighting system on certain British Aerospace (BAe) Model HS 748 airplanes. This action is prompted by the manufacturer's analysis and is necessary to prevent the emergency lighting system powerpack from becoming accidentally disarmed.

DATE: Comments must be received on or before November 19, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-93-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9101 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-93-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which exists on certain BAe Model HS 748 airplanes. When power is removed from the center busbar, power could be supplied to the disarm terminal of the powerpack sufficient to disarm the unit, even though the pilot's switch is in the "arm" position. To prevent this from occurring, the CAA has required compliance with BAe Model HS 748 Service Bulletin 33/29 dated April 2, 1985, which describes wiring changes to the system.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist on airplanes of this model registered in the United States, and AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 man-hours per airplane to accomplish the required actions, and that the average labor cost would be $40 per man-hour. Repair parts are estimated at $200 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,720.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, BAe Model HS 748 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace Aircraft Group: Applies to Model HS 748, constructor numbers 1793, 1794, and 1795 (Mod 402); and 1796 (Mod 400); and to any other airplanes which incorporate Modification 6953, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To prevent the accidental disarming of the emergency lighting system, accomplish the following unless previously accomplished:

A. Modify the emergency lighting system in accordance with BAe HS 748 Service Bulletin 33/29 dated April 2, 1984.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113 FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishments of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC. 20041. These documents may be examined at the FAA Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 20, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-23208 Filed 9-30-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-25]

Proposed Establishment of 700 Feet Transition Area; Tillamook, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a 700 feet transition area to encompass a new instrument approach procedure at the Tillamook, Oregon Airport. The action is necessary to ensure segregation of aircraft using the new procedure in instrument weather conditions and other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before: December 4, 1985.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-25, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, ANM-533, Federal Aviation Administration, Docket No. 85-ANM-25, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ANM-25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Office at the address listed above before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700 foot transition area at the Tillamook, Oregon Airport. The transition area will provide controlled airspace for aircraft executing a new instrument approach to the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10654; 49 U.S.C. 106(g)

(Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69].

2. By amending § 71.181 as follows:

Tillamook, Oregon Transition Area (New)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Tillamook Airport (Lat. 45°25'17" N/Long. 123°48'45" W).

Issued in Seattle, Washington, on July 11, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-23319 Filed 9-30-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ASO-21]

Proposed Alteration of Transition Area; Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Atlanta, Georgia, transition area by lowering the floor of controlled airspace, from 1,200 feet to 700 feet, in the vicinity of Stone Mountain, Georgia. The additional controlled airspace is required so that aircraft operating in the area may be radar vectored at the cardinal altitude of 3,000 feet rather than at the existing altitude of 3,100 feet. This will be beneficial to Instrument Flight Rule activities being conducted to and from DeKalb-Peachtree Airport.

DATE: Comments must be received on or before: November 10, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-350), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will alter the Atlanta, Georgia, transition area. This action will provide additional controlled airspace for use by Air Traffic Control in radar vectoring of aircraft in the vicinity of Stone Mountain and DeKalb-Peachtree Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in FAA Order 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.65]; 49 CFR 1.47.

2. By amending § 71.181 as follows:

Atlanta, GA—[Amended]

By deleting the words "DeKalb-Peachtree Airport (lat. 33°52'30" N., long. 84°18'10" W.);" and substituting for them the words "DeKalb-Peachtree Airport (lat. 33°52'30" N., long. 84°18'08" w.); within a 6.5 mile radius of Stone Mountain (lat. 33°48'22" N., long. 84°08'47" W.);".

Issued in East Point, Georgia, on September 19, 1985.

William H. Pollard,

Acting Director, Southern Region.

[FR Doc. 85-23321 Filed 9-30-85; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

46 CFR Part 160

[CGD 84-069b]

Lifesaving Equipment; Thermal Protective Aids

AGENCY: Coast Guard, DOT.

ACTION: Proposed rules.

SUMMARY: The Coast Guard proposes to adopt specifications for approving thermal protective aids. A thermal

protective aid is a bag or suit made of waterproof material with low thermal conductivity. It is intended to be carried in a liferaft, lifeboat, or rescue boat to provide protection against hypothermia (body heat loss during prolonged periods of exposure).

DATES: Comments on this proposal must be received on or before December 30, 1985.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 84-069b) U.S. Coast Guard, Washington, D.C. 20593. The comments, draft evaluation, and materials referenced in this notice will be available for examination and copying and comments may also be hand delivered between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: LCDR William M. Riley (202) 426-1444.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice as CGD 84-069b, and give reasons for their comments. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on these proposed rules. No public hearing is planned, but one may be held if requested by anyone raising a genuine issue.

Drafting Information

The principal drafters of these proposed rules are: LCDR William M. Riley, Office of Merchant Marine Safety, and Mr. Michael N. Mervin, Office of the Chief Counsel.

Discussion of the Proposed Regulations

Persons abandoning ship in lifeboats are often exposed to cold water and air temperatures, resulting in shock and hypothermia. Enclosed lifeboats and immersion suits (exposure suits) give a measure of protection against these risks when they are available. However, there is a need for a compact, inexpensive device which can be stowed in the survival craft for use in protecting or rewarming those persons who arrive at the enbarkation station, or are picked up from the water by the survival craft, and are not wearing an immersion suit. The International Maritime Organization (IMO) recognized this need, and included requirements and specifications for thermal protective aids in the Second Set of Amendments to the International Convention for Safety of Life at Sea, 1974 (SOLAS 74), adopted on June 17, 1983. These amendments will enter into force on July 1, 1986. Ships, the keels of which are laid or are at a similar stage of construction on or after that date, will be required to have thermal protective aids on board immediately when their construction is completed. Existing ships will be required to have the aids on board not later than July 1, 1991. Regulation 34 of Chapter III of SOLAS 74 contains the specifications for a thermal protective aid.

Thermal protective aids approved under the proposed rules will comply with Regulation 34 of Chapter III of SOLAS 74. As such, they may be offered for sale to U.S. merchant ships and mobile offshore drilling units (MODUs) to meet the requirements of SOLAS 74, and to foreign vessels and MODUs whose flag states recognize the approvals of other nations which conform to Regulation 34.

Requirements for certain vessels to carry thermal protective aids will be addressed in a separate rulemaking. Advance notice of that rulemaking project was published in the **Federal Register** of December 31, 1984. The requirements for approval of thermal protective aids need to be treated separately and expeditiously so that manufacturers can develop products to comply with the specifications by the time the shipowners begin placing orders for them.

The proposed rules require all testing to be done by an independent laboratory, in line with current policy to minimize use of Coast Guard personnel for factory inspections.

Economic Analysis and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A draft evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the address listed above under **ADDRESSES**. Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Total manufacturers' costs for 10 manufacturers to test and approve thermal protective aids under these proposed regulations would be approximately $22,500. The cost of production testing by an independent laboratory would be approximately 50¢ per device. Based upon the estimated cost involved, the Coast Guard certifies that these proposed rules would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains information collection requirements. These requirements have been previously submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by OMB under control numbers 2115-0121 and 2115-0141.

List of Subjects in 46 CFR Part 160

Marine safety.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Title 46 of the Code of Federal Regulations as follows:

PART 160—LIFESAVING EQUIPMENT

1. By adding a new Subpart 160.074 to Part 160 to read as follows:

Subpart 160.074—Thermal Protective Aids

Sec.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart 160.074—Thermal Protective Aids

§ 160.074-1 Scope.

This subpart contains construction and performance requirements, and approval tests for thermal protective aids that are designed to minimize the occurrence of or aid in the recovery from hypothermia (lowered body temperature) during long periods in a survival craft.

§ 160.074-3 Incorporations by reference.

(a) Certain materials are incorporated by reference into this subchapter with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found the date of the edition approved, citations to the particular

section of this part where the material is incorporated, addresses where the material is available, and the date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in the table, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Survival Systems Branch (G-MVI-3), Washington, DC 20593.

(b) The materials approved for incorporation by reference in this subpart are:

American Society for Testing and Materials

ASTM C 177—Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Guarded Hot Plate.

ASTM C 518—Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter.

ASTM D 1004—Tear Resistance of Plastic Film and Sheeting.

ASTM D 975—Standard Specification for Diesel Fuel Oils.

Federal Standards

Federal Standard No 751—Stitches, Seams, and Stitchings.

National Bureau of Standards Special Publication 440—Color, Universal Language and Dictionary of Names.

§ 160.074-5 Independent laboratory.

The approval and production tests and inspections in this subpart must be conducted by an independent laboratory accepted by the Coast Guard under Subpart 159.010 of this chapter.

§ 160.074-7 Approval procedures.

(a) *General.* A thermal protective aid is approved by the Coast Guard under the procedures in subpart 159.005 of this chapter.

(b) *Approval testing.* Each approval test must be conducted in accordance with 160.074-17.

§ 160.074-9 Construction.

(a) *General.* Each thermal protective aid must be constructed primarily of a durable insulating or heat reflecting material that meets the thermal insulation requirements in 160.074-11(a). Each aid must be designed to cover the wearer's entire body, except for the area of the mouth, nose, and eyes.

(b) *Seams.* Stitching, if used in structural seams of a thermal protective aid, must be lock type stitching that meets the requirements in Federal Standard No. 751 for one of the following:

(1) Class 300 lockstitch.

(2) Class 700 single thread lock stitch.

(c) *Seam strength.* Each seam must have a strength of at least 225 N (50 lb).

(d) *Hardware.* All hardware of a thermal protective aid must be of a size and design that allows ease of operation by the wearer. The hardware must be attached to the aid in a manner that allows the wearer to operate it easily and that prevents it from attaining a position in which it can be operated improperly.

(e) *Metal parts.* Each metal part of a thermal protective aid must be—

(1) 410 stainless steel or have salt water and salt air corrosion characteristics equal or superior to 410 stainless steel; and

(2) Galvanically compatable with each other metal part in contact with it.

(f) *Thermal protective aid exterior.* The primary color of the exterior surface of each thermal protective aid must be vivid reddish orange (color number 34 of NBS 440). The exterior surface of the aid must resist tearing when tested as prescribed in 160.074-17(i).

(g) *Hand and arm construction.* The hand of each thermal protective aid must be a glove that allows sufficient dexterity for the wearer to close and open the zipper or other hardware of the aid and to open and eat survival rations, unless the glove is removable. The glove may not be removable unless it is attached to the arm and unless it can be secured to the arm or stowed in a pocket on the arm when not in use.

(h) *Size.* Each thermal protective aid must fit persons ranging in weight from 50 kg. (110 lbs.) to 150 kg. (330 lbs.) and in height from 1.5 m. (59 in.) to 1.9 m. (75 in.).

(i) *Lifejacket.* Each thermal protective aid must be designed so that any Type I Personal Flotation Device meeting the requirements of this Chapter can be worn inside the aid and, when worn, does not damage the aid and does not adversely affect its performance.

§ 160.074-11 Performance.

(a) *Thermal protection.* The thermal protective aid must be designed to protect against loss of body heat as follows:

(1) The thermal conductivity of the material from which the thermal protective aid is constructed must be not more than 0.25 W/m-°K.

(2) The thermal protective aid must prevent evaporative heat loss.

(3) The aid must function properly at an air temperature of −30° C (−22° F) to +20° C (68° F).

(b) *Donning Time.* Each thermal protective aid must be designed to enable a person to don the aid correctly within one minute after reading the donning and use instructions described in 160.074-15(a).

(c) *Storage Temperature.* A thermal protective aid must not be damaged by storage in its storage case at any temperature between −30° C (−22° F) and +65° C (149° F).

(d) *In water performance.* The thermal protective aid must be designed to permit the wearer to remove it in the water within two minutes, if it impairs ability to swim.

(e) *Water penetration.* The fabric from which the thermal protective aid is constructed must maintain its watertight integrity when supporting a column of water 2 m high.

(f) *Oil resistence.* Each thermal protective aid must be designed to be useable after 24 hours exposure to diesel oil.

§ 160.074-13 Storage case.

Each thermal protective aid must be provided with a ziplock bag or equivalent storage case.

§ 160.074-15 Instructions.

(a) Each thermal protective aid must have instructions for its donning and use in an emergency. The instructions must be in English and must not exceed 50 words. Illustrations must be used in addition to the words. The instructions must include advice as to whether to swim in the aid or discard it if the wearer is thrown into the water.

(b) The instructions required by paragraph (a) of this section must be on the exterior of the storage case or printed on a waterproof card attached to the storage case. Instructions printed on the thermal protective aid and visible through a transparent storage case are deemed to be on the exterior of the storage case. The instructions must also be available in 8½×11 inch loose-leaf format for inclusion in the vessel's training manual.

§ 160.074-17 Approval testing.

(a) *General.* A thermal protective aid must be tested as prescribed in this section.

(b) *Mobility and swimming tests.* The mobility and swimming capabilities of each thermal protective aid must be tested under the following conditions and procedures:

(1) *Test subjects.* Seven males and three females must be used in the tests described in this paragraph. The subjects must represent each of the three physical types (ectomorphic, endomorphic, and mesomorphic). Each subject must be in good health. The heaviest male subject must weigh at least 25 kg (55 lb) more than the lightest

male subject. The heaviest female subject must weigh at least 25 kg (55 lb) more than the lightest female subject. The heaviest subject must weigh 150±5 Kg (330±11 lbs.) and the lightest subject must weigh 50±5 Kg (110±11 lbs.). Each subject must be unfamiliar with the specific thermal protective aid under test. Each subject must wear a standard range of clothing consisting of:

(i) Underwear (short sleeved, short legged);

(ii) Shirt (long sleeved);

(iii) Trousers (not woolen);

(iv) Woolen socks;

(v) Rubber soled shoes; and

(vi) A life preserver.

(2) *Donning test.* Each subject is removed from the view of the other subjects and allowed one minute to examine the thermal protective aid and the manufacturer's instructions for donning and use of the aid in an emergency. At the end of this period, the subject attempts to don the thermal protective aid as rapidly as possible. If the subject does not don the thermal protective aid completely, including gloves and any other accessories, within 60 seconds, the subject removes the aid and is given a demonstration of correct donning, and again attempts to don the aid. At least nine out of ten subjects must be able to don the thermal protective aid completely in 60 seconds on at least one of the two attempts.

(3) *Discarding test.* If the thermal protective aid impairs the ability of the wearer to swim, it must be demonstrated that it can be discarded by the test subjects, when immersed in water, in not more than two minutes. CAUTION: during each of the in water tests prescribed in this section, a person ready to render assistance when needed should be near each subject in the water.

(i) Unless the manufacturer specifies in the instructions that the thermal protective aid does impair ability to swim and should always be discarded in the water, each subject, wearing a life preserver, enters the water and swims 25 m. The subject, after sufficient rest to avoid fatigue, repeats this test wearing a thermal protective aid in addition to the life preserver. At least 9 out of ten subjects must be able to swim this distance wearing the thermal protective aid in not more than 125% of the time taken to swim the distance wearing only a life preserver, or the aid will be determined to impair the ability to swim.

(ii) If the thermal protective aid is determined by the above test or specified by the manufacturer to impair the ability to swim, each subject, after entering the water from a height of one meter (three feet), attempts to remove the aid and discard it. At least 9 out of ten subjects must be able to discard the device within two minutes.

(c) *Storage temperature.* Two samples of the thermal protective aids, in their storage cases, are alternately subjected to surrounding temperatures of −30 °C to +65 °C. These alternating cycles need not follow immediately after each other and the following procedure, repeated for a total of ten cycles, is acceptable:

(1) 8 hours conditioning at 65 °C to be completed in one day;

(2) The specimens removed from the warm chamber that same day and left exposed under ordinary room conditions until the next day.;

(3) 8 hours conditioning at −30 °C to be completed the next day; and

(4) The speciments removed from the cold chamber that same day and left exposed under ordinary room conditions until the next day. At the conclusion of step (3) of the final cycle of cold storage, two test subjects who successfully completed the donning test previously enter the cold chamber, unpack and don the thermal protective aids. The aids must not show any damage, such as shrinking, cracking, swelling, dissolution or change of mechanical qualities.

(d) *Water penetration.* A sample of the fabric from which the thermal protective aid is constructed is installed as a membrane at one end of a tube of at least 2.5 cm (one inch) diameter and 2 m long. The tube is fixed in a vertical position with the membrane at the bottom, and filled with water. After one hour the membrane must continue to support the column of water with no leakage.

(e) *Insulation.* The material from which the thermal protective aid is constructed is tested in accordance with the procedures in ASTM C 177 or ASTM C 518. The material must have a thermal conductivity of not more than 0.25 W/(m·°K).

(f) *Test for oil resistance.* After all its apertures have been sealed, a thermal protective aid is immersed under a 100 mm head of diesel oil, grade no. 2–D as defined in ASTM D–975, for 24 hours. The surface oil is then wiped off and a sample of the material from the aid is again tested in accordance with the procedures in ASTM C 177 or ASTM C 518. The material must still have a thermal conductivity of not more than 0.25 W/m·°K).

(g) *Seam strength.* The Strength of each different type of seam used in a thermal protective aid must be tested under the following conditions and procedures.

(1) *Test equipment.* The following equipment must be used in this test:

(i) A chamber in which air temperature can be kept at 23° C (73.4° F) ±2° C (1.8° F) and in which relative humidity can be kept at 50% ±5%.

(ii) A device to apply tension to the seam by means of a pair of top jaws and a pair of bottom jaws. Each set of jaws must grip the material on both sides so that it does not slip when the load is applied. Each front jaw must be 25 mm (1 inch) wide by 25 mm (1 inch) long. The distance between the jaws before tha load is applied must be 75mm (3 inches).

(2) *Test samples.* Each test sample consists of two pieces of the material from which the thermal protective aid is constructed, each of which is 100 mm (4 inches) square. The two pieces are joined by a seam as shown in figure 160.071–17(m)(3). For each type of seam, 5 samples are required. Each sample may be cut from a thermal protective aid or may be prepared specifically for this test. One type of seam is distinguished from another by the type and size of stitch or other joining method used (including orientation of warp and fill, if any) and by the type and thickness of the materials joined at the seam.

(3) *Test procedure.* Each sample is conditioned for at least 40 hours at 23° C ±2° C and 50% ±5% relative humidity. Immediately after conditioning, each sample is mounted individually in the tension device as shown in figure 160.071–17(m)(3). The jaws are separated at a rate of 5 mm/second (12 in/minute). The maximum force to achieve rupture is recorded. The average force at rupture must be at least 225 N (50 lb).

(h) *Tear resistance.* The tear resistance of the material from which a thermal protective aid is constructed must be determined by the method described in ASTM D 1004. If more than one material is used, each material must be tested. If varying thickness of a material are used in the aid, samples representing the thinnest portion of the material must be tested. If multiple layers of a material are used in the aid, samples representing the layer on the exterior of the aid must be tested. Any material that is a composite formed of two or more materials bonded together is considered to be a single material. The average tearing strength of each material must be at least 45 N (10 lb).

§ 160.074–23 Marking.

(a) Each thermal protective aid must be marked with the words "Thermal Protective Aid," the name of the manufacturer, the model, and the Coast Guard approval number.

(b) Each storage case must be marked with the words "Thermal Protective Aid". Markings on the thermal protective aid and visible through a transparent storage case are deemed to be marked on the storage case.

§ 160.074-25 Production testing.

(a) Thermal protective aid production testing is conducted under the procedures in this section and subpart 159.007 of this chapter.

(b) One out of every 100 thermal protective aids produced must be given a complete visual examination. The sample must be selected at random from a production lot of 100 thermal protective aids and examined by or under the supervision of the independent laboratory. The sample fails if the visual examination shows that the aid does not conform to the approved design.

(c) If a defect in the thermal protective aid is detected upon visual examination, 10 additional samples from the same lot must be selected at random and examined for the defect.

(d) If one or more of the 10 samples fails the examination, each thermal protective aid in the lot must be examined for the defect for which the lot was rejected. Only thermal protective aids that are free of defects may be sold as Coast Guard approval.

Dated: September 25, 1985.

J.W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-23281 Filed 9-30-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

49 CFR Part 391

[BMCS Docket No. MC-116; Notice No. 85-8]

Qualifications of Drivers; Drugs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to amend the Federal Motor Carrier Safety Regulations (FMCSR) by revising the prohibitive language of the nonalcoholic drug medical standard for interstate or foreign commerce drivers. The revision would prohibit the use of certain nonalcoholic drugs whereas the current rule prohibits the drive from having a current clinical diagnosis of drug dependence. The change is being proposed because the present language could allow known drug users to continue to drive commercial motor vehicles in spite of the knowledge of their drug use.

DATE: Written comments must be received on or before October 31, 1985.

ADDRESS: All written comments should refer to the docket number and notice number that appears at the top of this document and should be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 705-1011; or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On November 5, 1984, the FHWA published a final rule in the **Federal Register** (49 FR 44210) which amended the FMCSR to incorporate in the driver qualification requirements prohibitions in the transportation, possession, and use of drugs and other substances listed in Schedule I of the Drug Enforcement Administration's Schedules of Controlled Substances (SCS). There are approximately 100 drugs and other substances in Schedule I of the SCS. The action was taken because these substances degrade driving skills.

One of the amendments made by this final rule changed 49 CFR § 391.41(b)(12). This provision concerns physical qualifications for drivers. Before the November 5, 1984 final rule, the subparagraph provided that a physically qualified driver is one who "does not use an amphetamine, narcotic, or any habit forming durg." The November 5 final rule amended the rule to say that a physically qualified driver is one who

> Has no current clinical diagnosis of a drug dependence of a Schedule I drug or other substance identified in Appendix D to this subchapter, an amphetamine, narcotic, or any other habit-forming drug.

This amendment made two basic changes to the rule. First, consistent with the remainder of the November 5 rule, it made explicit the coverage under the provision of Schedule I drugs (e.g., marijuana) and the substances listed in Appendix D (e.g., various opium derivatives, hallucinogens, stimulants and depressants). Secondly, the amendment provided that use of one of the cited substances, standing alone, was no longer a disqualifying condition. Only having a current clinical diagnosis of dependence on one of the substances was a disqualifying condition. This change was intended to make the regulations consistent in their treatment of drug and alcohol abuse. the FMCSR require that a physically qualified driver have "no current clinical diagnosis of alcoholism" (49 CFR § 391.(b)(13)).

The clinical treatment of drug abuse and alcohol abuse is often quite similar. From a purely medical point of view, it makes some sense to treat these two varieties of substance abuse alike. However, the purpose of the FMCSR is to ensure the safety of highway travel by, among other means, getting unqualified drivers off the road.

Requiring a clinical diagnosis of drug dependence may be inconsistent with this purpose. Absent an admission by a driver that he or she is dependent on drugs (less likely than an admission of dependence on alcohol, given that use of many drugs is illegal), it is often difficult to establish a clinical diagnosis of drug dependence. Even a positive blood or urine test for drugs may not conclusively establish such a dependence, particularly if there is no history of drug abuse by the individual and no other symptoms of drug dependence (e.g., tremulousness, hallucinations). It is very possible that an individual who uses marijuana or amphetamines from time to time would accurately, from a medical point of view, not be diagnosed as being dependent on the drugs.

The problem, from the motor carrier safety point of view, is that a driver, though not subject to a clinical diagnosis of drug dependence, may create a serious safety hazard by using drugs. If a driver of a tractor-trailer carrying hazardous materials on a crowded Interstate highway is high on marijuana or overtired as the result of amphetamine use, the fact that he or she is not clinically dependent on the drugs will not diminish the danger created for the driver and others.

While other provisions of the FMCSR directly address persons convicted of driving under the influence of drugs, the physical qualification standards are preventive in nature. They aim to remove from the road persons who may present clear hazards to the public before an accident or an arrest takes place.

We recognize that not all persons who use drugs necessarily drive under their influence, any more than all persons with certain disqualifying heart conditions will necessarily suffer a heart attack while driving. But, in keeping

with the precautionary nature of the physical qualification standards, it is reasonable to screen out those persons who are significantly more likely than others to have a certain safety-related problem. It is fair to judge that those persons who use drugs, even if not clinically dependent on them, are more likely to present the hazard of driving under the influence than those who do not use drugs.

Moreover, most drivers are physically evaluated only once every two years. A driver who uses drugs now is more likely, than someone who does not, to become clinically dependent in the interim. Disqualifying users before they become clinically dependent is likely to benefit highway safety.

For these reasons, the FHWA is proposing to go back to the former language of § 391.41(b)(12), which regards the use of drugs as a disqualifying condition. The proposed change would retain the references to Schedule I drugs and other substances and Appendix D, however. The FHWA seeks comments on the effects of this proposed change on the effectiveness of the FMCSR in ensuring highway safety.

Economic Impact Evaluation

Because the impact of this proposal will not result in an annual effect on the economy of $100 million, a major increase in costs or prices, or significant adverse effects on the American economy, the FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. Although the FHWA believes the economic impact of this proposed rulemaking action will be minimal, public comment is requested concerning potential economic impacts.

Based on the information available to the FHWA at this time, the action will not have a significant economic impact on a substantial number of small entities. A 30-day comment period is being provided and is considered adequate since the subject matter has been the subject of previous rulemaking actions.

List of Subjects in 49 CFR Part 391

Driver qualifications—drug prohibition, Highways and roads, Highway safety, Physical standards, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: September 27, 1985.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

In consideration of the foregoing, the Federal Highway Administration proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by amending Part 391 as set forth below.

PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. The authority citation for Part 391 is revised to read as follows:

Authority: 49 U.S.C. 3102 and App. 2505; 49 CFR 1.48 and 301.60.

2. Section 391.41(b)(12) is revised to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(12) Does not use a Schedule I drug or other substance identified in Appendix D to this subchapter,[1] an amphetamine, a narcotic, or any other habit-forming drug; and

* * * * *

[FR Doc. 85-23485 Filed 9-27-85 11:50 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 50, No. 190
Tuesday, October 1, 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

Office of the Secretary

Meat Import Limitations; Fourth Quarterly Estimate

Pub. L. 88–482, enacted August 22, 1964, as amended by Pub. L. 96–177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1985 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As published on December 27, 1984 (49 FR 50215), the estimated aggregate quantity of meat articles prescribed by subsection 2(c), as adjusted by subsection 2(d) of the Act, for calendar year 1985 is 1,199 million pounds.

In accordance with the requirements of the Act, I have determined that the fourth quarterly estimate for 1985 of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1985 is 1,210 million pounds.

Done at Washington, DC this 26th day of September, 1985.

John R. Block,

Secretary.

[FR Doc. 85–23368 Filed 9–26–85; 2:05 pm]

BILLING CODE 3410–10–M

Determination of the Market Stabilization Price for Sugar for Fiscal Year 1986

AGENCY: Office of the Secetary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the market stabilization price for sugar for the period October 1, 1985—September 30, 1986. The market stabilization price was announced as 21.50 cents per pound on September 27, 1985 by the Secretary of Agriculture.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION: John Nuttall, Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, Room 6603, South Building, Department of Agriculture, Washington, D.C. 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: The market stabilization price is used to determine bond requirements and maximum liabilities under certain programs authorized by Presidential Proclamation No. 5002 of November 30, 1982 (47 CFR 54269). The calculation of the market stabilization price is provided for in 7 CFR 6.300–6.302 (50 FR 36040) and is the sum of: (1) The price support level for the applicable fiscal year, expressed in cents per pound of raw cane sugar; (2) adjusted average transportation costs; (3) interest costs, if applicable; and (4) 0.2 cent per pound. The adjusted average transportation costs are the weighted average costs of handling and transporting domestically produced raw cane sugar from Hawaii to Gulf and Atlantic Coast ports, as determined by the Secretary. Interest costs are the amount of interest, as determined and estimated by the Secretary, that would be required to be paid by a recipient of a price support loan for raw cane sugar upon repayment of the loan at full maturity. Interest costs shall only be applicable where, as under the current sugar price support program, a price support loan recipient is not required to pay interest upon forfeiture of the loan collateral. The Secretary announced the market stabilization price for fiscal year 1986 on September 27, 1985.

The Secretary of Agriculture has announced that the applicable loan rate under the price support program for sugar, expressed in cents per pound for raw cane sugar, will be 18.00 cents per pound for loans disbursed during the period October 1, 1985-September 30, 1986.

Accordingly, after appropriate review, it has been determined that the market stabilization price for fiscal year 1986 shall be 21.50 cents per pound. This consists of the 18.00 cents per pound loan rate; adjusted average transportation costs of 2.51 cents per pound; an interest cost of .79 cent per pound; and 0.2 cent per pound. The transportation factor represents data for the most recent year for which complete data are available, 1984, projected forwarded to 1985 by applying a projected increase in the Producer Price index for finished goods over this time. The interest factor is based on an estimated average interest of 8.75 percent over the year, and a six month loan maturity period.

Notice is hereby given that in conformity with the provisions of 7 CFR 6.300(a), the market stabilization price for sugar for fiscal year 1986 has been determined to be 21.50 cents per pound.

Signed at Washington, D.C., on September 27, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85–23541 Filed 9–27–85; 4:50 pm]

BILLING CODE 3410–10–M

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Blackfeet Indian Reservation in Montana

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Blackfeet Indian Tribe in Montana has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Blackfeet Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members

of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 31, 1986, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, DC on September 26, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-23418 Filed 9-30-85; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Pacific Crest National Scenic Trail Advisory Council; Meeting

The Pacific Crest National Scenic Trail Advisory Council will meet on October 31 and November 1, 1985 in Sedro Woolley, Washington. The meeting will begin on October 31 at 8:00 a.m. in the conference room of the North Cascade National Park Headquarters located at 800 State Street, Sedro Woolley. Weather permitting, the meeting will be followed by a field trip to view the Pacific Crest Trail and trail facilities.

The purpose of the meeting is for the Council to provide recommendations for the Secretary of Agriculture on broad questions of policy, programs, and procedures affecting the Pacific Crest Trail. The meeting will include a review of trail completion status, standing committee charters, and other related matters about the trail.

The meeting will be open to the public. Persons who wish additional information should contact Dick Benjamin, Recreation Staff Director, Pacific Southwest Region, Forest Service, 630 Sansome Street, San Francisco, California 94111, phone (415) 556-0986.

Dated: September 23, 1985.

Zane G. Smith, Jr.,

Chairman.

[FR Doc. 85-23395 Filed 9-30-85; 8:45 am]

BILLING CODE 3410-11-M

Name Change from Hector Ranger District, Green Mountain National Forest, to Hector Ranger District, Finger Lakes National Forest, NY

In recognition of the interest by citizens of the State of New York, and particularly residents in the Finger Lakes Region, and recognizing the National Forest status given the former Hector Land Use Project lands by Congress on November 29, 1988, (Pub. L. 98-175); Now therefore: All land of the Hector Ranger District, Green Mountain National Forest, located in Seneca and Schuyler Counties in the State of New York or land hereafter acquired for National Forest purposes for inclusion therein, is hereby designated as the Hector Ranger District, Finger Lakes National Forest, and will continue to be adminstered as part of the Green Mountain National Forest.

This action is taken pursuant to authority vested in the Secretary of Agriculture by section 11 of the Act of March 1, 1911 (36 Stat. 961), as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Natural Resources and Environment.

Effective date: This order shall become effective October 1, 1985.

Dated: September 16, 1985.

Peter C. Myers,

Assistant Secretary Natural Resources and Environment.

[FR Doc. 85-23369 Filed 9-30-85; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Appointments of Individuals To Serve as Members of the Performance Review Board, Senior Executive Service

The Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), requires that notice of the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of the performance review board for the U.S. Commission on Civil Rights for the rating year beginning October 1, 1984 and ending September 30, 1985.

Ann Brassier, Assistant Director for Training and Development, OPM

Frank Malanga, Director, Research Division, IRS

Albert Maltz, Assistant Staff Director for Administration, USCCR

Deborah Snow, Assistant Staff Director for Federal Civil Rights Evaluation, USCCR

Max Green,

Acting Staff Director.

[FR Doc. 85-23367 Filed 9-30-85; 8:45 am]

BILLING CODE 6335-01-M

Iowa Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Education Subcommittee of the Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on November 5, 1985, at the Ramada Inn, 6263 North Brady, Davenport, Iowa. The purpose of the subcommittee meeting is to develop plans for a community forum in Davenport on civil rights issues in education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Subcommittee Chairperson, Ralph Scott, Jr., or Melvin Jenkins, Director of the Central States Regional Office at (816) 374-5253, (TDD 816/374-5009.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, September 25, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-23328 Filed 9-30-85; 8:45 am]

BILLING CODE 6335-01-M

Nebraska Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 10:00 p.m. on November 8, 1985 and convene at 9:00 a.m. and adjourn at 12:00 noon on November 9, 1985, at the University of Nebraska College of Law, Lincoln, Nebraska. The purpose of the meeting is to obtain information on the status of civil rights in Nebraska

including information on affirmative action and comparable worth.

Persons desiring additional information, or planning a presentation to the Committee, should contact Subcommittee Chairperson, Richard Duncan, or Melvin Jenkins, Director of the Central States Regional Office at (816) 374–5253, (TDD 816/374–5009).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC September 25, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–23327 Filed 9–30–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 32–85]

Foreign-Trade Zone 112, El Paso County, CO; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Colorado Springs Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 112, requesting authority to expand its zone in El Paso County, Colorado, adjacent to the Colorado Springs Station of the Denver Customs port of Entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 12, 1985.

On November 1, 1984, the Board authorized the Colorado Springs Foreign-Trade Zone, Inc., to establish a foreign-trade zone in the Colorado Springs area (Board Order 281, 49 FR 44936, 11/13/84). The project currently covers 1300 acres within the Colorado Center planned industrial park on Drennan Road, adjacent to the Colorado Springs Municipal Airport in El Paso County.

The proposed zone expansion would add another 480 acres adjacent to the approved zone. It is part of an expansion of the Colorado Center and, as with the approved zone area, will be operated as an integral part of the center.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Donald Myhra, District Director, U.S. Customs Service, North Central Region, 600 Central Ave., Great Falls, MT 59401; and Lt. Colonel David E. Peixotto, District Engineer, U.S. Army Engineer District Albuquerque, P.O. Box 1580, Albuquerque, NM 87103.

Comments concernign the proposed zone expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 30, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 119 U.S. Customshouse, 721 19th Street, Denver, CO 80202

Office of the executive Secretary, Foreign-Trade Zones Board, U.S., Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230

Dated: September 24, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–23405 Filed 9–30–85; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 31–85

Foreign-Trade Zone 35—Philadelphia, PA; Application for Subzone, Pennsylvania Shipbuilding, Chester

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Philadelphia Port Commission, grantee of Foreign-Trade Zone 35, requesting special-purpose subzone status for the shipyard of Pennsylvania Shipbuilding Company (Penn Ship), Chester, Pennsylvania, within the Philadelphia Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 11, 1985.

Penn Ship is a second-tier subsidiary of Capital Marine Corporation. Its shipyard covers 185 acres at Foot of Morton Avenue, Chester, some 20 miles south of Philadelphia. The facility is used to design, construct, convert and repair vessels for military and commercial uses, employing 1400 persons. Current contracts involve the converting of 2 SL–7 ships to TAKRX fast logistic ships for the Navy; maintenance of 2 MARAD Cargo ships, and repair of a foreign tanker. Bids have been made on the construction of 2 clean-product tankers. Some 10 percent of the value TAKRX project and 80 percent of the material value of the clean product tankers involves imported components, including engines, generators, pumps, propellers, compressors, heat exchanges, anchors, chain, gears, valves, steel plate and structural shapes, steel pipe and tubes, copper pipes, deck machinery, switchboard and control panels.

Zone procedures will help Penn Ship reduce costs on its current orders and compete internationally for new contracts. The benefits stem from the fact that most of the imported components are subject to significant duties while the finished products, as oceangoing vessels, are duty-free. In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02110; and Lt. Colonel Ralph V. Locario, District Engineer, U.S. Army Engineer District Philadelphia, 2nd & Chestnut Streets, Philadelphia, PA 19106.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked an or before October 30, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 9448 Federal Bldg., 600 Arch Street, Philadelphia, PA 19106

Office of the Executive Secretary, Foreign-Trade Zones Boards, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW, Washington, DC 20230

Dated: September 24, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–23406 Filed 9–30–85; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A-580-001]

Certain Steel Wire Nails From Korea; Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On August 13, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain steel wire nails from Korea and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. we received no comments. We therefore determine that domestic interested parties are no longer interested in continuation of the order and we are revoking the order. In accordance with the interested parties' notification, the revocation will apply to certain steel wire nails entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or Stephen Munroe, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32606) the preliminary results of its changed circumstances administrative review of the antidumping duty order on certain steel wire nails from Korea (47 FR 35266–67, August 13, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of certain steel wire nails. Such merchandise is currently classifiable under items 646.2500, 646.2622, 646.2624, 646.2626, 646.2628, 646.2642, 646.2644, 646.2646, and 646.2648 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Final Results of the Review and Revocation

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received no comments.

As a result of this review, we determined that the domestic interested parties are no longer interested in continuation of the antidumping duty order on certain steel wire nails from Korea and that the order should be revoked on this basis.

Therefore, we are revoking the order on certain steel wire nails from Korea effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This notice does not cover unliquidated entries of certain steel wire nails from Korea which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, in a separate review, if one is requested.

This administrative review, revocation and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 24, 1985.

[FR Doc. 85–23352 Filed 9–30–85; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Apparel Products Produced or Manufactured in Mauritius

September 25, 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 October 1, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 2 and 5, 1981, as amended, between the Governments of the United States and Mauritius establishes a twelve-month period of restraint for cotton, wool and man-made fiber knitwear apparel products in Categories 338/339, 340 and 638/639, and in Categories 345, 438, 445, 446, 645, and 646 as a group, during the agreement period beginning on October 1, 1985 and extending through September 30, 1986. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in the foregoing categories, produced or manufactured in Mauritius and exported during the specified twelve-month period, in excess of the designated limits.

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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 25, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of The Treasury,
Washington, D.C. 20229

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; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 3 and 4, 1985, between the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories produced or manufactured in Mauritius and exported during the twelve-month period beginning on October 1, 1985 and extending through September 30, 1986, in excess of the limits indicated below:

Category	Twelve-Month Restraint Limit [1]
338/339	200,000 dozen.
340	212,000 dozen.
638/639	230,000 dozen.
345, 435, 445, 446, 645 and 646	116,150 dozen.

[1] The limits have not been adjusted to reflect any imports exported after September 30, 1985.

In carrying out this directive textile products in the foregoing categories which have been exported to the United States during the restraint periods established immediately previous to that established in this directive, shall, to the extent of any unfilled balances, be charged against the limits established for such goods during those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of July 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius, which provide, in part, that: (1) The limits may be exceeded by not more than 10 percent for carryover and carryforward and the limits for Categories 338/339 and 638/639 may be exceeded by not more than 7 percent swing, provided that an equal amount in equivalent square yards is deducted from one or more specific limits during the same agreement year; and (2) the two governments agree to consult on any question arising in the implementation of the bilateral agreement. Any appropriate adjustments under the provisions of the agreement, referred to above, will be made to you by letter.

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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

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 these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-23350 Filed 9-30-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting an Import Control Level for Certain Cotton Textile Products Produced or Manufactured in Singapore

September 25, 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 October 1, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and the Republic of Singapore have exchanged notes further amending their Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 21, 1981, as amended, to convert the existing minimum consultation level of 39,326 dozen for women's, girls', and infants' cotton skirts in Category 342 to a designated consultation level at 50,000 dozen for the agreement year which began on January 1, 1985. The letter to the Commissioner of Customs which follows this notice establishes this increased level and controls it for the first time in 1985. The level for this category has not been adjusted to reflect any imports exported during 1985. As the data become available, such charges will be made.

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 (48 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 25, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Singapore and exported during 1985.

Effective on October 1, 1985, the directive of December 21, 1984 is hereby further amended to a include a restraint level of 50,000 dozen [1] for cotton textile products in Category 342.

Textile products in Category 342 which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in Category 342 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.

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(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-23351 Filed 9-30-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

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.

[1] The level has not been adjusted to reflect any imports exported after December 31, 1984. Imports during the period January 1 through July 31, 1985 have amounted to 13,321 dozen.

DATES: Interested persons are invited to submit comments on or before October 31, 1985.

ADDRESSES: 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: Margaret 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) provide interested Federal agencies and the public an 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 OMB. 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: September 26, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Elementary and Secondary Education

Type of Review Requested: Revision
Title: Application for the Magnet Schools Assistance Program
Agency Form Number: A10–1P
Frequency: Annually
Affected Public: Local governments
Reporting Burden: Responses, 35; Burden Hours, 500
Recordkeeping Burden: Recordkeepers, 0; Burden Hours, 0

Abstract: The application is used by local educational agencies to apply for both new and continuation awards under the Magnet Schools Assistance Program.

Office of Vocational and Adult Education

Type of Review Requested: Revision
Title: Financial Status Report and Annual Performance Report for the Adult Education State-administered Program
Agency Form Number: ED 365, 365–1
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses, 55; Burden Hours, 220
Recordkeeping Burden: Recordkeepers, 55; Burden Hours, 4,400

Abstract: State educational agencies receiving grants under the Adult Education State-administered Program submit annual financial status and performance reports as prescribed by the Adult Education Act and by OMB Circular No. A–102. Program officials use the data collected in accounting for the expenditure of funds and for monitoring program activities required by the approved State plan.

[FR Doc. 85–23379 Filed 9–30–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

San Francisco Operations Office; Financial Assistance Award (Grant)

AGENCY: San Francisco Operations Office, DOE.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: The proposed work will be conducted at Home Manufacturers Council by the National Association of Home Builders, 15th & M St, N.W., Washington, D.C. 20005. The proposed period of performance is twelve months, beginning September 30, 1985 through September 30, 1986. The proposed cost of the work is $9,900.

Grant No. DE–FG03–85SF15918

Scope of Project

The major thrust of the research is to develop a list of industry perceived energy research needs and an agenda for addressing these needs specifically. The Home Manufacturers Council of the National Association of Home Builders will develop recommendations for a long range research plan for modular, pre-cut and panelized housing construction types.

This will be in the form of a list of energy research needs and an agenda for addressing these needs as it is related to these construction types.

This research is expected to directly support other industrial research and will result in achieving theoretically feasible goals which will provide for the low-cost, rapid development of highly energy efficient electrochromic glazing.

FOR FURTHER INFORMATION CONTACT: Jan Hadly, Contract Specialist, Contract Management Division, U.S. Department of Energy, San Francisco Operations Office, Oakland, CA 94612.

Issued in San Francisco, California, September 30, 1985.

Vito A. Magliano,

Acting Manager.

[FR Doc. 85–23449 Filed 9–30–85; 8:45 am]

BILLING CODE 6450–01–M

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), the following meeting notice is provided:

A meeting of the Industry Supply Advisory Group (ISAG) to the International Energy Agency (IEA) will be held from October 9 until about November 8, 1985 (but possibly until November 15), at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 9:00 a.m. on October 9. This meeting is being held in conjunction with the conduct of the IEA's Fifth IEA Allocation Systems Test, and that test is the agenda of the meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the ISAG meeting is open only to representatives of members of the ISAG, their counsel, employees of the IEA, employees of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, representatives of the Commission of the European Communities, and invitees of the IEA.

Issued in Washington, D.C., September 26, 1985.

J. Michael Farrell,

General Counsel.

[FR Doc. 85–23448 Filed 9–30–85; 8:45 am]

BILLING CODE 6450–01–M

Intent To Renew a Cooperative Agreement

The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for the award of additional effort under existing Cooperative Agreement Number DE-FC01-84CE40699 to University of City Science Center (UCSC) for operation and managment of twelve Energy Analysis and Diagnostic Centers. UCSC has submitted a renewal proposal.

Program scope: This cooperative agreement will provide for operation and management of twelve Energy Analysis and Diagnostic Centers (EADCs). These centers are responsible for auditing energy consumption at small and medium sized manufacturing plants, recommending improvements in energy efficieny at those plants, and training students in industrial energy management practices. Eligibility for award of the cooperative agreement is being limited to the University City Science Center because of its unique ability to maintain existing operations while concurrently providing training to schools new to the EADC program. The UCSC provides at this time the only demonstrated capability to provide appropriate training and guidance to EADCs and to insure that each EADC performs useful and effective energy audits. The term of this cooperative agreement shall be from October 1, 1985, to September 30, 1986, and the amount of funds awarded shall be $1,500,000.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemarie H. Marshall, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Ave., SW., Washington, D.C. 20585.

Issued in Washington, DC on September 23, 1985.

Edward T. Lovett,

Acting Director Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 85-23569 Filed 9-30-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF85-698-000, et al.]

Signal-Sherman Energy Company, et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

September 25, 1985.

Comment date: 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. Signal-Sherman Energy Company

Docket No. QF85-698-000.

On September 13, 1985, Signal-Sherman Energy Company (Applicant), of Liberty Lane, Hampton, New Hampshire 03842 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 will be located at Sherman Station in Penobscot County, Maine. The primary energy source will be biomass in the form of mill waste, bark, sawdust, forest slash, and whole tree chips. The electric power production capacity will be 18 megawatts. The facility will use number 2 fuel oil only for start-up purposes.

2. North Side Canal Company, Ltd.

Docket No. QF85-702-000.

On September 16, 1985, North Side Canal Company, Ltd. (Applicant), of 921 North Lincoln Avenue, Jerome, Idaho 83338 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 9,390 kilowatt hydroelectric facility (P. 9070-000) will be located in Jerome County, Idaho.

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.

3. Klondike Equity Enterprises, Inc.

Docket No. QF85-711-000.

On September 18, 1985, Paul R. Sorenson, President, Klondike Equity Enterprise, Inc. (Applicant) of Box 100, Newport Beach, California 92662 submitted for filing an application for certification of a facility known as Klondike V as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle Klondike V cogeneration facility is located at 2590 Red Hill, Santa Ana, California. The facility will contain a combustion turbine-generator, a two pressure level heat recovery boiler (HRB) and an extraction steam turbine-generator. The extracted steam together with low pressure steam from the HRB will be supplied to the absorption refrigeration equipment and heating needs at the athletic facility. The net electric power production of the facility will be 27,605 kW. The primary energy source will be natural gas. The facility is scheduled to start commercial operation in winter of 1986.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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. 85-23438 Filed 9-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST80-62-003, et al.]

Delhi Gas Pipeline Corp., et al.; Extension Reports

September 26, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations: a "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or asignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before October 21, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [1]
ST80-62-003	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201.	Transwestern Pipeline Co	08-26-85	C	12-01-85	
ST82-24-002	Louisiana Intrastate Gas Corp. P.O. Box 1352, Alexandria, LA 71301.	United Gas Pipe Line Co	08-16-85	C	11-20-85	
ST82-62-002	Louisiana Resources Co., P.O. Box 3102, Tulsa, OK 74101	Faustina Pipe Line Co	08-19-85	C	11-20-85	
ST82-98-002	Oasis Pipeline Co., 1200 Travis, Box 1188, Houston, TX 77001.	Tennessee Gas Pipeline Co	08-23-85	C	11-23-85	
ST82-103-002	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas TX 75201.	Transwestern Pipeline Co.	08-26-85	C	12-07-85	
ST82-158-002	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001.	Delhi Gas Pipeline Corp.	08-29-85	B	01-08-86	
ST83-105-002	Delta Natural Gas Co., Inc., Route 1, Box 30-A, Winchester, KY 40391.	Columbia Gas Transmission Corp	08-20-85	G (HT)	11-23-85	
ST83-133-001 [1]	Llano, Inc., P.O. Box 1188, Houston, TX 77001	Northern Natural Gas Co	08-23-85	C	12-11-84	11-21-85
ST84-12-001 [2]	National Fuel Gas Supply Corp., 10 LaFayette Square, Buffalo, NY 14203.	Delmarva Power and Light Co	08-19-85	B	10-01-85	11-17-85
ST84-155-001 [2]	Northwest Central Pipeline Corp., One William Center, Tulsa, OK 74101.	Transwestern Pipeline Co	08-19-85	G	11-01-85	11-17-85
ST84-158-001	Intrastate Gathering Corp. P.O. Box 3299, San Antonio, TX 78216.	Natural Gas Pipeline Co. of America	08-29-85	C	11-26-85	
ST84-160-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001.	Transcontinental Gas Pipe Line Corp	08-23-85	G	11-23-85	
ST84-160-001	Texas Gas Transmission Corp., 3800 Frederica St., Owensboro, KY 42301.	Transcontinental Gas Pipe Line Corp	08-19-85	G	11-18-85	
ST84-223-001 [2]	The Nueces Co., 1700 Pacific Ave., Dallas, TX 75201	Mountain Fuel Resources, Inc	08-23-85	C	11-18-85	11-21-85
ST84-265-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102.	Perry Pipeline Co., Inc	08-26-85	B	12-01-85	
ST84-293-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102.	High Plains Natural Gas Co	08-26-85	B	12-01-85	
ST84-510-001	Consolidated Gas Transmission Corp., 445 West Main St., Clarksburg, WV 26302.	Transcontinental Gas Pipe Line Corp	08-26-85	G	02-01-86	
ST85-363-001	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201.	Northern Natural Gas Co	08-30-85	C/F(157)	12-01-85	
ST85-632-001	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201.	Northern Ill. Gas Co., et al	08-30-85	C	12-01-85	

[1] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.
[2] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
Note.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulation.

[FR Doc. 85-23432 Filed 9-30-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TC85-22-000, et al.]

Florida Gas Transmission Co. et al., Tariff Sheet Filings

September 25, 1985.

In the matter of Florida Gas Transmission Company, Docket No. TC85-22-000; Mississippi River Transmission Corporation, Docket No. TC85-23-000; El Paso Natural Gas Company, Docket No. TC85-24-000; Eastern Shore Natural Gas Company, Docket No. TC85-26-000; K N Energy, Inc., Docket No. TC85-27-000; Southern Natural Gas Company, Docket No. TC85-28-000; Arkla Energy Resources, a Division of Arkla, Inc., Docket No. TC85-29-000; South Georgia Natural Gas Company, Docket No. TC85-30-000.

Take notice that the following pipelines [1] have filed revised tariff sheets to become effective November 1, 1985, pursuant to Section 281.204(b) of the Commission's Regulations, which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

[1] Addresses of the pipelines are listed in the Appendix hereto.

Pipeline and Docket No.

(1) *Florida Gas Transmission Company*, TC85-22-000, filed: September 11, 1985: Second Revised Sheet No. 30, Second Revised Sheet No. 31, Second Revised Sheet No. 32, Second Revised Sheet No. 33, Second Revised Sheet No. 34, Second Revised Sheet No. 35, Second Revised Sheet No. 36, Second Revised Sheet No. 37, of FERC Gas Tariff, First Revised Volume No. 1.

(2) *Mississippi River Transmission Corporation*, TC85-23-000, filed: September 13, 1985: Fifth Revised Sheet No. 75, Fourth Revised Sheet No. 76, Third Revised Sheet No. 77, Fifth Revised Sheet No. 78. Fourth Revised

Sheet No. 79, of FERC Gas Tariff, Second Revised Volume No. 1.

(3) *El Paso Natural Gas Company*, TC85-24-000, filed: September 13, 1985: Fourth Revised Sheet No. 329 to First Revised Volume No. 1, Eighteenth Revised Sheet No. 1-M.3 to Third Revised Volume No. 2, Eighteenth Revised Sheet No. 7-MM.3 to Original Volume No. 2A.

(4) *Eastern Shore Natural Gas Company*, TC85-26-000, filed: September 16, 1985: Seventh Revised Sheet No. 424 of FERC Gas Tariff, Original Volume No. 1.

(5) *K N Energy, Inc.*, TC85-27-000, filed: September 16, 1985: Ninth Revised Sheet No. 33, Ninth Revised Sheet No. 34, Ninth Revised Sheet No. 35, Ninth Revised Sheet No. 36, Ninth Revised Sheet No. 37, Seventh Revised Sheet No. 38, Seventh Revised Sheet No. 39, Seventh Revised Sheet No. 40, Seventh Revised Sheet No. 41, Seventh Revised Sheet No. 42, Seventh Revised Sheet No. 43, Seventh Revised Sheet No. 44, Seventh Revised Sheet No. 45, Seventh Revised Sheet No. 46, Seventh Revised Sheet No. 47, Seventh Revised Sheet No. 48, Seventh Revised Sheet No. 49, Fourth Revised Sheet No. 50, Fourth Revised Sheet No. 51, Fourth Revised Sheet No. 52, Fourth Revised Sheet No. 53, First Revised Sheet No. 54 of FERC Gas Tariff, Third Revised Volume No. 1.

(6) *Southern Natural Gas Company*, TC85-28-000, filed: September 16, 1985: Thirteenth Revised Sheet No. 61, Fourth Revised Sheet No. 61A, Twelfth Revised Sheet No. 62, Fourth Revised Sheet No. 62A, Fifteenth Revised Sheet No. 63, Seventh Revised Sheet No. 63A, Fourteenth Revised Sheet No. 64, Sixth Revised Sheet No. 64A, Thirteenth Revised Sheet No. 65, Eighth Revised Sheet No. 65A, Fourteenth Revised Sheet No. 66, Eighth Revised Sheet No. 66A, Sixteenth Revised Sheet No. 67, Eighth Revised Sheet No. 67A, Sixth Revised Sheet No. 68, Fourth Revised Sheet No. 68A, Eighth Revised Sheet No. 69, Third Revised Sheet No. 69A, Eighth Revised Sheet No. 70, Third Revised Sheet No. 70A, Fifteenth Revised Sheet No. 71, Seventh Revised Sheet No. 71A, Twelfth Revised Sheet No. 72, Fourth Revised Sheet No. 72A, Eleventh Revised Sheet No. 73, Fourth Revised Sheet No. 73A, Fourteenth Revised Sheet No. 74, Seventh Revised Sheet No. 74A, Thirteenth Revised Sheet No. 75, Sixth Revised Sheet No. 75A, Thirteenth Revised Sheet No. 76, Eighth Revised Sheet No. 76A, Fifteenth Revised Sheet No. 77, Eighth Revised Sheet No. 77A, Sixteenth Revised Sheet No. 78, Eighth Revised Sheet No. 78A, Sixth Revised Sheet No. 79, Fourth Revised Sheet No. 79A, Eighth Revised Sheet No. 80, Third Revised Sheet No. 80A, Eighth Revised Sheet No. 81, Third Revised Sheet No. 81A, Fifteenth Revised Sheet No. 82, Seventh Revised Sheet No. 82A of FERC Gas Tariff, Sixth Revised Volume No. 1.

(7) *Arkla Energy Resources, a Division of Arkla, Inc.*, TC85-29-000, filed: September 16, 1985: 7th Revised Sheet No. 3E, 7th Revised Sheet No. 3F, 7th Revised Sheet No. 3G, 7th Revised Sheet No. 3H, 7th Revised Sheet No. 3I, 7th Revised Sheet No. 3J of FERC Gas Tariff, First Revised Volume No. 1.

(8) *South Georgia Natural Gas Company*, TC85-30-000, filed: September 17, 1985: Eighth Revised Sheet No. 44, Ninth Revised Sheet No. 45, Sixth Revised Sheet No. 46, Seventh Revised Sheet No. 47 of FERC Gas Tariff, First Revised Volume No. 1.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before October 10, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

Appendix

Florida Gas Transmission Company, Post Office Box 1188, Houston, Texas 77001

Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124

El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978

Eastern Shore Natural Gas Company, P.O. Box 615, Dover, Delaware 19903-0615

K N Energy, Inc., Post Office Box 15265, Lakewood, Colorado 80215

Souther Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202-2563

Arkla Energy Resources, a Division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151

South Georgia Natural Gas Company, Post Office Box 1279, Thomasville, Georgia 31799-1279

[FR Doc. 85-23433 Filed 9-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE82-21-003]

Public Service Electric & Gas Co.; Application for Exemption

September 26, 1985.

Take notice that Public Service Electric & Gas Company (PSEG) filed an application on August 29, 1985 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D and E or Part 290.

In its application for exemption PSEG states that it should not be required to file the specified data for the following reasons:

"The information required under Part 290 is no longer needed or necessary because the New Jersey Board of Public Utilities (NJBPU) has various requirements, to which PSEG must respond, which satisfy the public's information needs."

"PSEG's previous PURPA filings were used to a limited extent by others and were not included in evidence or referenced at all in its last rate proceeding before NJBPU."

"The requirements of the State of New Jersey as set forth and required by NJBPU and those required under PURPA 290 filings are largely duplicative."

"Based upon the duplicative nature of the data submitted and its limited use, the cost of compliance greatly exceeds the benefits derived."

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that he utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register.**

Within that 45 day period, such person must also serve a copy of such comments on: Mr. James R. Lacey, General Solicitor, Public Service Electric and Gas Company—T5E, P.O. Box 570, Newark, New Jersey 07101.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23435 Filed 9-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-148-000, et al.]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

September 24, 1985.

Take notice that on September 17, 1985, Transcontinental Gas Pipe Line Corporation (Transco) submitted a filing to comply with Ordering Paragraph (C)(6) of the Commission's August 15, 1985 order in Docket Nos. RP85-148-000, TA85-3-29-000 and TA85-3-29-002. Transco's filing was informational in nature and related to Transco's Market Retention Program (MRP) and Market Maintenance Plan (MMP).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 30, 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 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. 85-23436 Filed 9-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI85-621-000, et al.]

Northern Gas Marketing, Inc., et al.; Applications for Abandonment of Service

September 26, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before October 8, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI85-621-000, B, Sept. 20, 1985	Northern Gas Marketing, Inc., P.O. Box 4524, Houston, Texas 77210.	Bridgeline Gas Distribution Company, South Marsh Island Block 261, Offshore Louisiana.	(1)	
CI85-622-000, B, Sept. 20, 1965	Production Marketing Specialists, Inc. dba/Promark Energy Company, 14825 St. Mary's Lane—Suite 202, Houston, Texas 77079.	Citizens Energy Corp., Citizens Resources Corp., & Northern Gas Marketing, Inc., South Marsh Island Area Block 261, Offshore Louisiana, Federal Domain.	(1)	
CI85-688-000, B, Sept. 19, 1985	Huffco Petroleum Corporation, 1100 Louisiana Avenue—Suite 5200, Houston, Texas 77002.	Northern Gas Marketing, Inc. by assignment from Northern Natural Gas Company, Division of Inter-North, Inc., Lease No. OCS G-2306, South Marsh Island Area, Northern One-Half of Block 261, Offshore Louisiana, Federal Domain.	(2)	
CI85-689-000, B, Sept. 19, 1985	Norse Petroleum (U.S.) Inc., 550 Westlake Park Blvd.—Suite 2200, Houston, Texas 77079.	do	(2)	
CI85-690-000, B, Sept. 19, 1985	Huthnance Energy Company, Suite 500, Dresser Tower, Houston, Texas 77002.	do	(2)	

[1] Short-term contract will expire on 9-30-85 and Seller entered into the contract and initiated service upon the erroneous assumption that the gas is not subject to the Natural Gas Act.
[2] Gas no longer wanted by purchaser.

A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-23434 Filed 9-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-605-000, et al.]

Ashland Power Associates, et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

September 24, 1985.

Comment date: 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. Ashland Power Associates

[Docket No. QF85-605-000]

On July 12, 1985, Ashland Power Associates (Applicant), of 22 Monument Square, Suite 603, Portland, Maine 04101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Ashland, Maine. The primary energy source will be woodwaste. The electric power production capacity will be 23 megawatts. The facility will provide steam for lumber drying kilns and the predrying of woodwaste. The date of installation will be prior to March 1986.

2. Bruce Luke

[Docket No. QF85-688-000]

On September 6, 1985, Bruce Luke (Applicant), of 1817 N. Quinn, Apt. 501, Arlington, Virginia 22209, 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 small power production facility will be located on Route 4, Box 915, Grand Caillou Route, Houma, Lousiaina 70363. The facility will burn ethanol type alcohol to generate 100 kilowatts of electric power. No electric utility or electric utility holding company has any ownership interest in the facility.

3. Cogenic Energy Systems, Inc.

[Docket No. QF85-669-000]

On August 29, 1985, Cogenic Energy Systems, Inc. (Applicant), of 9353 Activity Road, Suite D, San Diego, California 92126, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping cycle cogeneration facility will be installed at Griswold's Inn, 1500 South Raymond Avenue, Fullerton, California 92631. The facility will consist of an internal combustion engine coupled to an induction generator with waste heat recovery equipment designed to recover heat from the engine's water jacket and exhaust gases. The net electric power production capacity of the facility will be 150 kW. The primary source of energy will be natural gas.

4. Commonwealth Power Management

[Docket No. QF85-692-000]

On September 9, 1985, Commonwealth Power Management (Applicant), of 14209 S.E. 52nd Place, Bellevue, Washington 98006, 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 Oklahoma City, Oklahoma. The facility will consist of two gas-fired boilers and an extraction steam turbine generator. The facility will produce and deliver process steam to a nearby industry. The electric power production capacity of the facility will be 15 MW. The primary energy source will be natural gas.

5. Commonwealth Power Management

[Docket No. QF85-694-000]

On September 10, 1985, Commonwealth Power Management (Applicant), of 14209 S.E. 52nd Place, Bellevue, Washington 98006, 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 Enid, Oklahoma. The facility will consist of two gas-fired boilers and an extraction steam turbine generator. The facility will produce and deliver process steam to a nearby industry. The electric power production capacity of the facility will be 15 MW. The primary energy source will be natural gas.

6. Kaiser Engineers (California) Corporation

[Docket No. QF85-693-000]

On September 10, 1985, Kaiser Engineers (California) Corporation (Applicant), of 1800 Harrison Street, P.O. Box 23210, Oakland, California 94623-2321, 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 will be located at the Durham Road Landfill, Fremont, California. The facility consists of four incinerators, boilers, and a steam turbine generator. The primary source of energy will be municipal solid waste. The electric power production capacity of the facility will be 10 NW.

7. Klondike Equity Enterprises, Inc. (Klondike II)

[Docket No. QF85-696-000]

On September 10, 1985, Paul R. Sorenson, President, Klondike Equity Enterprise, Inc. (Applicant) of Box 100, Newport Beach, California 92662 submitted for filing an application for certification of a facility known as Klondike II as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle Klondike II cogeneration facility is located at Industry Blvd., County of San Diego, California. The facility will contain a combustion turbine-generator, a two pressure level heat recovery boiler (HRB) and an extractor steam turbine-generator. The extracted steam together with low pressure steam from the HRB will be supplied to the absorption refrigeration equipment and heating needs at the atheletic facility. The net electric power production of the facility will be 27,605 kW. The primary energy source will be natural gas. The facility is scheduled to start commercial operation in winter of 1986.

8. M.H. Bigan

[Docket No. QF85-683-000]

On September 6, 1985, M.H. Bigan (Applicant), of 421 Bigan Drive, Windber, Pennsylvania 15963, 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 small power production facility will be located near the Town of Windber Borough in Somerset County, Pennsylvania. The facility will burn municipal solid waste and bituminous coal refuse to generate 10,000 kW. The use of coal will not exceed 25 percent of the total fuel input. No electric utility or electric utility holding company has any ownership interest in the company.

9. Novo Electric Systems Corporation

[Docket No. QF85-681-000]

On September 3, 1985, Novo Electric Systems Corporation (Applicant), of 600 W. Lindsay Street, Stockton, California 95203, 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 is located at Davis, California. It consists of three (3) spark ignition reciprocating engine/indication generator units. Heat recovered from the engine cooling and exhaust systems is applied to process waste water from oil and gas operations. The electric power production capacity of the facility is 200 kW. The primary energy source is natural gas. The initial date of operation is September 1, 1985.

10. Novo Electric Systems Corporation

[Docket No. QF85-682-000]

On September 6, 1985, Novo Electric Systems Corporation (Applicant), of 600 W. Lindsay Street, Stockton, California 95203, 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 is located at Woodland,

California. It consists of three (3) spark ignition reciprocating engine/induction generator units. Heat recovered from the engine cooling and exhaust systems is applied to process waste water from oil and gas operations. The electric power production capacity of the facility is 300 kW. The primary energy source is natural gas. The initial date of operation is August 5, 1985.

11. Novo Electric Systems Corporation

[Docket No. QF85-680-000]

On August 26, 1985, Novo Electric Systems Corporation (Applicant), of 600 W. Lindsey Street, Stockton, California 95202, 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 is located at Half Moon Bay, California. It consists of a spark ignition reciprocating engine/induction generator units. Heat recovered from the engine cooling and exhaust systems is applied to produce hot water from space heating in a greenhouse. The electric power production capacity of the facility is 225 kW. The primary energy source is natural gas. The facility has been in operation since October 20, 1984.

12. Philadelphia Corporation

[Docket No. QF85-673-000]

On September 3, 1985, Philadelphia Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York, 10170, 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 proposed small power production facility will be located on the Indian River in Jefferson County, New York. The facility will consist of a run-of-the-river hydroelectric generator. The maximum electric power production capacity will be 3 MW.

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.

13. River Delta Cogeneration, Inc.

[Docket No. QF85-695-000]

On September 10, 1985, River Delta Cogeneration, Inc. (Applicant), of P.O. Box 1425, Sonoma, California 95476, 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 approximately 6 miles south of Clarksburg, California. The facility will consist of reciprocating engine/generator units. Heat from the engine coolant and oil will be recovered and used in horticulture operations. The primary source of energy will be natural gas. The maximum electric power production capacity will be 3.2 MW.

14. Zond Windsystem Partners, Ltd. Series 85-B

[Docket No. QF85-686-000]

On September 6, 1985, Zond Windsystem Partners, Ltd. Series 85-B (Applicant), of 112 South Curry Street, Tehachapi, California 93561, 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 will be located in Kern County near Tehachapi, California. The facility will consist of 240 wind turbine generators with a rated capacity of 100 kW each. The total electric power production capacity of the facility will be 24 MW.

15. Zond Windsystem Partners, Ltd. Series 85-A

[Docket No. QF85-687-000]

On September 6, 1985, Zond Windsystem Partners, Ltd. Series 85-A (Applicant), of 112 South Curry Street, Tehachapi, California 93561, 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 will be located in Kern County near Tehachapi, California. The facility will consist of 160 wind turbine generators with a rated capacity of 100 kW each. The total electric power production capacity of the facility will be 16 MW.

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 Capital Street, N.E., Washington, DC 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. 85-23459 Filed 9-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-849-000, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

September 25, 1985.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP85-849-000]

Take notice that on September 3, 1985, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-849-000, a request pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain metering facilities and the related transportation service necessary for the delivery and direct sale of natural gas to American Magnesium Company (American) and to initiate the delivery of natural gas to West Texas Gas, Inc. (West Texas), for resale to Dixie Petro-Chem, Inc. (Dixie), through the utilization of a remaining tap and valve assembly located in Scurry County, Texas, under its authorization issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

El Paso states that it was informed that on October 21, 1982, American sold the affected plant to MPLC North American Magnesium, Inc. (MPLC), and MPLC thereafter sold the plant to World Wide Refining and Tank Company

(World Wide) on March 1, 1984. El Paso advises that it did not consent to the assignment of the service by American to MPLC or the further assignment to World Wide. It was further determined by El Paso that the present consumer of gas delivered through the facilities proposed to be abandoned is Dixie. However, El Paso states that it continued to bill and receive payment from American for gas deliveries.

By letter agreement dated January 18, 1985, El Paso notified American of its decision to terminate the service effective upon receipt of the requisite regulatory approval. El Paso states that its decision was predicated on American's failure to honor the related contractual stipulations regarding assignments. The letter also evidences the consent of American to the abandonment.

In order to facilitate the arrangment described herein, El Paso proposes to abandon the existing certificate metering facilities which are presently utilized by El Paso to render the delivery and direct sale of natural gas to American and to initiate the delivery of natural gas to West Texas for resale to Dixie through the utilization of the remaining 6" O.D. tap and valve assembly, hereinafter referred to as the "Dixie Tap", on El Paso's existing 8⅝" O.D. pipeline in Scurry County, Texas. No new or additional facilities will be required by El Paso in order to serve West Texas. El Paso is advised that West Texas will install a meter, with necessary appurtenances, for measurement of deliveries to Dixie.

The quantities of natural gas to be delivered would be classified as Priority 1 and 2(c) requirements. El Paso states that the projected Priority 1 and 2(c) load growth will not alter West Texas' entitlements under El Paso's Permanent Allocation Plan. In addition, El Paso contends that the sale of natural gas proposed herein is permitted by and consistent with the high-priority load growth provisions set forth in Section 11.5(b), *Growth Provision*, of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

Comment date: November 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP85-867-000]

Take notice that on September 9, 1985, Arkla Energy Resources, a Division of Arkla, Inc. (AER), P.O. 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-867-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish a new delivery point for the direct sale of natural gas to Lone Star Steel Company (Lone Star), at its plant in Lone Star, Texas, under the certificate issue in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER proposes to acquire and operate a tap on its transmission pipeline AT-5 near Lone Star, Texas, for the direct sale of natural gas to Lone Star. AER estimates the cost of these facilities to be $183,528.

AER estimates that deliveries will be up to approximately 12,000 Mcf of gas per day. AER states it would not need to acquire any new gas supply to make this sale and that this sale would not have a detrimental effect on any of AER's existing customers. AER would charge Lone Star $3.75 per million Btu for all gas purchased hereunder.

Comment date: November 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Michigan Gas Storage Company

[Docket No. CP85-842-000]

Take notice that on August 30, 1985, Michigan Gas Storage Company (Applicant), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP85-842-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport end-user gas on behalf of Reinforced Plastics Division of DiversiTech General Incorporated, A Gencorp Company (Reinforced), under the authorization issued in Docket No. CP84-451-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Applicant proposes to transport on a peak day 1,640 million Btu, on an average day 1,500 million Btu, and on an annual basis 540,000 million Btu equivalent of gas for use at Reinforced's plant in Iona, Michigan, for a term expiring upon the termination of authorization as provided by Subpart F of 18 CFR Part 157 or termination of the April 26, 1985, transportation agreement as amended July 19, 1985, between Applicant and Reinforced. It is stated that the natural gas to be transported would be purchased from Yankee Resources, Inc. (Yankee), and would be used for process fuel and boiler fuel. It is stated that Applicant would receive the gas from Panhandle Eastern Pipe Line Company (Panhandle) for the account of Reinforced at various existing points of interconnection between Panhandle and Applicant (provided that such points of interconnection are downstream from Applicant's South Lyon measuring station in Oakland County, Michigan) or such other point(s) as the parties may agree to. It is further stated that gas would then be redelivered to Consumers Power Company (Consumers) for the account of Reinforced at existing interconnections between the facilities of Consumers and Applicant.

Applicant also requests flexibility authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Applicant would charge Reinforced a rate in accordance with its Rate Schedule T-3, which is presently 3.68 cents per million Btu for all gas that it delivers.

Comment date: November 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Central Pipline Corporation

[Docket No. CP85-863-000]

Take notice that on September 6, 1985 Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-863-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to replace the existing Lenapah, Oklahoma, town border delivery point with larger facilities to enable Union Gas System, Inc. (Union), a local distribution company, to serve Lenapah and South Coffeyville, Oklahoma, under the abandonment and certificate authorization issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central states that Union, which is the only customer served through the existing facilities, has requested the modification of its

Lenapha town border delivery facilities to enable Union to serve not only the town of Lenapah, but also to supplement Union's ability to serve the South Coffeyville, Oklahoma, load from Union's system. It is explained that Union presently serves South Coffeyville through Union's distribution system from the north. Northwest Central further explains that by enlarging the Lenapah town border facilities, Union will be able to serve South Coffeyville also from the south, thus ensuring more reliable and dependable service for customers in South Coffeyville.

It is stated that Northwest makes sales to Union under its Rate Schedules F and P and an underlying service agreement which provides that Northwest Central will supply all of the requirements of Union. The projected volume of deliveries through the new facilities are estimated to be 84,500 Mcf annually, increasing to 98,300 Mcf annually within five years. The estimated peak day volumes are 780 Mcf increasing to 800 Mcf within five years.

The estimated cost of the new Lenapah town border delivery point is $36,940, which would be paid from treasury cash. The cost to reclaim the existing facilities is $1,200 with no salvage value.

Comment date: November 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP85-831-000]

Take notice that on August 28, 1985, Panhandle Eastern Pipe Line Company (Applicant), Post Office Box 1642, Houston, Texas 77001, filed in Docket No. CP85-831-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport end-user gas on behalf of Reinforced Plastics Division of DiversiTech General Incorporated, A Gencorp Company (Reinforced), under the certificate issued in Docket No. CP83-83-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Applicant proposes to transport on a peak day 2,000 Mcf; on an average day 1,500 Mcf; and on an annual basis 540,000 Mcf of gas for use at Reinforced's plant in Iona, Michigan, for a term expiring from the date of automatic authorization until the earlier of (1) eighteen months from the effective date of the June 11, 1985, transportation agreement, (2) termination of authorization as provided in Subpart F of Part 157 of the Regulations, or (3) termination of the transportation agreement by either of the parties. It is stated that the natural gas to be transported would be purchased from Yankee Resources, Inc. (Yankee), and would be used for process fuel and boiler fuel. It is stated that Applicant would receive the gas at existing points of interconnection between Applicant and Yankee designees in Kingfisher County, Oklahoma, and Adams County, Oklahoma, and would transport and redeliver such gas less a four percent reduction fuel use to Michigan Gas Storage Company (Storage Company) at an existing point of interconnection in Oakland County, Michigan. It is explained that Storage Company would transport and redeliver the subject gas to Consumers Power Company (Consumers) who in turn would make delivery to Reinforced at its facilities in Ionia, Michigan. It is asserted that Storage Company is an existing jurisdictional customer of Applicant and that Consumers is served by Storage Company and Reinforced is an existing end-use customer of Consumers.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Applicant states that it would charge Reinforced under its currently effective Rate Schedule OST, which contains a rate of 42 cents plus 1.24 cents GRI surcharge, for each million Btu redelivered at the point of redelivery.

Comment date: November 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP85-855-000]

Take notice that on September 4, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85-855-000, as supplemented on September 17, 1985, a request pursuant to Sections 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport fuel oil displacement natural gas for Hadson Gas System, Inc. (Hadson), as agent for various low-priority end-users, under the certificate issued United in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that natural gas would be purchased from Hadson by SCM Corporation (for use at two locations), North Metals and Chemical Company and W.R. Grace and Company (for use at two locations), all of whom are low-priority end-users. United would receive up to 9,500 Mcf of natural gas per day for Hadson's account at the Bayou Tortue Livestock No. 3 and No. 4 wells in the Broussard Field, Lafayette Parish, Louisiana, and redeliver such gas for Hadson's account at existing interconnections between the facilities of United and Columbia Gulf Transmission Company in Rapides Parish, Louisiana, and/or the exiting interconnection between the facilities of Sea Robin Pipeline Company and Columbia Gulf in Vermilion Parish, Louisiana. Under separate agreements Columbia Gulf and Columbia Gas would continue this transportation service for SCM Corporation for use by its Glidden Coatings & Resins Division in Reading, Pennsylvania, and its Durkee Famous Foods in Bethlehem, Pennsylvania, for North Metals & Chemical Company for its use in York, Pennsylvania, and for W.R. Grace & Company for use by its Davidson Chemical Division in Cincinnati, Ohio, and Curtis Bay, Maryland.

The rate applicable to this transportation service is an amount equal to United's Type I Rate (Rate Schedule IT), which includes a component for gas consumed in the operation of United's pipeline system. Currently such rate is 11.02 cents per Mcf.

United states that the transportation agreement was effective on June 1, 1985, and would remain in full force and effect from the date of initial deliveries until the earlier (i) October 31, 1985, (ii) the date specified by the Commission in a final rule in Docket No. RM85-1-000, or (iii) the term set forth in the gas transportation agreement between United and Hadson dated May 30, 1985.

United further requests flexible authority pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to add or delete sources of supply or receipt/delivery points, if such altered services are on behalf of the same end-users, at the same end-use locations, within the maximum daily and annual volumes

authorized in this docket, and under the same terms and conditions authorized for the basic service.

Comment date: November 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP85-856-000]

Take notice that on September 4, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-856-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for EnTrade Corporation (EnTrade), an agent for various low-priority end-users, under the certificate issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request s on file with the Commission and open to public inspection.

It is stated that end-users, Middletown Paperboard Company in Middletown, Ohio; U.S. Gypsum Company in Greenville, Mississippi; U.S. Gypsum Company in Shoal; Indiana; Green River Steel Corporation in Owensboro, Kentucky; Dow Corning Corporation in Carrollton, Kentucky; and Travenol Laboratories in Cleveland, Mississippi, have purchased gas from EnTrade and would use such for boiler fuel. It is also indicated that the gas is not released by United.

United propose to receive and transport up to 17,000 Mcf of gas per day for the account of EnTrade at various locations in Texas and Louisiana. United would transport and redeliver said gas to Texas Gas Transmission Corporation's (Texas Gas) facilities in Panola County, Texas, for EnTrade. Texas Gas, under separate agreement, would deliver the gas to Cincinnati Gas and Electric, Mississippi Valley Gas Company, Indiana Gas Company, West Kentucky Gas Company, and Carrollton Utilities Company for delivery to the end-users.

United would charge 11.02 cents per Mcf as provided by its Rate Schedule IT.

The transportation service would be until the earlier date of the final rule by the Commission in Docket No. RM85-1000, October 31, 1985, or termination of the transportation agreement by the parties thereto.

United also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. United will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: November 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

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. 85-23437 Filed 9-30-85; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004147-001.

Title: Georgetown Terminal Agreement.

Parties: South Carolina State Ports Authority (Authority) International Paper Company (IPC).

Synopsis: This agreement modifies the basic agreement between the parties which provided for the lease by the Authority to IPC of State Pier 31 at Georgetown, South Carolina. The amendment modifies the formula used to escalate the Assigned Area Additional Fee and the Wharfage rates, as indicated in the agreement, so as to reflect the original intent of the parties to increase these charges every three years based on the rate of inflation.

Agreement No.: 202-008760-017.

Title: West Coast United States and Canada/India, Pakistan, Bangladesh, Sri Lanka and Burma Rate Agreement.

Parties: American President Lines, Ltd. The Scindia Steam Navigation Co., Inc. The Shipping Corporation of India, Ltd.

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format. In so doing it would add new provisions concerning (1) meetings, consultations and negotiation with shippers, shippers' associations and consignees; (2) service contracts; (3) discussions with inland carriers; (4) prohibited acts and (5) independent action.

Agreement No.: 202-009247-013.

Title: India, Pakistan, Bangladesh, Sri Lanka and Burma/West Coast United States and Canada Rate Agreement.

Parties: The Scindia Steam Navigation Co., Inc. The Shipping Corporation of India, Ltd.

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format. In so doing it would add new provisions concerning (1) meetings, consultations and negotiation with shippers, shippers' associations and consignees; (2) service contracts; (3) prohibited acts and (4) independent action.

Agreement No.: 204-010066-008

Title: United States Atlantic and Pacific/Colombia Equal Access Agreement.

Parties: Flota Mercante Grancolombiana, S.A. United States Lines (S.A.) Inc. Coordinated Caribbean Transport, Inc.

Synopsis: The proposed amendment would modify the agreement to substitute United States Lines (S.A.) Inc. for United States Lines, Inc. as a party to the agreement. It would also restate the agreement to conform with the Commission's format, organization and content requirements. The parties have requested a shortened review period.

Agreement No.: 202-010833.
Title: Eurocorde I.
Parties: North Europe-U.S. Atlantic Conference; U.S. Atlantic-North Europe Conference; Polish Ocean Lines.
Synopsis: The proposed agreement would permit the parties to discuss and agree upon rates, rules, tariffs, service contracts and service items in the trade between U.S. Atlantic Ports and inland and coastal points via such ports, and ports and points in the United Kingdom, the Republic of Ireland, Denmark, Sweden, Norway, Finland, Poland, West Germany, East Germany, Belgium, France (in the Bayonne/Dunkirk Range) and U.S.S.R. Baltic ports and inland European Ports via such ports. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Dated: September 25, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-23331 Filed 9-30-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens Banking Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citzens Banking Corporation,* Flint, Michigan; to acquire 100 percent of Second National Corporation, Saginaw, Michigan, thereby indirectly acquiring Second National Bank of Bay City, Bay City, Michigan, and Second National Bank of Saginaw, Michigan.

Applicant has also applied to acquire Century Life Insurance Company of Michigan, Phoenix, Arizona, and thereby engage in acting as underwriter with respect to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act. These activities would be conducted in the state of Michigan.

Board of Governors of the Federal Reserve System, September 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-23333 Filed 9-30-85; 8:45 am]

BILLING CODE 6210-01-M

Commercial Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act 12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 23, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Commercial Bancshares, Inc.,* Franklin, Louisiana; to acquire 100 percent of the voting shares of First National Bank of Abbeville, Abbeville, Louisiana.

2. *PAB Bancshares, Inc.,* Valdosta, Georgia; to acquire 100 percent of the voting shares of Farmers & Merchants Bancshares, Inc., Adel, Georgia.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinios 60690:

1. *First Wisconsin Corporation,* Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Cedarburg State Bank, Cedarburg, Wisconsin.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First American Bancshares, Inc.,* North Little Rock, Arkansas; to acquire at least 88.5 percent of the voting shares of Bank of Mulberry, Mulberry, Arkansas, currently a subsidiary of First Mulberry Bancshares, Inc., Mulberry, Arkansas.

D. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Freedom Bancorporation, Inc.,* Lindstrom, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Security State Bank of Lindstrom, Lindstorm, Minnesota. Comments on this application must be received not later than October 24, 1985.

Board of Governors of the Federal Reserve System, September 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-23334 Filed 9-30-85; 8:45 am]

BILLING CODE 6210-01-M

First Eastern Corp., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulatory Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight 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 disqute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1985.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Eastern Corp., Wilkes-Barre, Pennsylvania;* to engage *de novo* through its subsidiary, First Eastern Brokerage Services, Inc., Wilkes-Barre, Pennsylvania, in providing securities brokerage servcies, related securities credit activities pursuant to Regulation T (12 CFR Part 220) and incidental activities such as offering custodial services, individual retirement accounts and cash management services pursuant to § 225.25(b)(15) of Regulation Y. These activities would be conducted in the states of Pennsylvania, New York and New Jersey. Comments on this application must be received not later than October 22, 1985.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First State Bancshares, Inc.*, Pensacola, Florida; to engage *de novo* through its subsidiary, First State Capital Corporation, Pensacola, Florida, in trust company functions and securities brokerage activities pursuant to § 225.25(b)(3) and 225.25(b)(15) of Regulation Y. These activities would be conducted in Escambia County, Florida, and its contiguous counties.

2. *The Sasser Corporation*, Carthage, Mississippi; to engage *de novo* directly in data processing activities pursuant to § 225.25(b)(7) of Regulation Y. Services will be provided to the subsidiary bank and other customers in service area. These activities would be conducted in Leake, Attala, Madison, Neshoba, Newton, Scott and Winston Counties, all in Mississippi.

Board of Governors of the Federal Reserve System, September 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-23335 Filed 9-30-85; 8:45 am]

BILLING CODE 6210-01-M

Lincoln Financial Corp.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 85-22400), published at page 38034 of the issue for Thursday, September 19, 1985.

CB Bancorp, Huntington, Indiana should be CS Bancorp, Huntington, Indiana.

Board of Governors of the Federal Reserve System, September 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-23336 Filed 9-30-85; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Acquistion of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8)) and § 225.21(a) of Regulation Y (12 U.S.C. 1843(c)(8) of the Bank Holding Company Act (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 12, 1985.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to acquire New England Mutual Association Budget Plan, Inc., Keene, New Hampshire, and thereby engage in insurance premium financing and making or acquiring for its own account or for the account of others, loans and extensions of credit, including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or a finance company. These activities would be conducted in the states of Connecticut, Maine, Massachusetts,

New Hampshire, New York, Rhode Island and Vermont.

Board of Governors of the Federal Reserve System, September 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-23337 Filed 9-30-85; 8:45 am]

BILLING CODE 6210-01-M

Summit Holding Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 23, 1985.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Summit Holding Corporation,* Beckley, West Virginia; to acquire 100 percent of the voting shares of Gulf National Bank, Sophia, West Virginia.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Geneva Bancshares, Inc.,* Geneva, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The State Bank of Geneva, Geneva, Illinois.

2. *Lowden Bancshares, Inc.* Lowden, Iowa; to become a bank holding company by acquiring 93.3 percent of the voting shares of American Trust & Savings Banks, Lowden, Iowa.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Hull State Bancshares, Inc.,* Hull, Texas; to acquire 100 percent of the voting shares of Bank of the Trinity, N.A., Liberty, Texas, a *de novo* bank. Comments on this application must be received not later than October 21, 1985.

2. *Rio Grande Financial Corporation,* Brownsville, Texas; to become a bank holding company by acquiring 100 percent of the shares of National Bank of Commerce of Brownsville, Brownsville, Texas.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Crown National Bancorp,* San Jose, California; to become a bank holding company by acquiring 100 percent of the voting shares of Crown National Bank, San Jose, California (in organization). Comments on this application must be received not later than October 21, 1985.

Board of Governors of the Federal Reserve System, September 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-23338 Filed 9-30-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Report to Congress on the Cost of Travel and Operation of Privately Owned Vehicles

The Travel Expense Amendments Act of 1975 (Pub. L. 94-22, May 19, 1975) requires the periodic investigation of the costs of travel and the operating costs of privately owned vehicles (automobiles, motorcycles, and airplanes) to employees while engaged on official business. Further, the Act requires that the results of these investigations be reported to the Congress and published in the **Federal Register.**

The following report is being published to comply with the requirements of the Act.

Dated: September 24, 1985.

Terence C. Golden,

Administrator.

Report To Congress

The Travel Expense Amendments Act of 1975 (Pub. L. 94-22, May 19, 1975), 5 U.S.C. 5707(b)(1), requires that the Administrator of General Services, in consultation with the Comptroller General of the United States, the Secretaries of Defense and Transportation, and representatives of government employee organizations, conduct periodic investigations of the costs of travel and of operating privately owned vehicles to government employees while engaged on official business and report the results to the Congress at least once a year. The Act, with respect to privately owned vehicles, further requires that a determination of the average, actual cost per mile be made based on the results of the investigations. Such figures must be reported to the Congress within 5 days of the determinations.

We have conducted our cost investigations and consulted with representatives of employee organizations, the General Accounting Office, and the Departments of Defense and Transportation. As required, we are reporting the results.

Costs of travel

The investigation of travel costs focuses on subsistence costs in existing and potential high rate geographical areas (HRGA's). The General Services Administration (GSA) relies on the results of independently conducted surveys as the basis for prescribing maximum daily reimbursement rates within the $75 statutory maximum for HRGA's, and employees are reimbursed for actual expenses within these limits. A city or other defined area is designated as an HRGA when the subsistence costs (rounded to the nearest dollar) exceed the $50 statutory maximum per diem rate by 10 percent or more. Maximum daily reimbursement rates for subsistence expenses in HRGA's thus range from $55 to $75 per day.

Analysis of Survey Results

This cost investigation is based on a survey of costs for 470 localities performed in November 1984. Of the 470 locations, 405 had costs high enough to qualify them as HRGA's. The total of 405 is comprised of 197 previously designated HRGA's and 208 new localities that meet the HRGA requirements. Sixty-five of the 470 localities surveyed did not qualify for HRGA designation. Further details of the survey results are outlined below.

Total number of cities surveyed: 470.

Existing areas surveyed: 199.

Cannot be increased, rate already at $75 maximum	94
Can be increased within $75 maximum	67
Require no increase, current rate adequate	14
Require rate decrease, costs have declined	22

Require rate decrease to $50 per diem, no longer qualify as HRGA's	2
Total	199

New cities surveyed: 271:

Qualify as HRGA's, $75 maximum rate adequate	196
Qualify as HRGA's, $75 maximum rate inadequate	12
Do not qualify as HRGA's	63
Total	271

The results of our investigation as outlined above are being implemented in a change to the Federal Travel Regulations.

Potential changes to investigation methodology

This investigation has been prepared during a period of intense debate over how Federal travelers should be reimbursed for subsistence. GSA has submitted to the Office of Management and Budget a legislative proposal that we believe will satisfy critics of the existing system and assure equitable treatment of employees. This proposal, which is under review by other agencies, would change the current actual expense reimbursement system for HRGA's to a per diem reimbursement.

Because the method of reimbursement is inextricably tied to the level of rates that is appropriate, the costing methodology will change if the new legislation is enacted. GSA therfore has worked out a new set of costing specifications that we think are compatible with our legislative proposal. We are testing the model at this time.

Cost of operating privately owned vehicles

Our investigation with respect to privately owned vehicles revealed an average cost of 20.5 cents per mile for operating an automobile, 26.5 cents a mile for operating a motorcycle, and 71.5 cents a mile for operating an airplane. The average per mile operating cost for automobiles has not changed since our last report, and therefore no regulatory change to the current 20.5 cents automobile mileage allowance is required. Although costs of operation have increased for both motorcycles and airplanes, the current allowances of 20 cents per mile and 45 cents per mile, respectively, are at the statutory ceilings and cannot be administratively increased.

This report on the costs of travel and the operation of privately owned vehicles will be published in the **Federal Register.**

Sincerely,

Terence C. Golden,

Administrator.

[FR Doc. 85-23401 Filed 9-30-85; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Statistical Aspects of Physician Payment Systems established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Tuesday, October 15, 1985 from 9:00 a.m. to 5:00 p.m. in Room 303-305-A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will continue to hear presentations from public and private insurers on the ambulatory care data flow for the patient-physician encounter in their respective programs or organizations and from other uses of ambulatory care data.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Marjorie Greenberg, National Center for Health Statistics, Room 2-28, Center Building, 3700 East-West Highway, Hyattsville, MD 20782, telephone (301) 436-7122.

Dated: September 19, 1985.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 85-23400 Filed 9-30-85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Addition of Certain Lands to the Makah Indian Reservation

September 21, 1985.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1. In the absence of the Assistant Secretary—Indian Affairs, 209 DM 8.3A authorizes the Deputy Assistant Secretary—Indian Affairs final approval authority. Notice is hereby given that under the authority of Section 7 of the Act of June 18, 1934 (25 U.S.C. 467; 48 Stat. 986), the hereinafter described land located in Clallam County, Washington, was proclaimed a part of the Makah Indian Reservation effective September 21, 1985, for the exclusive use of Indians entitled by enrollment or tribal membership to residence at such reservation.

Willamette Meridian

Clallam County, Washington

Lot 4 of Section 16, Township 32 North, Range 15 West, containing 13.60 acres more or less, lying west of the Sooes River and adjoining the southern boundary of the Makah Indian Reservation.

Said land being subject to all valid rights, reservations, rights-of-way and easements of record.

Hazel E. Elbert,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-23414 Filed 9-30-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

New Mexico; Filing of Plat of Survey

September 20, 1985.

The Plat of Survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on September 20, 1985.

The survey represents the dependent resurvey of a portion of the east and west boundaries, the north boundary, a portion of the subdivisional lines, and the subdivision of certain sections in Township 9 South, Range 16 East, New Mexico Principal Meridian, New Mexico, under Group 814 NM.

This survey was requested by the Supervisor, Lincoln National Forest, U.S. Forest Service, Alamogordo, New Mexico.

The plat was in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from the office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-23371 Filed 9-30-85; 8:45 am]

BILLING CODE 4310-FB-M

New Mexico; Public Meeting and Request for Public Comment on the Proposed McKinley County Coal Fee Exchange; Correction

In FR Doc. 85-21631, appearing on page 37059 in the issue of Wednesday,

September 11, 1985, the following corrections are made. All corrections appear in the third column.

1. Under T. 15 N., R. 8 W., the legal description in Secs. 22 and 34 are corrected to read:

Sec. 22, SE¼NE¼, S½
Sec. 34, N½, NE¼SE¼.

2. In the first full paragraph, the name of the controlling company identified in the fourth and fifth lines is corrected to read, "wholly-owned subsidiary of SF Minerals Corporation."

3. Under T. 15 N., R. 6 W., the legal description for Sec. 19 is corrected to read: Lots 1 through 4, SE¼SE¼.

4. The total CLC coal acreage offered is corrected from 6,280.17 acres to 6,320.17 acres.

5.The last line in the column is corrected to read: T. 20 N., R. 10 W. (02–106).

Dated: September 24, 1985.

Charles W. Luscher,

State Director.

[FR Doc. 85–23403 Filed 9–30–85; 8:45 am]

BILLING CODE 4310–84–M

[C–28255]

Colorado; Proposed Modification of Withdrawals

September 23, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that those orders which withdrew lands for the Gunnison-Arkansas Project and the Colorado River Storage Project be modified to expire in 90 years insofar as they affect 28,486.36 acres of public and national forest system lands. The lands will remain closed to surface entry and mining but have been and continue to be open to mineral leasing.

DATE: Comments should be received on or before December 30, 1985.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 303–294–7635.

The Bureau of Reclamation proposes that portions of the existing land withdrawals made by Secretarial Order of May 23, 1946, as amended; Bureau Order of June 19, 1958; Bureau Order of December 18, 1958, as amended; Public Land Order 2570; and Public Land Order 4253, be modified to expire in 90 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as they affect 27,816.36 acres of public land and 670 acres of national forest system land located in T. 48 N., Rgs. 2, 3, 4, 5, and 6 W., and T. 49 N., Rgs 1, 2, 3, 4, 5, 6, and 7 W., New Mexico Principal Meridian. These areas aggregate 28,486.36 acres in Gunnison and Montrose Counties. Complete descriptions of lands being continued are available in the Colorado State Office.

The purpose of these withdrawals is for the administration and protection of the Colorado River Storage Project. No change is proposed in the purpose or segregative effect of the withdrawals. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal modification may present their views in writing to the State Director, Colorado State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the modification of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Richard D. Tate,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–23377 Filed 9–30–85; 8:45 am]

BILLING CODE 4310–JB–M

[CA–16960]

Public Lands in Humboldt County, CA

The following described public land has been determined to be suitable for disposal under the provision of Pub. L. 91–476, an act to provide for the establishment of the King Range National Conservation Area (84 Stat. 1067), and sec. 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756).

Humboldt Meridian

T. 4 N., R. 3 E.,
Sec. 13: NW¼SW¼—40 acres
Sec. 24: NE¼NE¼—40 acres
T. 4 N., R. 4 E.,
Sec. 17: NE¼SW¼—40 acres
T. 3 S., R. 1 W.,
Sec. 8: W½NE¼, NE¼NW¼—120 acres
Containing 240 acres total.

Thomas Grundman, 75 Wildwood Ave., Rio Dell, California 95562, has applied to acquire the above described lands in exchange for the following described privately owned lands:

Humboldt Meridian

T. 4 S., R. 1 E.,
Lot 39, as shown on the Record of Survey of Shelter Cove Ranchos for Saltair Land Company, being a portion of Sections 20 and 29, Township 4 South, Range 1 East, Humboldt Base and Meridian, filed August 11, 1969 in the office of the Humboldt County Recorder, in Book 25 of Surveys, Pages 5 through 11. (AP108–251–06)
Containing 42.128 acres total.

A mineral evaluation has been requested on the public land. If any minerals are identified, a reservation of identified minerals will be made to the United States. If no minerals are identified, the mineral estate of the public lands will be conveyed with the surface. The mineral estate of the privately owned lands will be conveyed with the surface.

The publication of this notice in the **Federal Register** shall segregate the applied for public lands from all other forms of appropriation under the public land laws, including the mining laws, for a period of two years. The exchange is expected to be consumated before the end of that period.

There will be reserved to the United States in the applied for lands, a right-of-way thereon for ditches and canals constructed by the authority of the United States (43 U.S.C. 945).

The purpose of this exchange is to acquire non-federal lands within the King Range National Conservation Area and to consolidate public land ownership for more effective management in the Scattered Blocks Planning Unit. This exchange is in conformance with Bureau planning and in the public interest.

Detailed information concerning the exchange, including the environmental analysis and the record of non-federal participation, is available for review at the Arcata Area Office, BLM, 1125 16th Street, P.O. Box II, Arcata, California 95521.

For a period of 45 days from the first publication of this notice interested parties may submit comments to the California State Director, Bureau of Land Management, Rm E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by the California State Director, who may

vacate or modify this realty action and issue a final determination. In the absence of a vacation or modification this realty action will become the final determination of the Bureau.

Van W. Manning,

District Manager, Bureau of Land Management, Ukiah District.

[FR Doc. 85-23399 Filed 9-30-85; 8:45 am]

BILLING CODE 4310-84-M

[NM-52374]

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 10,020.29-acre withdrawal for the Bureau of Reclamation continue for an additional 50 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by December 30, 1985.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, BLM, New Mexico, State Office, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6326.

The Department of the Interior proposes that the existing land withdrawal made by Secretary's Order of September 24, 1903, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 9 S., R. 3 W.,
- Sec. 1, SE¼SW¼;
- Sec. 11, SE¼SE¼;
- Sec. 12, Lot 3, SW¼NW¼;
- Sec. 23, NW¼NE¼;
- Sec. 24, Lot 3;
- Sec. 26, SW¼NW¼;
- Sec. 27, E½SE¼;
- Sec. 33, SE¼SE¼;
- Sec. 34, E½NE¼, SW¼, W½SE¼, NE¼SE¼;
- Sec. 35, Lot 1.

T. 10 S., R. 3 W.,
- Sec. 2, Lot 1;
- Sec. 3, Lots 1-6, W½NW¼;
- Sec. 4, Lots 1, 2, 5, SE¼NE¼, SE¼NW¼, W½SW¼;
- Sec. 5, SE¼SE¼;
- Sec. 8, NE¼NE¼;
- Sec. 9, Lot 7, W½W½;
- Sec. 10, Lot 1;
- Sec. 15, Lots 1-4;
- Sec. 16, Lot 1, W½NW¼, NW¼SW¼;
- Sec. 17, E½SE¼;
- Sec. 20, NE¼NW¼, SW¼NW¼, SW¼SW¼, E½SW¼;
- Sec. 21, NE¼NW¼, SE¼NE¼, SE¼SW¼, N½SE¼;
- Sec. 28, E½NW¼, SW¼NW¼, N½SW¼;
- Sec. 29, W½NW¼, S½SW¼;
- Sec. 32, SW¼NE¼, N½NW¼, SE¼NW¼, W½SE¼.

T. 11 S., R. 3 W.,
- Sec. 5, Lot 2, SW¼NE¼, SE¼SW¼, SE¼;
- Sec. 7, NE¼, W½SE¼, NE¼SE¼;
- Sec. 8, N½NE¼, SW¼NE¼, NW¼, W½SW¼;
- Sec. 17, E½SW¼;
- Sec. 18, Lot 4, SE¼NE¼, SE¼SW¼, N½SE¼, SW¼SE¼;
- Sec. 19, Lots 1, 2;
- Sec. 20, N½NW¼, SW¼NW¼, NW¼SW¼, N½SE¼, SE¼SE¼;
- Sec. 28, NW¼NW¼, S½NW¼, W½SW¼;
- Sec. 29, E½NE¼, W½, SE¼;
- Sec. 30, Lots 2-4, E½SW¼, N½SE¼, SW¼SE¼;
- Sec. 31, Lots 2-4, E½, E½W½;
- Sec. 32, E½E½, W½;
- Sec. 33, NW¼NE¼, N½NW¼, SE¼NW¼, E½SW¼, E½SE¼.

T. 12 S., R. 3 W.,
- Sec. 3, Lot 4;
- Sec. 4, Lots 1-3, S½NE¼, N½SE¼, SE¼SE¼;
- Sec. 5, Lots, 1, 3, 4, SE¼NE¼, S½NW¼, W½SW¼, E½SE¼;
- Sec. 6, Lots 1-5, S½NE¼, SE¼NW¼, E½SE¼;
- Sec. 7, E½NE¼, SE¼SE¼;
- Sec. 8, S½NE¼, W½, W½SE¼;
- Sec. 9, E½E½, SW¼NW¼;

T. 12 S., R. 3 W.,
- Sec. 10, Lots 1, 2;
- Sec. 15, Lot 2;
- Sec. 16, Lots 1-4, N½N½;
- Sec. 17, Lots 3, 4, N½NW¼;
- Sec. 18, Lots 1, 2, NE¼NE¼.

T. 11 S., R. 4 W.,
- Sec. 13, SE¼SE¼;
- Sec. 24, E½;
- Sec. 25, SE¼NE¼, NE¼SE¼;
- Sec. 36, SE¼NE¼, SE¼.

T. 12 S., R. 4 W.,
- Sec. 1, Lot 1.

The areas described aggregate 10,020.29 acres in Socorro and Sierra Counties.

The purpose of the withdrawal is for use in connection with the Rio Grande Project, Elephant Butte Dam and Reservoir Reservation.

The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long.

The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: September 23, 1985.

Norman P. Duquette,

State Director.

[FR Doc. 85-23397 Filed 9-30-85; 8:45 am]

BILLING CODE 4310-FB-M

Salt Lake District; Classification of Lands in Box Elder County, UT

[Desert Land Entry Applications U-51483, U-51484, U-51485, U-51486, U-51487, U-51488, U-51489, U-51490, U-51491]

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of Lands as Unsuitable for Desert Land Entry.

SUMMARY: The following described land has been examined and is hereby classified as unsuitable for disposal under the Desert Land Entry Act of March 13, 1877 (19 Stat. 377; 43 U.S.C. 321-323) as amended.

T. 12N., R. 13W., S.L.M.
- Sec. 19: All
- Sec. 30: Lots 1 & 2, NE¼, E½NW¼

T. 12N., R. 14W., S.L.M.
- Sec. 23: W½
- Sec. 24: S½
- Sec. 25: All
- Sec. 26: N½
- Sec. 35: N½

Totalling 2880 acres.

Reasons Supporting this Classification

1. The lands must be physically suitable or adaptable to the uses or purposes for which they are classified. In addition, they must have such physical and other characteristics as the regulations require them to have to qualify for a particular classification (43 CFR 2410.1(a)). These lands are only marginally physically suitable for cultivation. With respect to soils, the subject lands are not suited for irrigation. They have a high percentage of exchangeable sodium. Some have high erosion potential because of steep slopes and/or gravelly soil conditions.

2. All present and potential uses and users of the lands have been taken into consideration. All other things being equal, land classifications have attempted to achieve maximum future

uses and minimum disturbance to or dislocation of existing uers (43 CFR 2410.1(b)). To classify as suitable and dispose of these lands would break up a manageable block of public land and create several small isolated tracts which will be inefficient and ineffective to manage. It would also dislocate and adversely affect the existing users.

3. All land classifications must be consistent with Federal programs and policies, to the extent that those programs and policies affect the use or disposal of the public lands (43 CFR 2410.1(d)). It is the policy of the Bureau of Land Management that public lands be retained in Federal ownership unless, as a result of land use planning, it is determined that disposal of a particular tract or tracts will serve the National interest. The following petitions for classification are hereby disapproved as they apply to the above described lands.

Name of Petitioner and Type of Petition

Julie A. Peterson, Desert Land Entry (U–51483)
Kevin Peterson, Desert Land Entry (U–51484)
Vicki F. Peterson, Desert Land Entry (U–51485)
Marlow H. Peterson, Desert Land Entry (U–51486)
Carla W. Peterson, Desert Land Entry (U–51487)
Hyrum D. Peterson, Desert Land Entry (U–51488)
Gertrude W. Tyler, Desert Land Entry (U–51489)
Mary D. Bown, Desert Land Entry (U–51490)
Lionel Brown, Desert Land Entry (U–51491)

For a period of 30 days from date of this publication comments on or protest to this proposed decision may be made. No particular form of comment or protest is required. Any information may be presented which is believed will assist the Bureau of Land Management in making a sound decision as to the proper classification or designation of these lands. Comments and protests should be sent to the District Manager, 2370 South 2300 West, Salt Lake City, Utah 84119.

The official environmental analysis/land report sets out the facts upon which this proposed decision is based. A copy of this report is available to be reviewed at the Salt Lake District Office at the above address. Phone is area code (801) 524–5348.

Frank W. Snell,

Salt Lake District Manager.

[FR Doc. 85–23329 Filed 9–30–85; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Reclamation

[Int-Des 85–45]

Grand Valley Unit, Stage Two Development Colorado River Basin Salinity Control Project; Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft environmental statement on a proposed salinity control project that would reduce salt loading to the Colorado River system by lining canals and laterals in Mesa County in western Colorado. Written comments may be submitted to the Regional Director by November 25, 1985.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Department of the Interior, Bureau of Reclamation, Room 7423, Washington, D.C. 20240, Telephone (202) 343–4991

Division of Management Support, General Services, Library Section, Code 950, Engineering and Research Center, Denver Federal Center, Denver, Colorado 80225, Telephone: (303) 234–3019

Regional Director, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84147, Telephone (801) 524–5592

Grand Junction Projects Office, Bureau of Reclamation, 2597 B ¾ Road, P.O. Box 1889, Grand Junction, Colorado 81502, Telephone (303) 242–8621

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, or the Regional Director, at the above addresses. Copies also will be available for inspection in libraries in the project vicinity.

Dated: September 24, 1985.

Richard Atwater,

Acting Commissioner.

[FR Doc. 85–23390 Filed 9–30–85; 8:45 am]

BILLING CODE 4310-09-M

Grand Valley Unit, Stage Two Development, Colorado River Basin Salinity Control Project; Public Hearing

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft environmental Statement for the Grand Valley Unit, Stage Two Development, Colorado. This statement (INT DES 85–45, dated September 24, 1985) was made available to the public on September 24, 1985.

The draft environmental statement analyzes impacts of improving irrigation canals and laterals within the Grand Valley Unit area in Mesa County, Colorado, the reduced salt loading to the Colorado River. Plans to replace wildlife habitat loses are included.

Public hearings will be held in Grand Junction, Colorado, on November 6, 1985, from 2 to 4 p.m. and 7 to 9 p.m. at the Rodeway Inn. These hearings are designed to receive views and comments relating to the environmental impacts of the unit from interested organizations or individuals. Oral statements at the hearings will be limited to a period of 10 minutes per speaker. Speakers cannot trade their time to obtain a longer oral presentation. However, the person authorized to conduct the hearings may allow speakers to provide additional oral comments after all persons wishing to comment have been heard. Speakers will be scheduled according to their time preference, if any, requested by letter or telephone. Speakers not present when called will lose their privileges in the scheduled order, and their names will be recalled at the end of the scheduled speakers. Requests for scheduled presentations will be accepted until 4 p.m. November 5, 1985. Any subsequent requests will be handled on a first-come-first-served basis following the scheduled presentations at the meeting. Organizations or individuals desiring to present statements at the hearings should contact the Projects Manager, Grand Junction Projects Office, Bureau of Reclamation, 2597 B 3/4 Road, P.O. Box 1889, Grand Junction, Colorado 81502, telephone (303) 242–8621, by letter or telephone, and announce their intentions to participate. Written comments from those unable to attend and from those wishing to supplement their oral presentations at the hearings should be received by November 25, 1985, in order to be included in the hearing record.

Dated: September 24, 1985.

Richard Atwater,

Acting Commissioner.

[FR Doc. 85–23391 Filed 9–30–85; 8:45 am]

BILLING CODE 4310-09-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management

and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and explanatory material may be obtained by contacting the Bureau Clearance Office at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Procedure to Process and Recover Value of Right-of-Use and Administrative Costs

Abstract: Applicants for a right to use land under the jurisdiction of the Bureau of Reclamation must provide certain specified information. The required information will accompany the application and is the basic information necessary to enable the Bureau of Reclamation to determine whether or not the use can be granted. The information to be collected consists of the applicant's name and address, a description of the land on which the use is desired, the use to which the land will be put, the length of time the use will be in effect, and a map or drawing showing the area on which the desired use is to be located. If the use involves construction, the applicant may also be required to provide detailed construction plans, information needed by Reclamation to meet any environmental or cultural resource requirements, and additional information necessary to assure Reclamation that the proposed use will not conflict with the purpose for which Reclamation administers the land.

Bureau Form Number: No forms are involved.

Frequency: On occasion.

Description of Respondents: Individuals, firms and agencies desiring to use.

Bureau of Reclamation-administered land for any purpose.

Annual Respondents: 400.

Annual Burden Hours: 800.

Bureau Clearance Officer: Alma L. Gonzales, a.c. 203 343-4249.

Richard Atwater,

Acting Commissioner.

September 24, 1985.

[FR Doc. 85-23396 Filed 9-30-85; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5303, Block 313, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on September 18, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 19, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-23374 Filed 9-30-85; 8:45 am]

BILLING CODE 4310-MR-M

Department Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1146, Block 245, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 18, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Matairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office

located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/ Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). These practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 19, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-23375 Filed 9-30-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park service before September 21, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 16, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Navajo County

Standing Fall House

ARKANSAS

Benton County

War Eagle, *War Eagle Bridge*, CR 98

CALIFORNIA

Fresno County

Sanger vicinity, *Stoner House*, 21143 E. Weldon Ave.

CONNECTICUT

Hartford County

Granby, *Granby Center Historic District*, 3-8 E. Granby Rd., 2 Park Pl., 207—265 Salmon Brook St. South

Litchfield County

Harwinton, *Skinner, Jason, House*, Off South Rd.

New London County

Norwich, *Perkins—Rockwell House*, 42 Rockwell St.

HAWAII

Honolulu County

Honolulu, *Cooke Charles Montague, Jr., House*, 2859 Manoa Rd.

Maui County

Haiku, *Haiku Mill*, Haiku Rd.
Paia vicinity, *Makawao Union Church*, Baldwin Ave.

LOUISIANA

Iberia Parish

New Iberia, *Lamperez, Santiago, House*, 203 Front St.

Rapides Parish

Alexandria, *Bland House*, 330 St. James St.

MASSACHUSETTS

Bristol County

Dartmouth, *Round Hill Mansion*, 307 Smith Neck Rd.

Hampden County

Westfield, *Westfield Whip Manufacturing Company*, 360 Elm St.

NEW YORK

Columbia County

Hudson, *Front Street-Parade Hill-Lower Warren Street Historic District (Boundary Decrease)*, Roughly N. Front St. between W. Columbia & Prison Alley and S. Front St. between Cherry Alley & Ferry St.

Monroe County

Rochester, *Rochester Fire Department Headquarters and Shops (Inner Loop MRA)*, 185 North St.

SOUTH CAROLINA

Richland County

Columbia, *Palmetto Compress and Warehouse Company Building (Columbia MRA)*, 617 Devine St.

TEXAS

Harris County

Houston, *Fire Station House No. 9*, 1810-1812 Keene St.

VERMONT

Rutland County

Middeletown Springs, *Middletown Springs Historic District*, East, North, South, & West Sts., Montvert Ave., & Schoolhouse Rd.

WEST VIRGINIA

Jackson County

Ravenswood, *Lemley-Wood-Sayre House*, 301 Walnut St.

Kanawha County

Charleston, *Loewenstein & Sons Hardware Building*, 223—225 Capitol St.
Charleston, *Plaza Theatre*, 123 Summers St.

Monongalia County

Morgantown, *Women's Christian Temperance Union Community Building*, 160 Fayette St.

Monroe County

Union vicinity, *Salt Sulphur Springs Historic District*, US 219

The 15-day commenting period for the following property is to be waived at the request of the owner in order to assist the buildings preservation:

CALIFORNIA

San Diego County

San Diego, *Eagles Hall*, 733 Eighth Ave.

[FR Doc. 85-23460 Filed 9-30-85; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 20-85]

Privacy Act of 1974; Modified System of Records

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), the Department of Justice, Federal Bureau of Investigation (FBI), is republishing the following system of records which was last published in the **Federal Register** on November 7, 1984 (49 FR 44565): National Crime Information Center (NCIC) (JUSTICE/FBI-001)

The FBI is clarifying the description of the above-named system of records by listing a new category of records. The new category contains an alias and other descriptors of each individual enrolled in the U.S. Marshals Service

Witness Security Program for whom an arrest record for a serious and/or significant offense is already maintained in the system.

The FBI is neither increasing the number nor changing the types of individuals on whom records are maintained. It is describing in greater detail those records kept on individuals identified in item "B." under "Categories of Individuals Covered by the System." Therefore, since the change does not alter the purpose of the system, nor does it increase the scope thereof, no report to the Office of Management and Budget and the Congress is required.

The system is reprinted below in its entirety. The new category of records has been italicized.

Dated: September 13, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/FBI 001

SYSTEM NAME

National Crime Information Center (NCIC).

SYSTEM LOCATIONS:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, D.C. 20535.

CATEGORIES OR INDIVIDUALS COVERED BY THE SYSTEM:

A. Wanted Persons: 1. Individuals for whom Federal warrants are outstanding. 2. Individuals who have committed or have been identified with an offense which is classified as a felony or serious misdemeanor under the existing penal statutes of the jurisdictions originating the entry and felony or misdemeanor warrant has been issued for the individual with respect to the offense which was the basis of the entry. Probation and parole violators meeting the foregoing criteria. 3. A "Temporary Felony Want" may be entered when a law enforcement agency has need to take prompt action to establish a "want" entry for the apprehension of a person who has committed, or the officer has reasonable grounds to believe has committed, a felony and who may seek refuge by fleeing across jurisdictionary boundaries and circumstances preclude the immediate procurement of a felony warrant. A "Temporary Felony Want" shall be specifically identified as such and subject to verification and support by a proper warrant within 48 hours following the initial entry of a temporary want. The agency originating the "Temporary Felony Want" shall be responsible for subsequent verification or re-entry of a permanent want.

4. Juveniles who have been adjudicated delinquent and who have escaped or adsconded from custody, even though no arrest warrants were issued.

B. Individuals who have been charged with serious and/or significant offenses.

C. Missing Persons: 1.A person of any age who is missing and who is under proven physical/mental disability or is senile, thereby subjecting himsself or others to personal and immediate danger. 2. A person of any age who is missing under circumstances indicating that his disappearance was not voluntary. 3. A person of any age who is missing and in the company of another person under circumstances indicating that his physical safety is in danger. 4. A person who is missing and declared unemancipated as defined by the laws of his state of residence and does not meet any of the entry criteria set forth in 1, 2, or 3 above.

D. Individuals designated by the U.S. Secret Service as posing a potential danger to the President or other authorized protectees.

CATEGORIES OR RECORDS IN THE SYSTEM:

A. Stolen Vehicle File: 1. Stolen vehicles. 2. Vehicles wanted in conjunction with felonies or serious misdemeanors. 3. Stolen vehicle parts, including certificates of origin or title.

B. Stolen License Plate File: 1. Stolen or missing license plate.

C. Stolen/Missing Gun File: 1. Stolen or missing guns. 2. Recovered gun, ownership of which has not been established.

D. Stolen Article File.

E. Wanted Person File: Described in Categories of individuals covered by the system: A. Wanted Persons."

F. Securities File: 1. Serially numbered stolen, embezzled, counterfeited, missing securities. 2. "Securities" for present purtposes of this file are currency (e.g., bills, bank notes) and those documents or certificates which generally are considered to be evidence or dept (e.g. bonds, debentures, notes) or ownership of property (e.g.,common stock, preferred stock), and documents which represent subscription rights, warrants) and which are of those types traded in the securities exchanges in the United States, except for commodities futures. Also included are warehouse receipts, travelers checks and money orders.

G. Boat File.

H. Computerized Criminal History File: A cooperative federal-State program for the interstate exchange of criminal history record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies.

I. Missing Person File: Described in "Categories of individuals covered by the system: C. Missing Persons."

J. U.S. Secret Service Protective File: Described in "Categories of individuals covered by the system: D."

K. Identification records regarding persons enrolled in the United States Marshals Service Witness Security Program who have been charged with serious and/or significant offenses: Described in "Categories of Individuals Covered by the System: B."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 28 U.S.C. 534; Department of Justice Appropriation Act, 1973, Pub. L. No. 92–544, 86 Stat. 1115; Securities Acts Amendments of 1975, Pub. L. No. 94–29, 89 Stat. 97; and Exec. Order No. 10450, 3 CFR (1974).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in NCIC files is exchanged with and for the official use of authorized officials of the Federal Government, the States, cities, and penal and other institutions. The data is exchanged through NCIC lines to Federal criminal justice agencies, criminal justice agencies in the 50 States, the District of Columbia, Puerto Rico, U.S. Possessions and U.S. Territories. Additionally, data contained in the various "want files," i.e., the stolen vehicle file, stolen license plate file, stolen missing gun, file stolen article file, wanted person file, securities file, and boat file may be accessed by the Royal Canadian Mounted Police. Criminal history data is disseminated to non-criminal justice agencies for use in connection with licensing for local/state employment or other uses, but only here such dissemination is authorized by Federal or state statutes and approved by the Attorney General of the United States.

Data in NCIC files, other than the Computerized Criminal History File, is disseminated to (1) a nongovernmental agency or submit thereof which allocates a substantial part of its annual budget to the administration of criminal justice, whose regulatory employed peace officers have full police powers pursuant to state law and have complied with the minimum employment standards of governmentally employed police officers as specified by state statute; (2) a noncriminal justice

governmental department of motor vehicle or driver's license registry established by a statute, which provides vehicles registration and driver record information to criminal justice agencies; (3) a governmental regional dispatch center, established by a state statute, resolution, ordinance or Executive order, which provides communication services to criminal justice agencies; and (4) the national Automobile Theft Bureau, a nongovernmental nonprofit agency which acts as a national clearinghouse for information on stolen vehicles and offers free assistance to law enforcement agencies concerning automobile thefts, identification and recovery of stolen vehicles.

Disclosures of information from this system, as described above, are for the purpose of providing information to authorized agencies to facilitate the apprehension of fugitives, the location of missing persons, the location and/or return of stolen property, or similar criminal justice objectives.

Information on missing children missing adults who were reported missing while children, and unidentified living and deceased persons may be disclosed to the National Center for Missing and Exploited Children (NCMEC). The NCMEC is a non-governmental, nonprofit, federally funded corporation, serving as a national resource and technical assistance clearinghouse focusing on missing ar.d exploited children. Information is disclosed to NCMEC to assist it in its efforts to provide technical assistance and education to parents and local governments regarding the problems of missing and exploited children, and to operate a nationwide missing children hotline to permit members of the public to telephone the Center from anywhere in the United States with information about a missing child.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf whom the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of Information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the NCIC system is stored electronically for use in a computer environment.

RETRIEVABILITY:

On-line access to date in NCIC is achieved by using the following search descriptors. 1. Vehicle file: (a) Vehicle identification number; (b) License plate number; (c) NCIC number (unique number assigned by the NCIC computer to each NCIC record). 2. License Plate file: (a) License plate number; (b) NCIC number. 3. Gun file: (a) Serial number of gun; (b) NCIC number. 4. Article File: (a) Serial number of article; (b) NCIC number. 5. Wanted Person File and U.S. Secret Service Protective File: (a) Name and one of the following numerical identifiers, date of birth, FBI Number (number assigned by the Federal Bureau of Investigation to an arrest fingerprint record). Social Security number (It is noted the requirements of the Privacy Act with regard to the solicitation of Social Security numbers have been brought to the attention of the members of the NCIC system). Operator's license number (driver's license number). Miscellaneous identifying number (military number or number assigned by Federal, state, or local authorities to an individual's record). Origination agency case number. (b) Vehicle or license plate known to be in the possession of the wanted person: (c) NCIC number (unique number assigned to each NCIC record). 6. Securities File. (a) Type, serial number, denomination of security: (b) Type of security and name of owner of security; (c) Social Security number of owner of security; (d) NCIC number 7. Boat File: (a) Registration document number; (b) Hull serial number; (c) NCIC number. 8. Computerized Criminal History File: (a) Name, sex, race and date of birth; (b) FBI number; (c) State identification number; (d) Social Security number; (e) Miscellaneous number. 9. Missing Person File—Same as "Wanted Person" File.

SAFEGUARDS:

Data stored in the NCIC is documented criminal justice agency information and access to that data is restricted to duly authorized criminal justice agencies. The following security measures are the minimum to be adopted by all criminal justice agencies having access to the NCIC. Computerized Criminal History File. These measures are designed to prevent unauthorized access to the system data and/or unauthorized use of data obtained from the computerized file.

1. Computer Center. a. The criminal justice agency computer site must have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data. b. Since personnel at these computer centers can access data stored in the system, they must be screened thoroughly under the authority and supervision of an NCIC control terminal agency. (This authority and supervision may be delegated to responsible criminal justice agency personnel in the case of a satellite computer center being serviced through a stated control terminal agency.) This screening will also apply to non-criminal justice maintenance or technical personnel. c. All visitors to these computer centers must be accompanied by staff personnel at all times. d. Computers having access to the NCIC must have the proper computer instructions written and other built-in controls to prevent criminal history data from being accessible to any terminals other than authorized terminals. e. Computers having access to the NCIC must maintain a record of all transactions against the criminal history filed in the same manner the NCIC computer logs all transactions. The NCIC identifies each specific agency entering or receiving information and maintains a record of those transactions. This transaction record must be monitored and reviewed on a regular basis to detect any possible misuse of criminal history data. f. Each state control terminal shall build its data system around a centrral computer, through which each inquiry must pass for screening and verification. The configuration and operation of the center shall provide for the integrity of the data base.

2. Communications: a. Lines/channels being used to transmit criminal history information must be dedicated solely to criminal justice use, i.e., there must be no terminals belonging to agencies outside the criminal justice system sharing these lines/channels. b. Physical security of the lines/channels must be

protected to guard against clandestine devices being utilized to intercept of inject system traffic.

3. Terminal Devices Having Access to NCIC: a. All agencies having terminals on the system must be required to physically place these terminals in secure locations within the authorized agency. b. The agencies having terminals with access to criminal history must have terminal operators screened and restrict access to the terminal to a minimum number of authorized employees. c. Copies of criminal history data obtained from terminal devices must be afforded security to prevent any unauthorized access to or use of the data. d. All remote terminals on NCIC Computerized Criminal History will maintain a hard copy of computerized criminal history inquiries with notations of individual making request for record (90 days).

DETENTION AND DISPOSAL:

Unless otherwide removed, records will be retained in file as follows:

1. Vehicle File. a. Unrecovered stolen vehicle records (including snowmobile records) which do not contain vehicle identification numbers (VIN) therein, will be purged from file 90 days after the end of the license plate's expiration year as shown in the record. Unrecovered stolen vehicle records (including snowmobile records) which contain VIN's will remain in file for the year of entry plus 4. b. Unrecovered vehicles wanted in conjunction with a felony will remain in file for 90 days after entry. In the event a longer retention period is desired, the vehicle must be reentered. c. Unrecovered stolen VIN plates, certificates or origin or title, and serially numbered stolen vehicles engines or transmissions will remain in file for the year of entry plus 4.

2. License Plate file: Unrecovered stolen license plates not associated with a vehicle will remain in file for one year after the end of the plate's expiration year as shown in the record.

3. Gun file: a. Unrecovered weapons will be retained in file for an indefinite period until action is taken by the originating agency to clear the record. b. Weapons entered in file as "recovered" weapons will remain in file for the balance of the year entered plus 2.

4. Article file: Unrecovered stolen articles will be retained for the balance of the year entered plus one year.

5. Wanted Person File: Person not located will remain in file indefinitely until action is taken by the originating agency to clear the record (except "Temporary Felony Wants", which will be automatically removed from file after 48 hours).

6. Securities File: Unrecovered, stolen, embezzled, counterfeited or missing securities will be retained for the balance of the year entered plus 4, except for travelers checks and money orders, which will be retained for the balance of the year entered plus 2.

7. Boat File: Unrecovered stolen boats will be retained in file for the balance of the year entered plus 4.

8. Missing Persons File: Will remain in the file until the individual is located or, in the case of unemancipated persons, the individual reaches the age of emancipation as defined by laws of his state.

9. Computerized Criminal History File: When an individual reaches age of 80.

10. U.S. Secret Service Protective File: Will be retained until names are removed by the U.S. Secret Service.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, J. Edgar Hoover F.B.I. Building, 9th and Pennsylvania Avenue N.W., Washington, D.C. 20535.

NOTIFICATION PROCEDURES:

Same as the above.

RECORD ACCESS PROCEDURE:

It is noted the Attorney General is exempting this system from the access and contest procedures of the Privacy Act. However, the following alternative procedures are available to requester. The procedures by which an individual may obtain a copy of his computerized Criminal History are as follows:

If an individual has a criminal record supported by fingerprints and that record has been entered in the NCIC CCH File, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable State and Federal administrative and statutory regulations.

Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparision of fingerprints.

Procedure 1. All requests for review must be made by the subject of his record through a law enforcement agency which has access to the NCIC CCH File. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are in file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry of NCIC to obtain his record on-line or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Washington, D.C. by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI or possibly, in the State's central identification agency.

CONTESTING RECORD PROCEDURES:

The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

RECORD SOURCE CATEGORIES:

Information contained in the NCIC system is obtained from local, State, Federal and international criminal justice agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H), (e)(8) (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(3). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **FEDERAL REGISTER.**

[FR Doc. 85-23353 Filed 9-30-85; 8:45 am]

BILLING CODE 4410-02-M

Drug Enforcement Administration

Quotas for Controlled Substances in Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Established 1985 Aggregate Production Quotas.

SUMMARY: This notice establishes 1985 aggregate production quotas for phencyclidine and 1-piperidinocyclohexanecarbonitrile.

DATE: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain Jr, Chief Drug Control Section, Drug Enforcement Administration,1405 I Street, NW., Washington, DC 20537, Telephone (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On July 16 1985, a notice proposing to revise the 1985 aggregate production quota for phencyclidine and a notice proposing to establish a 1985 aggregate production quota for 1-piperidinocyclohexanecarbonitrile were published in the Federal Register (50 FR 28851). All interested persons were invited to comment on or object to the proposals on or before August 15, 1985. No comments or objections were received.

Pursuant to sections 3(c)(3) and 3(E)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the Drug Enforcement Administration by Section 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1985 revised aggregate production quota for phencyclidine and the 1985 aggregate production quota for 1-piperidinocyclohexanecarbonitrile, expressed in grams of anhydrous base, be established as follows:

Basic class-schedule II	1985 aggregate production quotas
Phencyclidine	120
1-piperidinocyclohexanecarbonitrile	32

Dated: September 3, 1985.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-23357 Filed 9-30-85; 8:45 am]

BILLING CODE 4410-09-M

Quotas for Controlled Substances in Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Established 1985 Aggregate Production Quotas.

SUMMARY: This notice establishes revised 1985 aggregate production quotas for controlled substances in Schedule II, as required under the Controlled Substances Act of 1970.

EFFECTIVE DATE: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On June 27, 1985, a notice of proposed revised 1985 aggregate production quotas for certain controlled substances in Schedule II was published in the Federal Register (50 FR 26642). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before July 29, 1985. Knoll Pharmeceutical Company of Whippany, New Jersey and Cita-Geigy Corporation of Summit, New Jersey submitted comments relative to the proposed revised quotas for hydromorphone and methylphenidate.

Relative to hydromorphone, Knoll Pharmaceutical Company commented that the proposed revised aggregate production quota for this substance of 196 kg. was inadequate to provide for the increased export and research needs. Relative to methylphenidate, Ciba-Geigy Corporation commented that the aggregate production quota will be inadequate to meet its needs and the legitimate medical needs in 1985.

DEA has determined that no increases are necessary at this time for the above mentioned proposed revised aggregate production quotas. No other comments and no requests for a hearing were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1985 revised aggregate production quotas be established as follows:

Basic class	Established revised 1985 aggregate production quotas (Expressed as grams of anhydrous acid or base)
Schedule II	
Alphaprodine	29,000
Amobarbital	1,955,000
Amphetamine	529,000
Codeine (for sale)	54,910,000
Codeine (for conversion)	3,564,000
Desoxyephedrine	[1] 1,324,000
Dextropropoxyphene	81,935,000
Dihydrocodeine	1,223,000
Diphenoxylate	617,000
Fentanyl	5,600
Hydrocodone	1,598,000
Hydromorphone	196,000
Levorphanol	18,700
Meperidine	9,381,000
Methadone	1,471,000
Methadone intermediate (4-cyano-2-dimethylamino-4, 4-diphenylbutane)	1,839,000
Methylphenidate	1,361,000
Mixed Alkaloids of Opium	13,000
Morphine (for sale)	1,310,000
Morphine (for conversion)	58,680,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	1,582,000
Pentobarbital	12,041,000
Pethidine Intermediate A	6,058,000
Phenylacetone	959,000
Secobarbital	2,067,000

[1] 1,174,000 grams for the production of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 150,000 grams for the production of methamphetamine.

Dated: September 5, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85-23356 Filed 9-30-85; 8:45 am]

BILLING CODE 4410-09-M

Controlled Substances; Proposed Aggregate Production Quotas for 1986

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Proposed Aggregate Production Quotas for 1986.

SUMMARY: This notice proposes initial 1986 aggregate production quotas for controlled substances in Schedule I and II of the Controlled Substances Act.

DATE: Comments or objections should be received on or before October 31, 1985.

ADDRESS: Send comments or objections in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street, NW, Washington, DC 20537, Attn: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) The estimated medical, scientific, research, and industrial needs of the United States; (2) lawful export requirements; and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1986 aggregate production quotas, the Administrator of the Drug Enforcement Administration considered the following factors: (1) Total actual 1984 and estimated 1985 and 1986 net disposals of each substance by all manufacturers; (2) projected trends in the national rate of net disposals of each substance; (3) estimates of inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; (4) projected demand as indicated by procurement quota applications which were filed pursuant to Section 1303.12 of Title 21 of the Code of Federal Regulations; (5) estimates of change in legitimate medical needs; and (6) documented diversion.

Pursuant to § 1303.23(c) of Title 21 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration will in early 1986 adjust individual manufacturing quotas allocated for the year based upon 1985 year-end inventory and actual 1985 disposition data supplied by quota applicants for each basic class of Schedule I or II controlled substance.

Based upon consideration of the above factors, the Administrator of the Drug Enforcement Administration hereby proposes that aggregate production quotas for 1986 for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Proposed 1986 quotas
Schedule I	
Alfentanil	7,500
2,5-Dimethoxyamphetamine	10,500,000
Tetrahydrocannabinols	30,000
Schedule II	
Alphaprodine	35,000
Amobarbital	1,743,000
Amphetamine	498,000
Cocaine	800,000
Codeine (for sale)	50,844,000
Codeine (for conversion)	3,657,000
Desoxyephedrine	1,300,000
1,178,000 grams for the production of levodesoxyephedrine for use in a non-controlled, non-prescription product, and 122,000 grams for the production of methamphetamine.	
Dextropropoxyphene	75,379,000
Dihydrocodeine	1,094,000
Diphenoxylate	600,000
Ecgonine (for conversion)	650,000
Fentanyl	5,000
Hydrocodone	1,788,000
Hydromorphone	201,000
Levorphanol	19,600
Meperidine	11,000,000
Methadone	1,459,000
Methadone Intermediate (4-Cyano-2-dimethyl-amino-4,4-diphenylbutane)	1,824,000
Methylphenidate	1,285,000
Mixed Alkaloids of Opium	10,000
Morphine (for sale)	1,407,000
Morphine (for conversion)	57,575,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	1,705,000
Oxycodone (for sale)	1,066,000
Oxycodone (for conversion)	5,300
Oxymorphone	3,500
Pentobarbital	12,000,000
Phenmetrazine	0
Phenylacetone	1,135,000
Secobarbital	2,064,000
Sufentanil	600
Thebaine	7,941,000

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposals relating to any one or more of the above-mentioned substances without filing comments or objections regarding the others. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative, and must be received by October 31, 1985. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall cause such hearing to be convened pursuant to the provisions of Title 21 of the Code of Federal Regulations, § 1303.31(a).

Pursuant to section (3)(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: September 3, 1985.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 85–23355 Filed 9–30–85; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances Application; Philadelphia Seed Co.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 8, 1985, Philadelphia Seed Company, Division of Stanford Seed Company, Muddy Creek Road, Lancaster County, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class controlled substance in Schedule I, exclusively to be rendered non-viable for bird feed.

As to be basic class of controlled substance listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written

comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 31, 1985.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: September 24, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85–23389 Filed 9–30–85; 8:45 am]

BILLING CODE 4410-09-M

Lodging of Consent Decree Pursuant to Clean Air Act; United States v. Mid-States Terminals, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September ——, 1985, a proposed Consent Decree in *United States v. Mid-States Terminals, Inc.*, Civil Action No. C–80–18 was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree concerns fugitive emissions from ship loading spouts at Mid-States' grain terminal elevators in Toledo, Ohio. During the ship loading process when grain is transferred from storage bins to the hold of the ships particulate and visible emission violations occur. The proposed Consent Decree requires the Defendant to bring the ship loading spouts at its existing facilities into compliance with the Ohio SIP emission limits by installation of an oil-mist control system by June 30, 1986. The proposed Consent Decree requires the Defendant to maintain compliance with particulate and visible emissions limits which represent the lowest achievable emission rates at its new facilities. The proposed Decree also requires the Defendant to pay a civil penalty of $125,000.

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. Mid-States Terminals, Inc.*, D.J. Ref. No. 90–5–2–1–279.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44144, and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn, Chicago, Illinois 60604. Copies of the Consent Decree may be examined in person 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, Washington, D.C. 20530. In requesting a copy, please attach a check in the amount of $4.00, payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–23376 Filed 9–30–85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–15, 926–8]

Acme Boot Co., Clarksville, Waverly, and Ashland, TN; Affirmative Determination Regarding Application for Reconsideration

By an application dated September 6, 1985, the United Rubber Workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of Acme Boot Company plants in Clarksville, Waveryl and Ashland, Tennessee. The determination was published in the **Federal Register** on August 13, 1985 (50 FR 32654).

The application claims, among other things, that the company is importing boots that compete with those produced domestically. Also, the union questions the Department's customer survey results given the state of the shoe industry and the high influx of imports in that industry.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is therefore, granted.

Signed at Washington, D.C., this 24th day of September 1985.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85–23365 Filed 9–30–85; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Briggs & Stratton Corp., Perry, GA

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 16, 1985—September 20, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not

contribute importantly to workers separations at the firm.

TA-W-16,007; Briggs & Stratton Corp., Perry, GA

TA-W-15,983; J.L. Coombs, Phillips, ME

TA-W-15,857; Amtex, Inc., Division TI Caro, Cleveland, TN

TA-W-15,936; Park Iron & Welding Co., Cleveland, OH

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-16,044; Shapely, Inc., Cincinnati, OH.

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA-W-16,077; Texaco, Inc., Eagle Point Refinery, Westville, NJ

Worker separations at the firm were attributable to the sale of facility pursuant to a Federal Trade Commission Order.

TA-W-16,080; U.S. Steel Mining Co., Inc., Waynesburg, PA

The coal extracted at the mine is all exported.

Affirmative Determinations

TA-W-16,059; Warner & Swasey Co., Wiedemann Div., King of Prussia, PA

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

TA-W-16,015; Winig Shoe Corp., Amsterdam, NY

A certification was issued covering all workers of the firm separated on or after may 7, 1984 and before August 31, 1984.

TA-W-15,966; Nexus Industries, Tropix Togs Div., Miami, FL

A certification was issued covering all workers of the firm separated on or after July 1, 1984 and before July 31, 1985.

TA-W-16,021; Universal Sportswear, Inc., Howell, NJ

A certification was issued covering all workers of the firm separated on or after May 9, 1984 and before March 31, 1985.

TA-W-16,095; Mohegan Knitwear Corp., New York, NY

A certification was issued covering all workers of the firm separated on or after June 3, 1984 and before June 24, 1985.

TA-W-15,967; Prince Graphite, Inc., El Cajon, CA

A certification was issued covering all workers of the firm separated on or after April 17, 1984.

TA-W-15,934; Mirro Corp., Maintowoc, WI

A certification was issued covering all workers of the firm separated on or after April 10, 1984.

I hereby certify that the aforementioned determinations were issued during the period September 16, 1985—September 20, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor 601 D Street, NW., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: September 24, 1985.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-23361 Filed 9-30-85; 8:45 am]

BILLING CODE 4510-30-M

[Order No. 5-85]

Federal-State Unemployment Compensation Program; Administrative Appeals Procedures for Audit Determinations of the Federal-State UC Program and Related Federal Unemployment Benefit and Allowance Programs

Presently, States are not provided with Administrative appeal rights before the Office of Administrative Law Judges for Grant Officers' final determinations disallowing costs or imposing corrective actions resulting from audits of the Federal-State UC program and related Federal unemployment benefit and allowance programs. Employment and Training Order No. 5-85 sets forth the policy and announces the procedures by which States may file such appeals. Employment and Training Order No. 5-85 is published below.

Dated: September 20, 1985.

Roberts T. Jones,

Acting Deputy Assistant Secretary of Labor.

Directive: Employment and Training Order No. 5-85.

To: National and Regional Offices.

From Roberts T. Jones, Acting Deputy Assistant Secretary of Labor.

Subject: Department of Labor Administrative Appeals Procedures for Audits of the Federal-State Unemployment Compensation Program and Related Federal Unemployment Benefit and Allowance Programs.

1. *Purpose:* To set forth policy and announce procedures by which States may appeal to the Office of Administrative Law Judges final determinations issued by Grant Officers disallowing costs or imposing corrective actions as a result of all audits of the Federal-State unemployment compensation program and related Federal unemployment beenfit and allowance programs. These procedures will provide States with administrative appeal rights for the above-referenced final determinations, pending the promulgation of regulations on this subject in accordance with the Administrative Procedure Act.

2. *References:* 42 U.S.C. 1302; 20 CFR 601.9; 29 CFR Part 18.

3. *Background:* At the present time States are not provided with administrative appeal rights before the Office of Administrative Law Judges for Grant Officer's final determinations disallowing costs or imposing corrective actions as a result of audits of the Federal-State unemployment compensation program and related Federal unemployment benefit and allowance programs. Many States are currently undergoing audits of the Federal share of their Unemployment Insurance Programs and procedures should be established to provide them with administrative appeal rights. Therefore ETA considered the need for an administrative appeal procedure applicable to these audits as well as all other types of Unemployment Insurance program audits.

4. *Policy:* The Employment and Training Administration has determined that States shall have administrative appeal rights from Grant Officer's final determinations disallowing costs of imposing corrective actions as a result of all audits of the Federal-State unemployment compensation program and related Federal unemployment benefit and allowance programs.

5. *Procedures:* The procedures set forth in the attachment shall apply for administrative appeals of all audits of the Federal-State unemployment compensation program and related Federal unemployment benefit and alowance programs pending promulgation of the regulations.

6. *Inquiries:* Questions should be directed to the Office of Program and Fiscal Integrity, Douglas G. Cochennour at (202) 376-6204 or Linda Kontnier at (202) 376-6630.

7. *Effective Date:* This Employment and Training Order is effective immediately.

Attachment to Employment and Training Order No. 5-85

Department of Labor Administrative appeals procedures for audits of the Federal-State unemployment compensation program and related Federal unemployment benefit and allowance programs

I. Hearing Before the Office of Administrative Law Judges

A. *Purpose and scope.* This issuance sets forth the procedures by which States may appeal to the Office of Administrative Law Judges (OALJ) final determinations disallowing costs or imposing corrective actions as a result of Unemployment Insurance (UI) audits. This issuance applies to all audits of the Federal-State unemployment compensation program and all related Federal unemployment benefit and allowance programs.

B. *Jurisdiction.* This issuance provides States with administrative hearing rights before the OALJ only for final determinations disallowing costs or imposing corrective actions as a result of UI audits. Final determinations resulting from other than UI audits within the scope of this issuance shall

be adjudicated under the appropriate regulation or other applicable law.

C. *Procedure for filing request for hearing.*

1. Within 21 days of receipt of the final determination disallowing costs or imposing a corrective action, the State may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, Room 700, Vanguard Building, 1111 20th Street, NW., Washington, D.C. 20036, with one copy to the departmental official who signed the final determination and one copy to the Administrator of the Office of Program and Fiscal Integrity (OPFI). Proof of service on such officials shall be enclosed with the appeal to the OALJ, and shall be a condition of acceptance of the appeal by the OALJ. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

2. The 21-day filing requirement is jurisdictional; failure to timely request a hearing acts as a waiver of the right to hearing.

3. The request shall be accompanied by a copy of the final determination and shall specifically state those issues of the final determination upon which review is requested. Those provisions of the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, shall be considered resolved and not subject to further review. Only the alleged violations of Federal statutes, regulations, grants or agreements made under the Federal law specifically raised in the final determination and the request for hearing are subject to review.

D. *Rules of procedure.* The *Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges*, set forth at 29 CFR Part 18 shall govern the conduct of proceedings under this issuance.

E. *Timing of decisions.* The OALJ should render a written decision not later than 90 days after the closing of the record.

F. *Timely submission of evidence.* The OALJ shall not permit the introduction at the hearing of documentation relating to the allowability of costs if such documentation has not been made available for review either at the time ordered for any prehearing conference, or, in the absence of such an order, at least three weeks prior to the hearing date.

G. *Burden of production.* The Department shall have the burden of production to support the Grant Officer's determination. To this end, the Grant Officer shall prepare and file an administrative file in support of the determination. Thereafter, the party or parties seeking to overturn the Grant Officer's determination shall have the burden of persuasion.

II. Post-Hearing Procedures

A. *Final decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 20 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary of Labor specifically identifying the procedure, finding of fact, conclusion of law, or policy to which exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary of Labor, unless the Secretary of Labor, within 30 days of such filing, has notified the parties that the case has been accepted for review.

B. *Secretarial review.* Any case accepted for review by the Secretary of Labor shall be decided within 180 days of such acceptance. If no decision is issued within such time, the decision of the adminstrative law judge shall become the final decision of the Secretary of Labor.

III. Other Authority

Nothing contained in this issuance shall be deemed to prejudice the separate authority of other law enforcement officials to pursue other remedies and sanctions available to them under any Federal law or at common law. Nothing in this issuance shall be deemed to reduce the responsibility and full liability of the States ot the United States or the U.S. Department of Labor.

[FR Doc. 85-23363 Filed 9-30-85; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,089]

Missoula White Pine Sash Co., Missoula, MT; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 17, 1985 in response to a worker petition received on June 11, 1985 which was filed by the Lumber, Production and Industrial Workers Union, Local #2812, on behalf of workers at Missoula White Pine Sash Company, Missoula, Montana.

The Petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 24th day of September 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-23364 Filed 9-30-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; ASL Industries, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 11, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 11, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW, Washington, DC 20213.

Signed at Washington, DC this 23rd day of September 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union/workers or former workers of—	Location	Date received	Date of petition	Petition number	Articles produced
ASL Industries, Inc. (workers)	Unionville, NY	9/16/85	9/11/85	TA-W-16,427	Woven labels, printed hangtags—garments.
Diamond Bathurst, Inc. (Glass Pottery, Plastic Allied Wkrs)	Indianapolis IN	9/16/85	9/12/85	TA-W-16,428	Glass bottles & jars.
Farah Manufacturing of New Mexico (wkrs)	Las Cruces, NM	9/17/85	9/13/85	TA-W-16,429	Men's slacks.
G & H Manufacturing Co. (workers)	Fredericksburg, VA	9/16/85	9/10/85	TA-W-16,430	Men's suits, sport coats, pants.
International Shoe Co. (ACTWU)	Batesville, AR	9/16/85	9/7/85	TA-W-16,431	Men's work shoes & boots, some womens.

APPENDIX—Continued

Petitioner Union/workers or former workers of—	Location	Date received	Date of petition	Petition number	Articles produced
Parmall, Inc. (workers)	Mt Pleasant, PA	9/17/85	9/6/85	TA-W-16,432	Electrical insulators, filament wound fiberglass tubing.
Samuel Brutin & Co. (ILGWU)	Paterson, NJ	9/16/85	9/4/85	TA-W-16,433	Ladies coats & suits.
Smith GM Power, Inc. (company)	Salt Lake City, UT	9/16/85	9/11/85	TA-W-16,434	Sales & service of Detroit diesel 149 engines.
Vera Maxwell Inc. (workers)	New York, NY	9/16/85	9/11/85	TA-W-16,435	Ladies sportswear.
Weyerhaeuser Co., Plywood Division (Plywood Workers Union).	Longview, WA	9/16/85	9/11/85	TA-W-16,436	Plywood & veneer.
Weyerhaeuser Co. (IWA)	North Bend, OR	9/16/85	9/11/85	TA-W-16,437	Lumber.
Spencer Wright Industries, Cobble Div. (IAMAW)	Chattanooga, TN	9/17/85	9/11/85	TA-W-16,438	Tufting machinery.

[FR Doc. 85-23362 Filed 9-30-85; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-15,812]

Amerada Hess Corp., Accounting Department, Purvis, MS; Dismissal of Application of Reconsideration

Pursuant to 29 CFR 90.18 an application of administrative reconsideration was filed with the director of the Office of Trade Adjustment Assistance for workers at the Amerada Hess Corporation, Accounting Department, Purvis, Mississippi. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-15,812; Amerada Hess Corporation, Accounting Department, Purvis, Mississippi (September 20, 1985).

Signed at Washington, DC this 23rd day of September, 1985.

Dated: September 23, 1985.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-23360 Filed 9-30-85; 8:45 am]
BILLING CODE 4910-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

President's Committee on the Arts and the Humanities; Meeting

Plenary Meeting X of the President's Committee on the Arts and the Humanities will convene at 9:00 a.m. on Thursday, October 17, 1985, in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. This is a regularly scheduled meeting at which committee activities will be reviewed and progress reported. Stanley M. Freehling of Chicago will be sworn in as a new member of the President's Committee on the Arts and the Humanities.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

The primary presentation of the meeting will be that of Robert McC. Adams, secretary of Smithsonian Institution on Smithsonian Goals and Expectations.

Other Agenda items will include:

- Briefings by the Chairman of the National Endowment for the Arts, the National Endowment for the Humanities, and Director of the Institute of Museum Services on the highlights of their activities
- International Survey of Arts
- Charitable Contributions
- Fund for New American Plays
- Collections Survey of Black Universities
- History Teaching Alliance
- Community Foundations
- New Alliances for Secondary Schools
- Public Library Radio Initiative
- Case Statement for Emerging Institutions
- Invest in the American Collection
- Youth In Philanthropy
- Great Performances in the Libraries
- Community Arts Councils Initiative

This meeting is expected to adjourn before lunch. Please notify the President's Committee (202) 682-5409 or (212) 883-6764 if you wish to attend.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-23378 Filed 9-30-85; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Developmental Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Developmental Biology.

Date and time: October 17, 18, 19, 1985, starting at 8:30 A.M. to 5:30 P.M., each day.

Place: Room 1242B, National Science Foundation, 1800 G Street, N.W. Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Joseph Mascarenhas, Program Director, Developmental Biology Program, Room 332-H, National Science Foundation, Washington, D.C. 20550, Telephone 202/357-7989.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in developmental biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

September 26, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-23452 Filed 9-30-85; 8:45 am]
BILLING CODE 7555-01-M

Advisory Committee for Physics; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics.

Date and time: October 21, 1985 (10:00 a.m.—6:00 p.m.); October 22, 1985 (8:30 a.m.—5:00 p.m.).

Place: National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550. Room 540 each day.

Type of meeting: Open.

Contact person: Dr. Marcel Bardon, Director, Division of Physics, National

Science Foundation, Washington, D.C. 20550. Telephone (202) 357–7985.

Summary of minutes: May be obtained from Mrs. Phyllis Hurley, Division of Physics, National Science Foundation, Washington, D.C. 20550.

Purpose of committee: To provide advice and recommendations concerning support for research in physics.

Agenda: *October 21, 1985,* 10:00 a.m.—6:00 p.m., Room 540: oversight review of NSF support of Nuclear Science, including presentations by NSF and DOE staff and the report of the Subcommittee for Review of NSF Nuclear Science Programs; *October 22, 1985,* 8:30 a.m.—5:00 p.m., Room 540: discussion of FY 1986 and FY 1987 budgets; funding pressures; computational science; other items of interest to Committee. Continuation of discussions of previous day.

September 26, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–23453 Filed 9–30–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Social and Developmental Psychology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Social and Developmental Psychology.

Date and time: October 24 and 25, 1985: 9:00 a.m.–5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 1242A, Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Jean B. Intermaggio, Program Director, Room 320, National Science Foundation, Washington, D.C. 20550 (202–357–9485).

Purpose of meeting: To provide advice and recommendations concerning support for research in Social and Developmental Psychology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: September 26, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–23454 Filed 9–30–85; 8:45 am]

BILLING CODE 7555-01-M

Committee on Equal Opportunities in Science and Technology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meetings:

Name: Committee on Equal Opportunities in Science and Technology.

Dates: Thursday, October 24 and Friday, October 25, 1985.

Time: 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 540, Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Ms. Jane Stutsman, Executive Secretary, National Science Foundation, Rm. 425, 1800 G Street, NW., Washington, D.C. 20550. Telephone: 202/357–9418.

Purpose of committee: Responsible for all Committee matters relating to the participation in and opportunities for education, training, and research for minorities, women and handicapped persons in science and technology, and the impact of science and technology on them.

Summary of minutes: May be obtained from the contact person at the above stated address.

Agenda: The Committee will consider mechanisms to increase participation of minorities, women and handicapped persons in Foundation programs, research projects, and on all NSF advisory committees. It will also advise the Director on how to modify NSF policies and procedures relating to minority, women and handicapped persons as well as the internal distribution of funds to implement this program.

Dated: September 26, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–23451 Filed 9–30–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Atmospheric Sciences

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS).

Date: October 24–25, 1985.

Time: 8:45 a.m.–5:00 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Open.

Contact: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357–9874.

Purpose of committee: The Advisory Committee for Atmospheric Sciences provides advice, recommendations, and oversight concerning support for research and research-related activities in the atmospheric sciences area.

Agenda: *October 24, 1985, Room 543—8:45 a.m. to 5:00 p.m.:* Opening Remarks by Chairman, ACAS and Division Director, ATM; Update from October 1984 ACAS Meeting; Remarks by Chairman, Advisory Committee for Ocean Sciences (ACOS); Division of Atmospheric Sciences (ATM) Instrumentation Guidelines; Science Education at NSF; Atmospheric Participation; Remarks by Acting Assistant Director, AAEO; ATM Long Range Planning (LRP) for FY 1988–92: Objectives and ACAS Methodology; ACAS LRP Discussion: Procedure for LRP October 1985 Document; *October 25, 1985, Room 543–9:00 a.m. to 12:00 noon:* Remarks by the Deputy Director, NSF, to ACAS and ACOS; Discussion on Oversight Methodology for Overview of GARP and Aeronomy Programs, Spring, 1986; Conclusion of Long Range Planning for FY 1988–92.

September 26, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–23457 Filed 9–30–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Ocean Sciences (ACOS); Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ocean Sciences (ACOS).

Date and time: October 24, 25, 1985—8:30 A.M. to 5:00 P.M. each day.

Place: Room 453, National Academy of Sciences, 21st & Pennsylvania Avenue, NW., Washington, DC.

Type of meeting: Open.

Contact person: Dr. M. Grant Gross, Director, Division of Ocean Sciences Room 609, National Science Foundation, Washington, DC Telephone: (202) 357—9639.

Summary minutes: May be obtained from the contact person.

Purpose of committee: To provide advice and recommendations concerning oceanographic research and its support by the NSF Division of Ocean Sciences.

Agenda

The Committee will hold morning and afternoon Sessions on both days following opening remarks and introductions. The Committee will hear briefings and status reports of current topical interest from various officials and representatives from NSF, other Governmental Departments and

Agencies, and other organizations active in ocean science matters. The Committee will also hear reports from several Subcommittees and reflect upon a proper course of action based on the information presented. The Committee will also discuss the current status and future revisions of the draft Long-Range Plan for Ocean Sciences, and formulate appropriate guidance and direction for the continuing planning process. The Committee will also conduct necessary administrative functions in accordance with established practice with respect to approval of the minutes of the previous meeting; determination of the time and place of the next meeting; as well as any other appropriate business.

September 26, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-23456 Filed 9-30-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Prokaryotic Genetics; Meeting

In accordance with the Federal Advisory Panel Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Prokaryotic Genetics.

Date and time: Monday, October 21—Wednesday, October 23, 1985; 8:30 A.M.—5:00 P.M.

Place: National Science Foundation, 1800 G Street, NW., Washington D.C. 20550; Room 1242A.

Type of meeting: Closed.

Contact person: Dr. Philip D. Harriman, Program Director, Prokaryotic Genetics; (202) 357-9687

Purpose of advisory panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

September 26, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-23455 Filed 9-30-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co.; Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-6 issued to Consumers Power Company, for operation of the Big Point Plant, located in Charlevoix County, Michigan.

The proposed amendment request, which was originally noticed on September 11, 1985 (50 FR 37078) requested by submittal dated August 16, 1985, has been revised by submittal dated September 24, 1985. As originally noticed, the application requested changes to the Technical Specifications (TS) in support of the reload I1 planned fuel reloading.

Specifically, the reload I1 fuel Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) Limits are to be changed in accordance with the licensee's application for amendment dated August 16, 1985 as revised September 24, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility or a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (iii) of actions not likely to involve significant hazards considerations relates to a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the TS, that the analytical methods used to demonstrate conformance with the TS and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

The information provided in the September 11, 1985 notice remains valid, except the revised application includes new information regarding the Minimum Critical Power Ratio (MCPR).

Consumers Power Company letter dated August 9, 1983 provided RETRAN Sensitivity Analyses for variations in several parameters including fuel gap conductivity. The gap conductivity was varied to show sensitivity of MCPR to changes in the heat transfer parameters for the fuel. These conductivities were selected so the fuel temperatures and stored energies at different power levels matched those calculated in XN-76-21, "Design Report for Big Rock Point Reactor Reload G-3 Fuel, Addendum 4", August 1976. The fuel temperature in XN-76-21 was calculated by the GAPEX computer code. The results show that even for large changes in gap conductivity, MCPR changes very little.

A review has also been made of the gap conductance calculated by the Exxon GAPEX model for I1 fuel relative to the G1 through H4 fuel. This review indicates an approximate 30% gap conductance increase at beginning of life and 50% increase at end of life. The above sensitivity study indicates a change in MCPR from 1.59 to 1.61 would conservatively account for the increased gap conductance in the I1 fuel. The revised application proposes this MCPR change.

Although a new MCPR is proposed, the reload remains essentially unchanged in that it does not contain any fuel assemblies significantly different from those previously found acceptable to the NRC. Therefore, these revised changes fit example (iii) described above, and on this basis, the staff proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not

normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By October 31, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designate Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely manner would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John A. Zwolinski, Chief, Operating Reactors Branch No. 5, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)((1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Bethesda, Maryland, this 26th day of September 1985.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 85-23415 Filed 9-30-85; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the

staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, ES 401-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Onsite Meteorological Measurement Program for Uranium Recovery Facilities—Data Acquisition and Reporting" and is intended for Division 3, "Fuels and Materials Facilities." It is being developed to provide guidance to applicants and licensees that is acceptable to the NRC staff regarding the meterorological parameters that should be measured, the siting of instruments, system accuracies, maintenance and servicing schedules, and the recovery and compilation of data.

This draft guide and the associated value/iimpact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission,, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555. Comments will be most helpful if received by December 2, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 24th day of September 1985.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Radiation Programs and Earth Sciences Office of Nuclear Regulatory Research.

[FR Doc. 85-23416 Filed 9-30-85; 8:45 am]

BILLING CODE 7590-01-M

State of Iowa; Staff Assessment of Proposed Agreement Between the NRC and the State of Iowa

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Proposed Agreement with State of Iowa.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission is publishing for public comment the NRC staff assessment of a proposed agreement received from the Governor of the State of Iowa for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

A staff assessment of the State's proposed program for control over sources of radiation is set forth below as supplementary information to this notice. A copy of the program narrative, including the referenced appendices, appropriate State legislation and Iowa regulations, is available for public inspection in the Commission's public document room at 1717 H Street, NW., Washington, DC. Exemptions from the Commission's regulatory authority, which would implement this proposed agreement, have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATES: Comments must be received on or before October 31, 1985.

ADDRESSES: Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC. 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joel O. Lubenau, Office of State Programs, U.S. Nucler Regulatory Commission, Washington, DC 20555, telephone: 301-492-9887.

SUPPLEMENTARY INFORMATION: Assessment of Proposed Iowa Program to Regulate Certain Radioactive Materials Pursuant to section 274 of the Atomic Energy Act of the 1954, as amended.

The Commission has received a proposal from the Governor of Iowa for the State to enter into an agreement with the NRC whereby the NRC would relinquish and the State would assume certain regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

Section 274e of the Atomic Energy Act of 1954, as amended, requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the **Federal Register.**

I. Background

A. Section 274 of the Atomic Energy Act of 1954, as amended, provides a mechanism whereby the NRC may transfer to the States certain regulatory authority over agreement materials[1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

B. In a letter dated August 22, 1985, Governor Terry E. Branstad of the State of Iowa requested that the Commission enter into an agreement with the State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, and proposed that the agreement become

[1] A. Byproduct materials as defined in 11e(1); B. Byproduct materials as defined in 11e(2); C. Source materials; and D. Special nuclear materials in quantities not sufficient to form a critical mass.

effective on January 1, 1986. The Governor certified that the State of Iowa has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State of Iowa desires to assume regulatory responsibility for such materials. The text of the proposed agreement is shown in Appendix A and the narrative portion of the program description is shown in Appendix B.

The specific authority requested is for (1) byproduct material as defined in section 11e(1) of the Act, (2) source material and (3) special nuclear material in quantities not sufficient to form a critical mass. The State does not wish to assume authority over uranium milling activities nor the commercial disposal of low-level radioactive waste. The State, however, reserves the right to apply at a future date to NRC for an amended agreement to assume authority in these areas. The nine articles of the proposed agreement cover the following areas:

I. Lists the materials covered by the agreement
II. Lists the Commission's continued authority and responsibility for certain activities
III. Allows for future amendment of the agreement
IV. Allows for certain regulatory changes by the Commission
V. References the continued authority of the Commission for common defense and security for safeguards purposes
VI. Pledges the best efforts of the Commission and the State to achieve coordinated and compatible programs
VII. Recognizes reciprocity of licenses issued by the respective agencies
VIII. Sets forth criteria for termination or suspension of the agreement
IX. Specifies the effective date of the agreement

C. Section 136C, the Code, H.F. 2110 authorizes the State Department of Health to issue licenses to, and perform inspections of, users of radioactive materials under the proposed agreement and otherwise carry out a total radiation control program. Iowa radiation control regulations, Health Department (470) Chapters 38 to 41, adopted by the Iowa State Board of Health on May 8, 1985 under authority of Section 136C.3, The Code, provides standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. Pursuant to 470–39.53, the regulations are not applicable to agreement materials until the effective date of the agreement. The regulations provide for the State to license and inspect users of naturally-occurring and accelerator-produced radioactive materials.

D. The environmental radiation activities with which the Department has been involved in conjunction with the University of Iowa Hygienic Laboratory include a general environmental surveillance program and a radiological surveillance program for the Duane Arnold power reactor site under contract with NRC. The State has the capability of developing site specific environmental surveillance programs when needed and has authority to charge its licensees a fee to recover the costs of such programs.

The Department has also been involved in registration and inspection of x-ray uses since 1980 including restrictions on healing arts x-ray screening practices and involvement in the U.S. FDA studies such as the Dental Exposure Normalization Technique (DENT). In 1983, Iowa established minimum training standards for diagnostic radiographers.

II. NRC Staff Assessment of Proposed Iowa Program for Control of Agreement Materials

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[2]

Objectives

1. *Protection.* A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Based upon the analysis of the State's proposed regulatory program the staff believes the Iowa proposed regulatory program for agreement materials is adequately designed to protect the health and safety of the public against radiation hazards.

Radiation Protection Standards

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

Statutory authority to formulate and promulgate rules for controlling exposure to sources of radiation is contained in section 136C, The Code. In accordance with that authority, the State adopted radiation control regulations on May 8, 1985 which include radiation protection standards which would apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass upon the effective date of an agreement between the State and the Commission pursuant to section 274b of the Atomic Energy Act of 1954, as amended.

Reference: Iowa State Department of Health radiation control regulations 470–38 to 41.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity of maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.

Technical definitions and terminology contained in the Iowa Radiation Control Regulations including those related to units of measurement and radiation doses are uniform with those contained in 10 CFR Part 20.

Reference: Iowa 470–38.2, 39.2.

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

The Iowa regulations cover all sources of radiation within the State's jurisdiction and provide for consideration of the total radiation exposure of individuals from all sources of radiation in the possession of a licensee or registrant.

Reference: Iowa 470–40.1, 40.5.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

The Iowa requirements for surveys to evaluate potential exposures from sources of radiation and the personnel monitoring requirements are uniform with those contained in 10 CFR Part 20.

References: Iowa 470–40.8 and 40.9.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs, and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

The prescribed radiation labels, signs, and symbols are uniform with those contained in 10 CFR Parts 20, 30 thru 32 and 34.

[2] NRC Statement of Policy published in the **Federal Register** January 23, 1981 (46 FR 7540–7546), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the **Federal Register** July 21, 1983 (48 FR 33376).

The Iowa posting requirements are also uniform with those of Part 20.

References: Iowa 470–39.23, 39.25, 39.36, 39.40, 40.9, and 41.4.

7. *Instruction.* Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR Part 19, § 19.16 and to be represented during inspections as specified in § 19.14 of 10 CFR Part 19.

The Iowa regulations contain requirements for instructions and notices to workers that are uniform with those of 10 CFR Part 19.

Reference: Iowa 470–40.21.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

The Iowa regulations contain a requirement for security of stored radioactive material.

Reference: Iowa 470–40.12.

9. *Radioactive Waste Disposal.* (a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR Part 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.

(b) Land Disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (Section 151(a)(2), Pub. L. 97–425).

Iowa Radiation Control Regulations contain provisions relating to the disposal of radioactive materials into the air, water and sewer and burial in soil which are essentially uniform with those of 10 CFR Part 20. In a letter dated August 8, 1985 to NRC the Department committed to adopting certain clarifying amendments to their regulations to conform them more closely to 10 CFR Parts 20 and 61 and, in the interim, will impose license conditions to ensure uniformity with these Parts. Iowa, at this time, does not propose to regulate the commercial land disposal of low-level radioactive waste.

References: Iowa 470–40.7, 40.14 to 40.17, 40.19 and letter dated August 8, 1985 from J. Eure, Director, Environmental Health Section, Iowa Department of Health to J. Lubenau, NRC.

10. *Regulation Governing Shipment of Radioactive Materials.* The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactve materials must be compatible with 10 CFR Part 71.

The Iowa regulations are uniform with those contained in NRC regulations 10 CFR Part 71.

References: Iowa 470–39.76 to 39.39.

11. *Records and Reports.* The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

The Iowa regulations require the following records and reports by licensees and registrants:

(a) Records covering personnel radiation exposures, radiation surveys, and disposals of materials.

(b) Records of receipt and transfer of materials.

(c) Reports concerning incidents involving radioactive materials.

(d) Reports to former employees of their radiation exposure.

(e) Reports to employees of their annual radiation exposure.

(f) Reports to employees of radiation exposure in excess of prescribed limits.

Reference: Iowa 470–38.4, 40.20, 40.21.

12. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

The Iowa Department of Health is authorized to impose upon any licensee or registrant, by rule, regulation, or order such requirements in addition to those established in the regulations as it deems appropriate or necessary to minimize danger to public health and safety or property.

Reference: Iowa 470–38.7.

The Department may also grant such exemptions from the requirements of the regulations as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

Reference: Iowa 470–38.3.

Prior Evaluation of Uses of Radioactive Matterials

13. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of Knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory

controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing board use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the use of radioactive materials, the Iowa Department of Health will require the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: Iowa 470–39.1 to 39.3, 39.28 to 39.56; Iowa Program Description, "Licensing and Registration."

Provision is made for the issuance of general licenses for byproduct, source and special nuclear materials in situations where prior evaluation of the licensee's qualifications, facilities, equipment and procedures is not required. The regulations grant general licenses under the same circumstances as those under which general licenses are granted in the Commission's regulations.

References: Iowa 470–30.12 to 39.26, 39.57, 39.58, 39.79 to 39.85.

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

In evaluating a proposal to use agreement materials, the Iowa Department of Health will determine that:

(1) The applicant is qualified by reason of training and experience to use the material in question for the prupose requested in accordance with the regulations in such a manner as to minimize danger to public health and safety or property;

(2) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property; and

(3) The issuance of the license will not be inimical to the health and safety of the public.

Other special requirements for the issuance of specific licenses are contained in the regulations.

References: Iowa 470–39.30 to 39.45.

15. *Human Use.* The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

The Iowa regulations require that the use of radioactive material (including sealed sources) on or in humans shall be by a physician having substantial experience in the handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients.

Reference: Iowa 470–39.31.

Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

Iowa materials licensees will be subject to inspection by the Department of Health. Upon instruction from the Department, licensees shall perform or permit the Department to perform such reasonable tests and surveys as the Department deems appropriate or necessary. The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent as inspections of similar licenses by NRC.

References: Iowa 470–38.5 and 38.6; Iowa Program Description, "Inspection Program."

17. *Inspections Compulsory.* Licensees shall be under obligation by law to provide access to inspectors.

Iowa regulations state that licensees shall afford the Department at all reasonable times opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

Reference: Iowa 470–38.5.

18. *Notification of Results of Inspection.* Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Following Department inspections, each licensee will be notified in writing of the results of the inspection. The letters and written notices indicate if the licensee is in compliance and if not, list the areas of noncompliance.

Reference: Iowa Program Description, "Compliance and Enforcement."

Enforcement

19. *Enforcement.* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.

The Iowa Department of Health is equipped with the necessary powers for prompt enforcement of the regulations. Where conditions exist that create a clear preseence of a hazard to the public health that requires immediate action to protect human health and safety, the Department may issue orders to reduce, discontinue or eliminate such conditions. The Department actions mayalso include impounding of radioactive material, imposition of a civil penalty, revocation of a license, and requesting County Attorney or Attorney General to seek injunctions and convictions for criminal violations.

References: Iowa 470–38.7, 38.8, 38.9, 38.11; Iowa Program Description, "Compliance and Enforcement."

Personnel

20. *Qualifications of Regulatory and Inspection Personnel.* The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. The person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial

training and extensive experience in the field of radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the difference disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

a. Number of Personnel

There are approximately 170 NRC specific licenses in the State of Iowa. Under the proposed agreement, the State would assume responsibility for about 155 of these licenses. The Department's Radiological Health Program is currently staffed with six professional persons. Five individuals will be assigned line and supervisory duties in the materials program. We estimate the State will need to apply between 1.6 to 2.1 staff-years of effort to the program. The present personnel together with their assigned responsibilities are as follows:

John A. Eure: Director, Environmental Health Section. Responsible for administration and supervision of Environmental Health Section.

Donald A. Flater: Coordinator, Radiological Health Program. Responsible for administration and supervision of the radiological health program.

David Russell Myers: Environmental Specialist III. Supervises field inspection staff and conducts inspections.

Bruce W. Hokel: Environmental Specialist II. Currently conducts inspections and under consideration as lead person for licensing.

Richard L. Welke: Environmental Specialist I. Currently conducts inspections.

Paul E. Koehn: Environmental Specialist I. Currently in training.

Total personnel time devoted to radioactive materials is expected to be at least 2 person-years.

b. Training

The academic and specialized short course training for those persons involved in the administration, licensing and inspection of radioactive materials is shown below.

Donald A. Flater—B.S. Radiological Sciences and Administration, George Washington University.

Transportation of Radioactive Materials, November 1984, U.S. Nuclear Regulatory Commission.

Advanced Medical Imaging Technology Workshop, September 1984, Conference of Radiation Control Program Directors, Inc.

Inspection Procedures, July 1984, U.S. Nuclear Regulatory Commission.

Principles of Epidemiology, March, 1984, Centers for Disease Control.

Applied Epidemiology, February 1984, Centers for Disease Control and Iowa State Department of Health.

Orientation Course in Licensing Practices and Procedures for State Regulatory Personnel, September 1983, U.S. Nuclear Regulatory Commission.

Radiological Defense Officer Course, June 1983, Iowa Office of Disaster Services.

Radiological Monitoring Home Study Course, May 1983, Federal Emergency Management Agency.

Medical Use of Radionuclides, April 1983, U.S. Nuclear Regulatory Commission.

Radiological Emergency Planning Course, March 1981, Federal Emergency Management Agency.

Radiological Emergency Response Operations for Radiological Emergency Response Teams, January 1981, U.S. Nuclear Regulatory Commission.

Dose Projection Accident Assessment and Protective Action Decision Making for Radiological Emergency Response, March 1980, U.S. Nuclear Regulatory Commission.

David Russell Myers—B.S. Biology, Grandview College.

Computed Tomography Dosimetry Training Course, May 1985, University of Missouri, Kansas City School of Medicine, Food and Drug Administration Center for Medical Devices and Radiological Health.

FDA Regional Training, September 1984, Mayo Clinic.

Inspection Procedures, July 1984, U.S. Nuclear Regulatory Commission.

Health Physics and Radioactive Materials, June 1984, Oak Ridge Associated Universities.

Medical Use of Radionuclides, June 1984, Oak Ridge Associated Universities.

Principles of Epidemiology, March 1984, Centers for Disease Control and Iowa State Department of Health.

Applied Epidemiology, February 1984, Centers for Disease Control and Iowa State Department of Health.

Emergency Management Institute Radiological Accident Assessment Course, August 1982, National Emergency Training Center.

Radiological Defense Officer Course, May 1982, Federal Emergency Management Agency.

Radiological Emergency Response Operations Course, January 1981, U.S. Nuclear Regulatory Commission.

Diagnostic X-Ray Survey Training Program, June 1980, U.S. Army Academy of Health Sciences.

Bruce W. Hokel—B.S., Fisheries and Wildlife, Iowa State University.

Introduction to Licensing Practices and Procedures, U.S. Nuclear Regulatory Commission.

Nuclear Transportation for State Regulatory Personnel, U.S. Nuclear Regulatory Commission.

Principles of Licensing, one week on-the-job training with staff of NRC, Region III.

Safety Aspects of Industrial Radiography for State Regulatory

Personnel, U.S. Nuclear Regulatory Commission.

Orientation Course in Licensing Practices, U.S. Nuclear Regulatory Commission.

Health Physics and Radiation Protection, Oak Ridge Associated Universities.

Basic Radiological Health, University of Texas Health Center.

X-Ray Compliance Testing, Fort Sam Houston.

Radiological Incidents Emergency Response, Nuclear Test Site—Mercury, Nevada.

Principles of Epidemiology, Centers for Disease Control.

Applied Epidemiology, Centers for Disease Control.

Richard L. Welke—B.A. Biology, University of Minnesota.

Medical Use of Radionuclides, June 1985, U.S. Nuclear Regulatory Commission.

FEMA Nuclear Power Plant Off-Site Radiological Accident Assessment Course, November 1985.

FDA Training Course for Diagnostic X-Ray Compliance Surveys, September 1984.

NIOSH Non-Ionizing-Ionizing Radiation 583/584, April 1984.

Paul E. Koehn—B.S. Science, Upper Iowa University.

Fundamental Course for Radiological Response Teams, March 1985.

Fundamental Course for Radiological Monitors, March 1985.

c. *Experience*

Since receiving a Bachelor of Science in Sanitary Engineering from the University of Illinois in February, 1957, Mr. Eure has been actively engaged as an Environmental Health Engineer in the field of public health. His experience has been primarily in the areas of radiological health and water supply and pollution control from a technical, administrative and supervisory aspect.

In July, 1960, he was accepted into the Regular Corps of the U.S. Public Health Service and was reassigned to the University of Texas for graduate training in Sanitary Engineering. In September of 1961, he received a Master of Science Degree in Sanitary Engineering with a minor in Bacteriology and was subsequently assigned to the Occupational Health Division of the Texas Department of Health as a resident in radiological health.

In March, 1964, he was assigned to the New York City Office of Radiation Control. A number of potentially hazardous situations were investigated during this assignment including lost radioactivity sources, sale of radium pills for internal use and high energy accelerator accident involving excessive exposure to employees. During the course of another occupational health investigation it was determined that television receivers intended for household use were emitting high levels of x-radiation. This finding and subsequent investigation efforts identified the need for Federal control of Electronic Products and resulted in Congressional enactment of the Radiation Control for Health and Safety Act of 1968—Pub. L. 90-602.

In July 1968, he was assigned to the Bureau of Radiological Health headquarters in Rockville, Maryland. Here he was engaged in emergency planning activities and developed a model plan which has served as a guide for the development of many State emergency plans, engaged in regulatory activities associated with the Radiation Control for Health and Safety Act, and was assigned successively more responsible positions and management of a national program of surveillance of electronic products.

In July, 1979, he retired from the USPHS, and was appointed as the Director of Radiological Health at the Iowa State Department of Health. Here he established a comprehensive program in Radiological Health which is now fully operational. In October, 1981, he was appointed as Director of Environmental Health within this Department and assumed the responsibility of administering programs in public health engineering including sanitation, consumer safety and work related disease in addition to radiation protection. He is currently engaged in expanding the work related disease functions of his section.

His professional certifications include Licensed Professional Engineer-Texas, Diplomate American Academy of Environmental Engineers and Fellow of the American Public Health Association.

Mr. Flater has been employed by the Department of Health since 1980 in increasingly reasonable positions. Prior to coming to Iowa, he was employed by the FDA Bureau of Radiological Health where he received two "Commendable Service Awards."

Mr. Myers has been with the Iowa radiation control program since 1980.

Mr. Hokel has been with the program since 1983.

Mr. Koehn joined the program in February, 1985.

Reference: Iowa Program Description, Apendix IV, B.

21. *Conditions Applicable to Special Nuclear Material, Source Material and Tritium.* Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material and tritium and (2) periodic inventory data.

The State's regulations do not prohibit or interfere with the duties imposed by the NRC on holders of special nuclear material owned by the U.S. Department of Energy or licensed by NRC, such as the responsibility of licensees to supply to the NRC reports of transfer and inventory.

Reference: Iowa 470-38.1 and 38.3.

22. *Special Nuclear Material Defined.* The definition of special nuclear material in quantities not sufficient to form a critical mass, as contained in the Iowa Radiation Control Regulations, is uniform with the definition in 10 CFR Part 150.

Reference: Iowa 470-38.2, Definition of Special Nuclear Material in Quantities Not Sufficient to Form a Critical Mass.

Administration

23. *Fair and Impartial Administration.* The Iowa statute and regulations provide for administrative and judicial review of actions taken by the Department of Health.

Reference: Section 136C, The Code, Iowa 470-38.9, 38.12, 39.56, 40.21.

24. *State Agency Designation.* The Iowa Department of Health has been designated as the State's radiation control agency.

References: Section 136, The Code.

25. *Existing NRC Licenses and Pending Applications.* The Department has made provision to continue NRC licenses in effect temporarily after the transfer of jurisdiction. Such licenses will expire either 90 days after receipt from the Department of a notice of expiration or on the date of expiration specified in the Federal license, whichever is earlier.

Reference: Iowa 470-39.53.

26. *Relations with Federal Government and Other States.* There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

The proposed agreement declares that the State will use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of like materials.

Reference: Governor Branstad's letter dated August 26, 1985, Proposed Agreement between the State of Iowa and the Nuclear Regulatory Commission, Article VI.

27. *Coverage, Amendments, Reciprocity.* The proposed Iowa agreement provides for the assumption of regulatory authority over the following categories of materials within the State:

(a) Byproduct materials, as defined by Section 11e(1) of the Atomic Energy Act, as amended.

(b) Source materials.

(c) Special nuclear materials in quantities not sufficient to form a critical mass.

Reference: Proposed Agreement, Article I.

Provision has been made by Iowa for the reciprocal recognition of licenses to permit activities within Iowa of persons licensed by other jurisdictions. This reciprocity is like that granted under 10 CFR Part 150.

Reference: Iowa 470–39.57.

28. *NRC and Department of Energy Contractors.* The State's regulations provide that certain NRC and DOE contractors or subcontractors are exempt from the State's requirements for licensing and registration of sources of radiation which such persons receive, possess, use, transfer, or acquire. Reference: Iowa 470–38.3.

III. Staff Conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states:

"The Commission shall enter into an agreement under subsection b of this section with any State if:

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) The Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed amendment."

The Staff has concluded that the State of Iowa meets the requirements of section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. Since the State is not seeking authority over uranium milling activities, subsection o. is not applicable to the proposed Iowa agreement.

Dated at Bethesda, Maryland, this 24th day of September 1985.

For the U.S. Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

Appendix A

Proposed Agreement Between the United States Nuclear Regulatory Commission and the State of Iowa for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

WHEREAS, The Governor of the State of Iowa is authorized under Chapter 136C, Code of Iowa, to enter into this Agreement with the Commission; and

WHEREAS, The Governor of the State of Iowa certified on ———, 1985, that the State of Iowa (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

WHEREAS, The Commission found on ———, that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

WHEREAS, The Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and

WHEREAS, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e.(1) of the Act;

B. Source materials; and

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission;

E. The land disposal of source, byproduct and special nuclear material received from other persons; and

F. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include

the additional area(s) specified in Article II, paragraph E or F, whereby the State can exert regulatory control over the materials stated herein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulations, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss of diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection agains hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules, and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the material listed in Article I licensed by the other party of by an Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j. of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act.

Article IX

This Agreement shall become effective on ———, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Washington, District of Columbia, in triplicate, this — day of ———, 1986.

For the United States Nuclear Regulatory Commission.

Nunzio J. Palladino, *Chairman.*

Done at Des Moines, Iowa, in triplicate, this —— day of ———, 1985.

For the State of Iowa.

Terry E. Branstad, *Governor.*

Appendix B—The Iowa Radiation Control Program

Foreword

The State of Iowa, while recognizing that the scientific medical and industrial usage of atomic energy can be beneficial to its citizens, is also cognizant of the hazards inherent to ionizing radiation. With these hazards in mind, and considering that the State is committed to attain the highest practicable degree of protection for the public health from the harmful effects of all types of radiation, the second session of the 70th Iowa General Assembly (1984) enacted H.F. 2110 which is an act relating to the regulation of radiation machines and radiation material.

Section 274 of the Atomic Energy Act of 1954, as amended, authorizes the United States Nuclear Regulatory Commission (NRC) to enter into an agreement with the Governor of a state, for purposes of enabling that state to assume regulatory responsibility for licensing and regulatory control of byproduct, source and less than critical quantities of special nuclear material.

Section 136C.11 of 1984 Iowa Act, H.F. 2110, authorizes the Governor, on behalf of the Iowa State Department of Health (ISDH), Division of Disease Prevention, Environmental Health Section, Radiological Health Program, to enter into an agreement with the NRC. This agreement would provide for the discontinuance of certain responsibilities of the NRC relating to ionizing radiation and the assumption of such responsibilities by the State. A copy of the subject legislation is contained in Appendix I.D.

Radiation Protection in Iowa

Prior to 1979 there was no comprehensive regulation of x-ray or radium within the State of Iowa. Enactment of legislation entitled, "Radiation Emitting Equipment," which became effective January 1, 1979, enabled the ISDH to assure the safe installation, operation, and use of radiation emitting equipment through the process of rulemaking, registration, and inspection. Radiation emitting equipment includes sources of ionizing radiation, such as x-ray machines, accelerators, radium and other radioactive material not under the jurisdiction of the NRC.

In implementing this law, the ISDH established a radiation control program in July 1979 and promulgated rules which became effective July 1, 1980. Although Iowa has made a belated appearance on the radiation control regulatory scene, it has been able to profit from the knowledge gained by other Federal, state, and local programs who have been actively engaged in this activity for many years. In particular, the rules which Iowa adopted were directly extracted from those recommended by the National Conference of Radiation Control Program Directors, Inc., and reflect several decades of experience by other radiation control programs. These rules basically address safety requirements associated with equipment, but also include stipulations regarding maximum exposure levels, operating procedures, safety instructions, warnings, and personnel and patient protection.

Registration and Inspection

On July 1, 1980, the Environmental Health Section's Radiological Health Program (RHP) initiated its registration program for equipment. As of January 1, 1984, approximately 2400 possessors of almost 5000 healing arts x-ray machines

have registered their equipment with the Department. This number includes all healing arts users including hospitals, educational institutions, industries, and state and local agencies. In addition, there are approximately 80 facilities employing non-healing arts x-ray and 20 possessors, of radium registered as are the possessors of 15 particle accelerators. Ninety percent of the registered facilities fall into the healing arts categories.

In addition to registration, the RHP also is conducting comprehensive inspections throughout the State. The radiation emitting equipment inspected to date almost entirely consists of diagnostic x-ray machines employed in the healing arts. As of April 1, 1985, the RHP has inspected over 47 percent of the x-ray tubes and two radium users. Although a wide variety of units were inspected, including newly installed equipment, major emphasis was given to equipment which might pose the greatest risk to public health either because of its antiquity or improper use. Locations of the units and information used in prioritizing were obtained from the registration program.

Approximately 17 percent of the units inspected thus far have been found to possess major items of non-compliance such as the absence of a means to limit the useful beam of the x-ray to the portion of the patient's body which is of clinical interest or the absence of an adequate means of protecting the operator from radiation exposure. An additional 67 percent of the units inspected were found to not conform with aspects of the rules of lesser public health concern. In most cases these minor non-compliances can be rectified by establishment of safety procedures and other instructional guidance to the operator or by adjustment and calibration of equipment. All non-compliance equipment has either been corrected or is in the process of being corrected.

Special Provisions

The 1979 Iowa law and subsequent rules, while diligently following the pathway blazed by other states, does incorporate several new provisions not embarked on by most of the other state programs. These new avenues toward reducing radiation exposure involve the following areas:

(1) Restricting healing arts screening practices;

(2) Establishing operator training requirements;

(3) Maintaining human exposure to radiation at levels which are as low as reasonably achievable; and

(4) Funding a radiation control program from registration/inspection fees paid by possessors of radiation emitting equipment.

Healing Arts Screening

Healing arts screening can be defined as the intentional exposure of individuals to x-ray for diagnostic purposes without the specific and individual order of a licensed practitioner of the healing arts. The Iowa Administrative Code only permits that such screening practices be conducted with the approval of the ISDH. Until the promulgation of these rules there was no legal restriction against the indiscriminate x-raying of persons in the State without involving a licensed practitioner. A number of large industrial employers were regularly hiring out-of-state mobile x-ray services to conduct annual chest x-ray examinations which were in some cases required by the employer or in one instance an employee benefit included in the labor contract. The degree of scrutiny given to analyzing the x-ray films obtained from these screening practices or of assuring the provision of the diagnostic information retrieved from the individuals' personal physicians is highly suspect. Implementation of these regulatory provisions has significantly decreased the observed instances of unwarranted healing arts screening.

These rules are intended to minimize, if not preclude, the screening which is conducted randomly and arbitrarily, and without appropriate pre-selection. Such pre-selection would include the identification of positive reactors to tuberculin skin tests, or other individuals who have a demonstrated increased risk to disease for which x-ray diagnosis is appropriate. For instance, ISDH approval can be and has been justified for chest x-ray screening of workers exposed to asbestos or silicon dusts.

X-ray examination at the discretion and prerogative of an examining licensed practitioner who needs such radiographic information for diagnostic purposes would not, of course, be healing arts screening and, therefore, not subject to restriction. This requirement would hopefully serve to reduce unnecessary x-ray exposure to the public by reducing the number of x-rays taken for purposes of legal liability, insurance claims, workman's compensation, or otherwise where the probability of receiving healing arts benefits is extremely remote.

Operator Training Requirements

January 12, 1983, is the effective date for the State "Minimum Training Standards for Diagnostic Radiographers" (470–42.1(136C)). This rule applies to operators of diagnostic x-ray equipment employed in the healing arts other than dentistry or veterinary medicine. Licensed practitioners in medicine, osteopathy, chiropractic or podiatry also are not covered under the rules. The standard establishes training requirements for two categories of diagnostic radiographers, General and Limited.

General diagnostic radiographers are those who may apply x-ray to any portion of the human body to obtain a radiograph. Successful completion of a two-year training program identical to that which is necessary to obtain national certification is required for the General category.

The Limited category would include those individuals who only radiograph specific portions of the human body, such as chests, extremities or in the practice of chiropractic or podiatry. The training programs for Limited diagnostic radiographers must be specifically recognized by the ISDH and are not expected to exceed approximately 80 hours total class time.

The Conditional diagnostic radiographer category would be made available only by special exemption from these rules and would be temporary in nature. Typically such an exemption may be provided to afford a short, but reasonable period of time, for an individual to commence an acceptable training program. It is difficult to conceive of a situation in which a long-term exemption permitting a Conditional diagnostic radiographer could be justified. Hopefully, this exemption will enable the timely training of operators without undue interference with the provision of healing arts services.

As Low As Reasonably Achievable

As an adjunct to its compliance program, the ISDH is participating in a radiological health initiative with the Food and Drug Administration's (FDA) Bureau of Radiological Health by disseminating educational material on unnecessary radiation exposure in the healing arts. This information has been provided to practitioners and other healing arts facilities for distribution to patients.

This program involves the distribution of consumer information packets to all types of healing arts facilities including medical doctors, osteopathic doctors,

chiropractors, dentists, hospitals, clinics, and numerous specialty type facilities such as podiatry, gynecology, urology, internal medicine, neurology and surgery. The program is scheduled to continue indefinitely with radiation inspectors and other field personnel distributing the packets. The information being disseminated is not new. It has long been recognized in the field of radiation protection. The new aspect of this program is that it emphasizes the role of the consumer in protection effects.

Since this program so very directly relates to diagnostic x-rays, a valuable tool of the healing arts, it seems only appropriate that dissemination of this information be closely associated with healing arts facilities.

The ISDH also is cooperating with the FDA in its "Dental Exposure Normalization Technique"

This activity is primarily directed towards reducing patient exposure through quality assurance programs at dental facilities. The Iowa Dental Association has expressed its support of this program and is actively nurturing cooperation within the dental community.

Further emphasis towards encouraging reduction in patient exposure from medical x-ray procedures through voluntary quality assurance program emphasis is contemplated for the future. Physical demonstration of financial, as well as patient exposure savings, is expected to be an effective method of obtaining cooperation from the community.

The activities of the RHP are supported, to a large degree, from fees paid by registrants of radiation emitting equipment. This method of fiscal support is based on the statutory requirement for fees in amounts sufficient to defray the cost of administering this program. The apportionment of fees approximates as closely as possible the ISDH resources necessary to administer this program in relation to each registrant. In developing the fee, we attemped to maintain consistency with fees other states were charging for equipment as well as the method employed in assessing these fees. The fee schedule as it now exists is our best estimate of what is needed to defray the cost of this regulatory program. The variation in the fees reflects differences in equipment complexity and potential public health impact moderated by an equalizing tendency of an overall registration program. The person having legal possession of radiation emitting equipment is considered the registrant of that equipment and the person responsible for paying the fee. Fees range from $20.00 for an individual industrial x-ray unit to a maximum of $250.00 for facilities possessing 16 or more medical x-ray machines.

Other Activities

Basically the Iowa RHP is similar to those being implemented in most other states, with the slight exception of the features described above. Currently, major emphasis is being given to reducing exposure from diagnostic x-ray because of its overall contribution to that total populations's exposure from man-made radiation sources.

In addition to fulfilling its responsibilities under the Radiation Emitting Equipment Act, the Agency also serves to provide State government with radiological health expertise, particularly in the event of nuclear emergencies. This activity involves consulting with other agencies on such subjects as transportation of radioactive material, low-level radioactive waste disposal, radioactive contamination, protective action guides for radioactively contaminated agriculture products and medical radiological response. In the unlikely event of a nuclear emergency in Iowa, personnel from the Environmental Health Section would report to the State Emergency Operations Center and primarily perform the following functions:

1. Receive and interpret data regarding radioactivity releases to the environment or the potential for such releases;

2. Perform calculations to ascertain the resultant levels of radioactivity affecting persons;

3. Evaluate the impact of these radioactivity levels of the public health; and

4. Translate this health physics evaluation to the decision makers and assist them in making protective action decisions.

In addition to this formalized response, the agency also provides consultative and training services to the public and regulated sectors relating to radiation safety. Investigations of complaints, minor accidents and suspected radiation problems are conducted on request as staff and resource limitations permit.

New Legislation

The second session of the 70th Iowa General Assembly (1984) passed H.F. 2110 (Appendix I,D). This legislation provides the authority for the Governor to enter into an agreement for the assumption of certain licensing and regulatory functions of the NRC. Rules which will facilitate the transition of authority from the NRC to the State radiation control group have been promulgated. We are aware of the need to periodically update rules to maintain compatibility. Work is underway to address appropriate revisions of the current rules. Draft rule changes will be submitted to NRC for review and comment.

Organization, Functions and Responsibility

The 18th General Assembly of Iowa established a State Board of Health in March 1880. The purpose of the Board was to provide for collecting vital statistics, to assign certain duties to local boards of health, and to punish neglect of duties. The Board consisted of nine members which included the State Attorney General, one civil engineer, and several physicians.

The State Board of Health and State Department of Health first appeared in the Iowa Code in 1897. The current legislation for this Board and Department is:

1. Chapter 136, The Code, stipulates that the Board is the policy making body for the Department of Health having powers and duties to:

a. Consider and study the entire field of legislation and administration concerning public health, hygiene and sanitation.

b. Advise the Department relative to:

i. The causes of disease and epidemics and the effect of locality, employment and living conditions upon public health

ii. The sanitary conditions in the educational, charitable, correction and penal institutions in the State

iii. Communicable and infectious disease including zoonotic diseases, quarantine and isolation, venereal diseases, antitoxins and vaccines, housing and vital statistics

c. Establish policies governing the performance of the Department in the discharge of any duties imposed on it by law.

d. Establish policies for the guidance of the Commissioner in the discharge of his duties.

e. Investigate the conduct of the work of the Department and for this purpose it shall have access at any time to all books, papers, documents and records of the Department.

f. Advise or make recommendations to the Governor or General Assembly relative to public health, hygiene and sanitation.

g. Adopt, promulgate, amend and repeal rules and regulations consistent with law for the protection of public health and for the guidance of the Department. All rules which have been

or are hereafter adopted by the Department shall be subject to approval by the Board.

2. Chapter 135, The Code, stipulates that the Commissioner of Public Health is the head of the State Department of Health having the power and duties to:

a. Exercise general supervision over the public health, promote public hygiene and sanitation and, unless otherwise provided, enforce the laws relating to same.

b. Conduct campaigns for the people in hygiene and sanitation.

c. Issue monthly health bulletins containing fundamental health principles and other data deemed of public interest.

d. Make investigations and surveys with respect to the causes of disease and epidemics and the effect of locality, employment, and living conditions on the public health.

e. Make inspections of the sanitary conditions in the educational, charitable, correctional, and penal institutions in the State.

f. Make inspections of the sanitary conditions in any locality of the State upon written petition of five or more citizens from said locality and issue directions for the improvement of the same which shall be executed by the local board.

g. Establish, publish, and enforce a code of rules governing the installation of plumbing in cities.

h. Exercise general supervision of the administration of the housing law and give aid to the local authorization in the enforcement of the same.

i. Enforce the law relative to the "Practice of Certain Professions Affecting the Public Health."

j. Establish and maintain such divisions in the Department as are necessary for the proper enforcement of the laws administered by it including a division on contagious and infectious disease, a division of venereal disease, a division of vital statistics and a division of examinations and licenses; but the various services of the Department shall be so consolidated as to eliminate unnecessary personnel and make possible the carrying on of the functions of the Department under the most economical methods.

k. Establish, publish and enforce rules not inconsistent with law for the enforcement of the provisions of this title and for the enforcement of the various laws, the administration and supervision of which are imposed upon the Department.

l. Establish standards for issuing permits and exercise control over the distribution of venereal disease prophylactics distributed by methods not under the direct supervision of a licensed physician under Chapters 148, 150 or 150A or a pharmacist license under 147. Any person selling, offering for sale or giving away any venereal disease prophylatic in violation of the standards established by the Department shall be fined not exceeding five hundred dollars and the Department shall revoke this permit.

m. Administer the statewide public health nursing and homemaker-home health aide programs by approving grants of state funds to the local boards of health and county boards of supervisors and by providing guidelines for the approval of the grants and allocations of the State funds.

The Department has two assistants to the Commissioner who are responsible for (1) Central Administation and Professional Licensure, and (2) Health Planning and Development. There are also four division directors responsible for (1) Health Facilities, (2) Disease Prevention, (3) Personal and Family Health, and (4) Community Health. A chart showing the present organization of the Department of Health is contained in Appendix IIA.

Funding for the Department is both State and Federal. Federal Block Grants are used to fund many of the Department's programs. Funds for the RHP are 19 percent Federal contract money, 40 percent from registration fees and 41 percent state funds.

Although our legislation to regulate radiation producing machines and radioactive materials does not mandate the appointment of an advisory committee, such a committee has been appointed by the Commissioner of Health and is called the Ad Hoc Committee on Rules for Radiation Emitting Equipment. The current committee is made up of 20 individuals representing engineering, diagnostic radiography, nuclear medicine, dentistry, veterinary medicine, chiropractic, podiatry, manufacturers, industry, allied health organizations and public interest groups. Appendix III is a list of the membership of the present committee. This committee's responsibilities are to act as a techincal resource and a review mechanism for rules promulgated by the Department. The committee is strictly advisory and final decisions are reserved for the Commissioner based on staff recommendations. Any conflict of interest on the part of the advisory committee would be taken into consideration in the staff review. The RHP of the Environmental Health Section has the authority to regulate the use of all sources of ionizing radiation, except those it may exempt or are under the jurisdiction of the Federal government. A chart showing the organization of the Environmental Health Section is shown in Appendix IIB.

All members of the RHP staff have experience in health physics and are in the process of receiving specialized training relating to radioactive materials. Professional staff including both new and existing personnel will continue attending NRC training courses as they become available to attain and maintain a high level of technical competency. Responsibilities, background and experience of radiation control personnel are given in Appendix IV.

The RHP is within the Environmental Health Section of the Division of Disease Prevention. The Section Director is responsible for signing licenses and overall general supervision of the Program. The Coordinator of the RHP will be responsible for supervising the review of license applications and the justification and writing of all licenses. This individual will also review all inspection reports and be responsible for corresponding with licensees to advise them of items of non-compliance found during inspections and eliciting compliance. The Coordinator will spend one-third of a person-year on agreement state program activities. A senior staff member of the RHP will be responsible for conducting license application review and preparation of licenses. He will have lead responsibility for inspection of licensees and investigation of incidents pertaining to radioactive materials. This staff person will also be an integral part of all emergency response efforts. It is anticipated that a major portion of this individual's time will be spent on the agreement state program. Prior to consummation of the agreement a position will be established to provide secretarial support for this program. It is also anticipated that the RHP professional staff will be trained and used in the radioactive materials program to do routine inspections. It is expected that the total personnel time devoted to the radioactive materials program will be at least two-person-years.

Within Iowa the Departments of Health, Water, Air and Waste Management, Transportation and the Bureau of Labor also have authority regarding radioactive materials. To avoid duplication of effort, promote coordiation of radiation protection activities and assure uniform regulation and timely investigation of all potentially hazardous situations

resulting from radioactive material, appropriate interagency agreements are necessary. The Iowa Code (Appendix IB) permits state and local governments in Iowa to make efficient use of their powers by enabling them to provide joint services and facilitate with other agencies and to cooperate in other ways of mutual advantage. To consolidate the radiological health activities the Iowa State Department of Health has entered into 28E Agreements with the Department of Water, Air and Waste Management, the Department of Transportation and the Bureau of Labor. Appendix IB.1, 2 and 3 contains copies of the subject legislation and a copy of each of the 28E agreements.

Scope of Activities

The RHP administers the regulatory program associated with licensing of radio-active materials and registration of radiation machines, special projects and emergency response. Chapter 136C, The Code, (Attachment I, D) outlines the Department's duties. General laboratory services for the State are provided by the University Hygienic Laboratory (UHL) at the University of Iowa, Iowa City. Laboratory analysis needed by the RHP would be provided by the UHL through a contractual agreement to be established prior to the signing of the NRC agreement. Also, as part of this contractual agreement we will make provision to obtain environmental surveillance data generated by UHL.

Base on a review of NRC licensees in Iowa it would appear that there is not an immediate need for the RHP to have environmental surveillance capabilities. As we progress into the agreement state program, should the need arise, we will take whatever action is necessary to verify environmental surveillance data provided by a licensee or to conduct environmental surveillance activities to determine if a public health problem exists and to determine the extent of such a problem.

Within Iowa there are 5,251 registered radiation machine tubes which includes 2,752 dental tubes, 1,822 medical tubes, 398 chiropractic tubes, 68 podiatry tubes, and 195 tubes used for non-healing arts purposes. These tubes are all contained in 2,451 registered facilities. There are 27 linear accelerators registered with the Program. Eighteen are used for medical therapy purposes and nine are used for industrial purposes. We also have 24 facilities registered who use NARM products. As of March 1, 1985, there are 172 NRC licenses in Iowa. It is anticipated that the State will assume approximately 170 of these licenses.

At this time, the State does not wish to assume authority over uranium milling activities or the commercial disposal of low-level radioactive waste. The State, however, reserves the right to apply at a future date to NRC for an amended Agreement to assume authority in these areas.

Regulatory Procedures and Policy

Licensing and Registration

Chapter 136C, The Code, requires licensing of all radioactive materials and radiation machines except for sources of radiation which are specifically exempted by rule. Fees are charged for radiation machine registration as set forth in 470–38.13(1) of our Radiation Emitting Equipment Rules, Title IV. 470–38.13(2) sets forth the provision that a license and inspection fee for radioactive materials will be based on the provisions of 10 CFR Part 170.

Licensing procedures are being developed and will be consistent with those of the NRC. A draft licensing application and sample forms contained in Appendix V will be used in conjunction with licensing and regulatory guides patterned after NRC documents.

General licenses are provided by rule without filing an application with the Department or the issuance of a licensing document. General licenses will be issued for specified materials under specified conditions when it is determined that the issuance of specific licenses is not necessary to protect the public health and safety. Specific licenses or amendments thereto will be issued upon review and approval of an application. A specific license will be issued only to named persons or facilities under the supervision of a named person and will incorporate appropriate conditions and expiration date. A pre-licensing inspection will be conducted when appropriate.

The Department will establish a subcommittee of our Ad Hoc Committee on Rules for Radiation Emitting Equipment and seek its advice and consultation regarding all applications for non-routine medical use of radioactive materials. Appropriate research protocols will be required as a part of such an application. The Department will maintain knowledge of current developments, techniques and procedures for medical use applicable to the licensing program through continuing contact and information exchange with the NRC, other agreement states and the medical profession.

The registration and inspection program for radiation producing machines will continue and the use and inspection of NARM will be phased into the radioactive materials program.

Inspection Program

The Department has an inspection/compliance program for radiation machines which is similar to that which will be established for the radioactive materials program. Inspections for the purpose of evaluating radiation safety and determining compliance with appropriate rules and provisions of licenses will be conducted as scheduled or in response to requests or complaints. Inspection frequency will be based upon the extent of the potential hazard and experience with the particular facility. Inspection priorities may be changed on a case-by-case basis consistent with current NRC practices. It is anticipated that the state inspection of licensees will be conducted in accordance with the following inspection frequency chart.

License type	Inspection frequency
Industrial Radiography	1 year.
Broad Medical	2 years.
Broad Academic	2 years.
Nuclear Pharmacy	2 years.
Research and Development	3 years.
Broad Industrial (A & B)	3 years.
Nuclear Medicine	3 years.
Teletherapy	3 years.
Broad Industrial (C)	5 years.
Non-Medical Group	5 years.
Mobile Gauges	5 years.
Limited Industrial	6 years.
Academic (not covered above)	6 years.
Gauges, Calibrators, etc.	Initial.[1]

[1] As needed.

All license type/inspection frequency not covered above will be inspected based on NRC criteria.

Inspections will be conducted on an unannounced basis unless the Department determines that an announced inspection is more appropriate. Written inspection procedures developed with NRC guidance will be followed in conducting inspections and preparing reports.

The RHP has personnel trained in regulatory practice and procedures. Additionally, program personnel continue to accompany NRC inspectors during their field inspections in Iowa to gain a higher degree of competency in evaluating radiation safety and to determine compliance with appropriate regulations and license provisions. Inspections will include the observation of pertinent facilities, operators and equipment; a review of the pertinent records and of radioactive materials—all as appropriate to the scope of the activity, conditions of the license and applicable rules. In addition,

independent measurements will be made as appropriate.

At the start and conclusion of an inspection, personal contact will be made at management levels whenever possible. Following the inspection, results will be discussed with management. Prompt investigations and reports will be made of all reported or alleged incidents to determine the cause, the steps to be taken for correction, and the prevention of similar incidents in the future.

Compliance and Enforcement

Compliance with rules and license conditions will be determined by inspections and evaluation of inspection reports. When there are items of non-compliance, the licensee or registrant will be informed at the time of inspection as follows:

1. When the items are minor and the licensee or registrant agrees at the time of inspection to correct them, written inspection findings will be prepared which will list the items of non-compliance, confirm any corrections made during the inspection, and require acknowledgment by the person interviewed. The licensee or registrant will be informed that a review of any corrective action items will be conducted at the time of the next regular inspection or by a reinspection.

2. When the non-compliance is considered serious, the person interviewed will be informed at the time of the inspection. Written notification of inspection findings will be sent to the licensee or registrant which will delineate the items of non-compliance and require a written response within 30 days of the written notification date. The response from the license or registrant shall include a correction action plan and a timetable which will outline the completion dates for correcting all non-compliance items.

3. If no reply is received to the initial written notification within the specified time, a regulatory letter will be sent to management. This letter will order compliance and advise that if corrective action is not initiated, the Department will seek appropriate penalties and direct remedial relief.

4. Continued non-compliance as determined by a reinspection, if appropriate, or by failure to respond within five days of the regulatory letter could result in Departmental action as outlined in 470–38.9(5) of our Radiation Emitting Equipment Rules, Title IV. The Departmental action may include one or a combination of the following:

a. Impound or order the impounding of radioactive material in accordance with Iowa Code, Section 136C.5 Subsection 5.

b. Impose an appropriate civil penalty.

c. Revoke a radioactive materials license.

d. Request the County Attorney or the Attorney General to seek court action to enjoin violations and seek conviction for a simple misdemeanor.

e. Take enforcement action that the Department feels appropriate and necessary and is authorized by law.

The Department uses its best efforts to attain compliance through cooperation and education prior to initiating the formal legal procedures outlined above.

Upon request by a licensee or upon the determination by the Department, the terms and conditions of a license may be amended, consistent with our legislation or rules, to meet changing conditions in operations or to remedy technicalities of non-compliance.

Effective Date of License

Any person who possesses a license for agreement materials issued by the NRC, on the effective date of the agreement with the NRC, shall be deemed to possess a like license issued by the Department which shall expire either 90 days after the receipt from the Department of a notice of expiration of such license or on the date of expiration specified in the Federal license, whichever is earlier.

Administrative Procedures

The basic standards of procedures for administrative agencies in the State of Iowa are set forth in Chapter 17A, The Code (copy in Attachment IA). The Department will follow the provisions of this Chapter, Chapter 136C, The Code, which is the act relating to the Regulation of Radiation Machines and Radioactive Material and the Department's Radiation Emitting Equipment Rules, Title IV, with respect to hearings, issuance of orders and judicial review of findings.

Compatibility and Reciprocity

In promulgating the present Radiation Emitting Equipment Rules, Title IV, the Department has, insofar as practicable, maintained compatibility with NRC and agreement state regulations, has avoided requiring dual licensing and has provided for reciprocal recognition of other agreement states and Federal licensees.

Through these rules the State has adopted radiation protection standards and will strive to maintain compatibility with NRC and other agreement states. The Department will also cooperate with NRC and other agreement states in interchanging information and statistics relating to control of radioactive materials.

Interagency Agreements

Interagency agreements are provided for in Chapter 28E, The Code, (copy in Appendix IB). Currently the ISDH has 28E Agreements with the Iowa Bureau of Labor, the Iowa Department of Transportation, and the Iowa Department of Water, Air and Waste Management. (Copies of each agreement are attached to appropriate legislation in Appendix IB.1, 2 and 3.) The purpose of each is to avoid duplication of effort and to promote coordination of radiation protection activities; assure uniform regulation of the use, manufacture, production, distribution, sale, transport, transfer, installation, repair, receipt, acquisition, ownership and possession of radioactive materials from a radiological health and safety standpoint relating to the exposure of individuals, and to assure timely investigation of all potentially hazardous situations resulting from radioactive material.

Radiation Laboratory Services

The RHP has or will be obtaining the equipment to have the capability of evaluating samples collected during routine inspections and for making independent measurements. The current equipment the program has is listed in Appendix VI. We have included in our 1985–86 budget request $10,500.00 for new equipment which will include additional ion chambers, alpha detection process, a neutron measurement device, audible personnel monitoring devices, etc. We have a good working relationship with Iowa State University (ISU), the University of Iowa (U of I), and the University (State) Hygienic Laboratory (UHL). These institutions have very good radiation measurement inventories and in the past we have been able to borrow equipment as the need arises. All instruments used for inspection and emergency response will be calibrated on the basis recommended by NRC.

Iowa has an environmental surveillance program. It is conducted by the State University Hygienic Laboratory (UHL) and includes radiological analyses of air, surface and drinking waters and milk samples taken State-wide. The UHL also conducts a radiological surveillance program around the Duane Arnold power reactor site under contract with NRC. If, in the future, the State licenses a facility having a potential for a significant radiological impact upon the environment, the State has the

capability to develop a site-specific environmental surveillance program. The Iowa enabling legislation empowers the State to charge the licensee a fee to recover the costs of such a program.

The three institutions mentioned above have the capability to do gamma spectroscopy and gross alpha-beta counting of environmental sample. In most cases UHL will be used because it is the agency which provides laboratory services for the State of Iowa. If the UHL is unable to perform necessary tests, assistance will be requested from the appropriate Federal agency.

Emergency Response

The RHP has technically trained personnel and specialized equipment to investigate and evaluate incidents involving ionizing radiation. The program continues to prepare for such response by providing the following:

1. Trained staff for advisement required to meet any given situation.

2. Trained and equipped staff for emergency field activities. If the magnitude to the incident would be too great, assistance could be obtained from the three state emergency response teams which are located at ISU, U of I and UHL.

3. Transportation to the incident site via private auto or by any type of state mode of transportation which would be necessary for prompt response.

4. Established liaison with appropriate Federal officials.

5. Training of key personnel of other State/local agencies.

Radiological assistance in the form of monitoring, liaison with appropriate authorities and recommendations for area security and cleanup are provided by the Department. All program personnel will be maintained at an operation-ready level of training. This will be accomplished by training received in house and from Federal agencies.

Appendix VIIA is the portion of the Nuclear Power Plant Emergency Plant Response criteria of the Iowa Emergency Plan which relates to the ISDH activities. The Plan addresses only off-site releases from fixed nuclear facilities. Upon review you will note that it is the responsibility of the Department to advise the Iowa Office of Disaster Services (ODS) of the extent of the hazard to the public health and safety and recommend protective actions as necessary.

In Appendix VIIB is the portion of Annex E of the Iowa Emergency Plan which outlnies the telephone procedure for a radioactive material incident. This Annex is currently being revised to address State actions to be taken regarding radioactive material spills, overexposures, transportation accidents, fires or explosions, theft, etc., and to update the guidance materials incorporated into the plan. All licensees will be given a copy of Annex E and instructed in the proper method of reporting incidents.

[FR Doc. 85-23305 Filed 9-30-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Proposed Model Conservation Standard Amendments, Reopening of Comment Period

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of Reopening Comment Period for Proposed Model Conservation Standard Amendments, Public Hearings and Opportunity for Additional Consultation.

SUMMARY: The **Federal Register** of July 26, 1985, at pages 30654 through 30661, contained a notice of proposed amendments to portions of the Northwest Conservation and Electric Power Plan (Plan) that relate to the Model Conservation Standards (MCS). The notice described the proposed amendments, explained how to obtain additional information, and outlined the process for submitting comments and participating in public hearings. During the public comment period, the Council also released to those who requested copies, and noticed in the **Federal Register** of September 11, 1985 at pages 37099 through 37100, two additional documents that provided updated technical background information relevant to the proposed amendments. The notice described the additional documents and explained how to obtain copies of them. On September 13, 1985 at 5:00 p.m., Pacific time the comment period closed for the proposed MCS amendments. In response to public comments received and the ongoing study and analysis conducted by its staff, the Council voted at its regularly scheduled Council meeting in Portland, Oregon on September 19, 1985 to reopen the comment period for the proposed MCS amendments. This notice describes issues contained in the most recent formulation of the proposed MCS amendments, explains how to obtain a copy of the staff analysis describing the current formulation of the proposed amendments, and gives notice of further opportunity to submit public comments and to consult with members of the Council regarding the substance of the proposed amendments. The Council currently expects to take final action on proposed MCS amendments at its October 30–31, 1985 meeting in Boise, Idaho. The actual date on which the Council will make its final decision will be announced in accord with applicable law and the Council's practice of providing notice of its meeting agendas.

DATES AND ADDRESSES: Additional written comments regarding the proposed MCS amendments will be accepted at the Council's central office (Suite 1100, 850 SW Broadway, Portland, Oregon 97205) until 5:00 p.m., Pacific time, on October 21, 1985. Members of the Council will meet for further consultation with the public regarding the amendments at its offices in Portland beginning at 10 a.m. on Monday, October 7, 1985 and Wednesday, October 16, 1985. These consultations will consist of informal presentations describing the Council's current deliberations regarding the MCS amendments, with the opportunity for discussion, consultation, questions and answers. Formal testimony need not be prepared. In addition, members of the public may present oral comments regarding the current formulation of the proposed MCS amendments during public hearings already scheduled for consideration of the Council's draft revision of its Plan. As noticed in the **Federal Register** of September 11, 1985 at page 37100, those hearings are scheduled for:

- Missoula, Montana, 9 a.m., October 11, 1985, at the Village Red Lion, 100 Madison;
- Salem, Oregon, 10 a.m., October 15, 1985, at the Employment Building Auditorium, 875 Union Street NE;
- Boise, Idaho, 10 a.m., October 17, 1985, at the Downtowner Red Lion, 1800 Fairview; and
- Seattle, Washington, 9 a.m., October 21, 1985, at the Federal Building South Auditorium, 915 Second Avenue.

At those hearings, comments will first be taken regarding the drat Plan revision. After all such comments have been presented, comments will be taken regarding the proposed MCS amendments.

Guidelines for Presenting Oral Comments at Hearings

1. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordinator, at the Council's central office (850 SW., Broadway, Suite 1100, Portland, Oregon 97205 or (503) 222-

5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon) no later than two business days before the hearing. Please specify whether you intend to address the proposed MCS amendments, the draft revised Plan, or both.

2. Those who do not reserve a time period will be permitted to present oral comments as time permits.

3. Use the hearing to summarize written comments. The comments themselves should not be read.

4. If possible, ten (10) copies of written comments should be submitted to the Council reporter at the hearings. This person will be sitting at a table near the Council members and will be identified at the start of the hearing by the chairman. When preparing these copies, refer to the guidelines below for written comments.

5. Comment time may be limited if the number of people signed up to testify is so large that it will be necessary to impose limits to allow all commenters an opportunity to speak. A 15-minute guideline is suggested.

6. Appearance at more than one hearing is unnecessary. At each hearing, scheduling preference will be given to individuals and groups who have not testified at earlier hearings.

Guidelines for Submitting Written Comments

1. All written comments concerning the current formulation of the proposed MCS amendments must be received in the Council's central office, 850 SW., Broadway, Suite 1100, Portland, Orgeon, 97205 by 5 p.m. Pacific time on Monday, October 21, 1985. Comments should be directed to the attention of Dulcy Mahar at this address.

2. Comments should be clearly marked "MCS Comments".

3. Please type comments, if possible. Use only one side of the paper.

4. Provide ten (10) copies of all comments and supporting materials if at all possible.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, Information Coordinator, at Suite 1100, 850 SW Broadway, Portland, Oregon, 97205 or (toll-free) 1-800-222-3355 from Montana, Idaho, Washington, and California; (toll-free) 1-800-452-2324 in Oregon; or (503) 222-5161.

SUPPLEMENTARY INFORMATION: During the seven week period afforded for public comment and hearings regarding the proposed MCS amendments, more than 100 written comments were received and more than 40 persons made oral presentations at MCS hearings held in Montana, Idaho, Washington, and Oregon. At the hearings, members of the Council frequently asked questions of those who made oral presentations and requested updated information and analysis in important areas. The Council carefully reviewed the comments that were received. The Council also released for public review two documents that provided updated MCS conservation measure costs reported from the Residential Standards Demonstration Program (RSDP) so that the public might address the following issues raised by the MCS amendments: timing and level of the standards, economic feasibility for the consumer, cost-effectiveness for the region, indoor air quality and heat recovery ventilators, early adoption of building codes meeting the MCS, and marketing or incentive programs to encourage energy-efficient housing.

As part of the rulemaking process, the proposed amendments have evolved in several respects. The Council highlights the following features of the proposed amendments as they have evolved and invites further comment regarding these particular aspects of the proposed amendments:

- The appropriate deadline for implementation of the standards;
- The appropriate interim progress to be required to insure compliance with the standards;
- Acquisition payments to home buyers or builders required to achieve the standards, and allocation of such payments between utilities and the Bonneville Power Administration;
- Surcharges for failure to achieve compliance with the standards or failure to adopt programs designed to achieve the standards; and
- The need for the standards to insure indoor air quality comparable to that achieved under current building practices.

With the reopening of the MCS comment period, the new deadline for submission of comments regarding the proposed MCS amendments will occur after public hearings are held on the draft revised Plan (October 21, 1985), but before the deadline for submission of comments on the draft revised Plan (October 25, 1985). The Council is aware that certain issues in the two proceedings are interrelated. Specifically, the role of the Model Conservation Standards in relation to the resource portfolio of the Power Plan is an issue on which comments will be appropriately received in the Power Plan rulemaking proceeding. However, as noted in previous notices regarding the MCS amendments, the MCS rulemaking is distinct from the Draft Power Plan rulemaking proceeding. Accordingly, comments on the MCS amendments should be submitted in writing before October 21, 1985, at the MCS consultation sessions, or during the public hearings scheduled October 11, 15, 17 and 21 for consideration of both the MCS amendments and the draft revised Plan.

Copies of the staff analysis describing the current formulation of the proposed amendments have been mailed to those included on the Council's MCS mailing list. Others may request copies from the Council's Director of Public Information and Involvement at the address and telephone numbers listed above.

Rick Applegate,

Executive Assistant.

[FR Doc. 85-23347 Filed 9-30-85; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-7533]

Issuer Delisting; Notice of Application To Withdraw From Listing and Regulation; Federal Realty Investment Trust

September 25, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the Common Shares of Beneficial Interest, No Par Value, of Federal Realty Investment Trust from listing and registration on the American Stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Federal Realty Investment Trust considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common shares on the New York Stock Exchange and the American Stock Exchange. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common shares.

Any interested person may, on or before October 11, 1985 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20545, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The

Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-23429 Filed 9-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22447; File No. SR-Amex-85-28]

Self-Regulatory Organizations; Approval of Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Emergency Procedures for the Execution of AUTOAMOS Orders

September 23, 1985.

The American Stock Exchange, Inc. ("Amex" or "Exchange") submitted on August 2, 1985, 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 permit the implementation of emergency procedures for the execution of AUTOAMOS orders during unusual market conditions.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 22307, August 9, 1985) and by publication in the **Federal Register** (50 FR 32932, August 15, 1985). No comments were received with respect to the proposed rule filing.

Under current procedures, AUTOAMOS orders are exposed to the crowd by the specialist for execution at the best available price. Executions may be against an order on the book, the specialist as principal, or one or more brokers or traders in the crowd. To complete the transaction, information identifying the broker(s) on the other side of the AUTOAMOS trade ("contra-broker(s)") is entered on a touch-screen terminal located at the post by the specialist, and a report is automatically sent back to the firm initiating the order.

In its filing, Amex states that AUTOAMOS has proven to be a highly efficient system during usual market conditions of moderate order flow, but becomes less efficient during "breakout" situations (*i.e.*, when there is an extremely large influx of both system and non-system orders). Delays in the execution and reporting of AUTOAMOS orders during breakout periods result primarily from the requirement that specialists expose each AUTOAMOS order to the trading crowd. In order to alleviate this situation, Amex proposes that when a breakout occurs, a specialist be permitted to execute AUTOAMOS orders against the book or against himself, as principal, without exposing the order to the crowd.[1]

Under the proposed rule change, limit orders would continue to be protected at all times because specialists would continue to fulfill their agency obligations for all orders entrusted to them before executing an AUTOAMOS order as principal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization and, in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission believes the proposal should benefit public customers, member firms and Amex floor brokers by ensuring that AUTOAMOS functions efficiently during periods of peak volume. In addition, the proposed emergency procedures should allow Amex specialists more time to handle non-system orders during these periods. The Commission, therefore, is approving the proposal on a one-year pilot basis. The Commission believes that a pilot is appropriate because it will allow the Amex sufficient time to collect data on the number and frequency of breakout situations, and the effect, if any, on the Amex trading crowd of not having AUTOAMOS orders exposed to them during breakouts.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved for one year, commencing on the date when the emergency procedures are implemented.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 24, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-23430 Filed 9-30-85; 8:45 am]

BILLING CODE 8010-01-M

[1] A breakout situation could be declared and terminated with the authorization of two Floor Governors.

Release No. 34-22456; File No. SR-CBOE-85-40]

Self-Regulatory Organizations Proposed Rule Change by Chicago Board Options Exchange, Incorporated; Relating to Position Limits (Treasury Bonds and Notes)

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 September 19, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Position Limits (Treasury Bonds and Notes)

Rule 21.3. Except with the prior written permission of the President or his designee, no member shall make, for any account in which it has an interest or for the account of any customer, an opening transaction on any exchange in any class of Treasury securities options if the member has reasons to believe that as a result of such transaction the member or its customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an amount of options on a Treasury security, for example, the 14% bonds due in the year 2011, (whether long or short) of the put class and the call class on the same side of the market covering in excess of (i) $100 million principal amount of underlying Treasury securities where the initial or reopened public issuance is $1 billion to less than $2 billion, (ii) $200 million principal amount of underlying Treasury securities where the initial or reopened public issuance is $2 billion to less than $4 billion, (iii) $400 million principal amount of underlying Treasury securities where the initial or reopened public issuance is $4 billion [or more] *to less than $6 billion, (iv) $600 million principal amount of underlying Treasury securities where the initial or reopened public issuance is $6 billion to less than $8 billion, (v) $800 million principal amount of underlying Treasury securities where the initial or reopened public issuance is $8 billion to less than $10 billion, (vi) $1 billion*

principal amount of underlying Treasury securities where the initial or reopened public issuance is $10 billion or more, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options of [iv] *vii* such other amount of options as may be fixed from time to time by the Board as the position limit for one or more classes or series of options. Reasonable notice shall be given of each new position limit fixed by the Board, by posting notice on the bulletin board of the Exchange.

Rule 21.4. Except with the prior written permission of the President or his designee, no member shall exercise, for any account in which it has an interest or for the account of any customer, a long position in options on a Treasury security, for example, the 14% bonds due in the year 2011, where such member or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised with any five consecutive business days, or with any when-issued period, aggregate long positions in an amount of Treasury security puts or calls covering in excess of (i) $100 million principal amount of underlying Treasury securities where the initial or reopened public issuance is $1 billion to less than $2 billion, (ii) $200 million principal amount of underlying Treasury securities where the initial or reopened public issuance is $2 billion to less than $4 billion, (iii) $400 million principal amount of underlying Treasury securities where the initial or reopened public issuance is $4 billion [or more] *to less than $6 billion, (iv) $600 million principal amount of underlying Treasury securities where the initial or reopened public issuance is $6 billion to less than $8 billion, (v) $800 million principal amount of underlying Treasury securities where the initial or reopened public issuance is $8 billion to less than $10 billion, (vi) $1 billion principal amount of underlying Treasury securities where the initial or reopened public issuance is $10 billion or more,* or [(iv)] *(vii)* such other amount of options as may be fixed from time to time by the Board as the exercise limit for a class or series of options. Exercises of puts and exercises of calls are not combined for purposes of this exercise limit. Reasonable notice shall be given of each new exercise limit fixed by the Board, by posting notice on the bulletin board of the Exchange.

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 and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Recently, the size of U.S. Treasury securities issues has grown dramatically. In some cases the size has more than doubled because the Treasury has reopened certain issues (i.e., sold the same issue at more than one auction). This has been coupled with a greater volume in Government securities options trading. The tiering approach to position limits in Government security options has worked well, but now that the size of recent issues has ranged up to approximately $11 billion, the ability of market participants to hedge effectively their positions has been undermined by the lower position limits currently in place.

The proposed rule change offers increases in position limits to realistic levels, while maintaining essentially the same relationship between the position limits and the size of the underlying offering as is presently the case. The Commission most recently approved this approach to increasing Government Securities options position limits in Exchange Act Release 20454 (December 6, 1983), in 48 FR 55662 (December 14, 1983). In that Release, the Commissioner approved the Exchange's adding a $400 million position limit where the underlying market is $4 billion or greater. Previously, the top position limit had been $200 million. Because of the dramatic increase in the size of the underlying issues since 1983, the new proposed rule change continues the same tiering concept by increasing the position limit by $200 million for each additional $2 billion in the underlying offering up to a $1 billion limit for issues of $10 billion or greater. The exercise limits in Rule 21.4 would also be amended to conform with the changes to position limits in Rule 21.3, as currently is the case.

The Exchange believes that the proposed rule change is consistent with the Securities Exchange Act of 1934 and in particular Section 6(b)(5) thereof, in that the proposed change will facilitate trading in Government security options and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange received a letter of comment which urges position limit relief in Treasury Bond and Note Options. A copy of the letter, to the Exchange from Lawrence J. Latto and Jeffrey C. Martin, dated August 27, 1985, is available at the Commission and the CBOE.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 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 October 22, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 25, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-23431 Filed 9-30-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

September 24, 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 securities: Rockefeller Center Properties, Inc., Common Stock, $.01 Par Value (File No. 7-8623).

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 11, 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, DC 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. 85-23446 Filed 9-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22453 File No. SR-CBOE-85-26]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Incorporated; Relating to Transactions off the Exchange

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 June 26, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Test of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Transactions Off the Exchange

Rule 6.49.

(a) Except as otherwise provided by this Rule, no member acting as principal or agent may effect transactions in any class of option contracts listed on the Exchange for a premium in excess of $1.00 other than (i) on the Exchange, (ii) on another exchange on which such option contracts are listed and traded, and (iii) in the over-the-counter market if the stock underlying the option class was a Tier 1 National Market System security under SEC Rule 11Aa2-1(b)(1), *or in the case of an index option, if all the component stocks of an index underlying the option class were Tier 1 or Tier 2 National Market System Securities under SEC Rule 11Aa2-1(b)(1)-(2),* at the time the Exchange commenced trading in that option class, unless the member has attempted to execute the transaction on the floor of the Exchange and has reasonably ascertained that it may be executed at a better price off the floor.

(b)—(c) No change.

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 and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Rule 6.49 was recently amended to accommodate the Commission's rulings on options on over-the-counter stocks ("OTC stocks"). See SR-CBOE-85-17 and the Commission's Release approving the proposed rule change, Securities Exchange Act Release No. 22104 ("The Release"). The Release noted that the Exchange understood that the Commission would expect further modification to Rule 6.49 if the Exchange determined to list options on an index comprised to OTC stocks. This proposed rule change makes the further modification, in conjunction with the Exchange's proposed rule change to list options on such an index, the Standard & Poor's Over-the-Counter Industrial Index.

It should be noted that, as was the case with SR-CBOE-85-17, the Exchange is making this proposed rule change because of the Commission's insistence that such modifications to off-board trading restrictions are necessary to enable the Exchange to list such options for trading. This Exchange also notes that Standard & Poor's proprietary and other rights in all of Standard & Poor's indexes, including the Standard & Poor's Over-the-Counter Industrial Index, preclude lawful trading of options on the index except at this Exchange. *See, e.g., Board of Trade of the City of Chicago v. Dow Jones & Co.*, Docket No. 57145—Agenda 27—March 1983 (Ill. Supreme Ct., Oct. 21, 1983). No such rights are waived by the required filing of this proposed rule change.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on completition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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 October 22, 1985.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

September 24, 1985.

[FR Doc. 85-23443 Filed 9-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22455; File No. SR-CBOE-85-27]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Incorporated; Relating to Listing and Trading Options on Standard & Poor's Over-the-Counter Industrial 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 September 23, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

In Securities Exchange Act Release N. 19264 (November 22, 1982), ("the Release") the Commission approved certain proposed rule changes of the Chicago Board Options Exchange ("CBOE") and the American and New York Stock Exchanges relating to the listing and trading of standardized put and call option contracts on various stock indices. In the Release, the Commission stated, "Each index that will underlie an options contract must be reviewed separately as a proposed rule change pursuant to Rule 19b-4 under the Act before trading in an option based on that index may commence." The purpose of this proposed rule change is to permit CBOE to list options on the stock index described in Item 3 hereof.

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 and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit CBOE to list and open for trading standardized put and call options on a stock index called the Standard & Poor's Over-the-Counter Industrial Index ("S&P OTC Index" or "the Index"). S&P will have proprietary rights to this Index and permit CBOE to list options on the Index pursuant to agreement. Options on the Index will be traded pursuant to existing Exchange Rules, including in particular the Rules in Chapter 24. The options will be cash settled, as are other index options.

The purpose of the Index is to portray the pattern of price movement of common stocks traded in the over-the-counter ("OTC") market. The Index includes OTC common stocks in major industrial groups believed to be representative of the movement of OTC industrial common stocks.

A major use of the Index will be as a standard for comparison of the performance of individual OTC common stocks.

S&P has been in the business of creating and maintaining stock price indexes for over sixty years and intends to use all its resources to ensure that this index is handled with the same integrity and care as all the other indexes have always been.

S&P reserves the right to vary criteria for composition of the Index, depending on market conditions. S&P expects that any stock selling at more than five times less than one-fifth the price of the average price of a NMS issue will be closely monitored and subject to review. S&P will also monitor any stock whose trading volume falls below 75,000 shares a month for an extended period and will automatically eliminate any stock which trades less than 40,000 shares a month for a six month period.

The index includes 250 of the largest industrial common stocks traded in the over-the-counter market. S&P selected the stocks on the basis of market value of common shares outstanding. Those with the highest market value were given preference. Issues that were very low in price, had little trading activity, or had a large concentration of insider holdings were generally excluded. American Depository Receipts, utilities, transportation stocks, and financial stocks were also excluded. The stocks are all Tier 1 or Tier 2 national market system securities ("NMS Securities") as to which bid and offer quotations and last sale information are reported in the automated quotation system ("NASDAQ") operated by the National Association of Securities Dealers, Inc. ("NASD"). NMS securities are defined in Securities Exchange Act Rule 11Aa2-1, 17 CFR 240.11Aa2-1. A list of stocks is available at the CBOE or the Commission.

The Index multiplier defined in Rule 24.1(f) will be 100. The current Index value will be the continuously disseminated value as reported by S&P who will disseminate the values continuously and calculate the values at one minute intervals throughout the day to all major quote vendors. The stock prices used to calculate the Index value by S&P will be based on the mid-point between the stock's inside market bid and offer displayed on NASDAQ. S&P will thus be the reporting authority as defined in Rule 24.1(h). The final Index value reported each day by S&P will be the closing Index value, as defined in Rule 24.1(g).

The Index value will be based on what is known as a price weighted average of the stocks. The Index was set to equal a value of 150 as of December 31, 1984. Adjustments are made to neutralize the effect on the index of stock dividends, stock splits, right issues and spin-offs. Cash dividends are ignored in the adjustment process, unless they are deemed to be in the nature of liquidating dividends.

The purpose of index weighting by price is to cause each component stock to influence the index value in proportion to its price. This has been recognized as a viable calculation methodology, as evidenced by such long-standing indexes as the Dow Jones Industrial Average. In addition, the volume of options trading on more recently created market indexes, such as options on the Major Market Index ("XMI"), traded at the American Stock Exchange, shows that price weighted market indexes offer attractive hedging strategies for investors.

Standard & Poor's will monitor the stocks in the index on a daily basis, as it does for all other indexes it calculates. The necessary adjustments will be made for stock dividends and stock splits, rights issues and spin-offs.

It is S&P's intention to make as few changes in the composition of the index in the future as possible. Changes will be made: (a) When a company is listed on a stock exchange, or (b) When a company is merged or acquired.

As replacements are needed, Standard & Poor's intends to use the same criteria for selecting companies as it did when the original index was created.

The Exchange wishes to have the Commission approve the trading of this Index either with European exercise or regular exercise. An option under European exercise, of course, can only be exercised at expiration.

The Exchange also wishes to have the Commission approve the Index to be traded, pursuant to Rule 24.9, either on expiration cycles at three month intervals or on four consecutive monthly expiration cycles. The Exchange will elect the exercise system and the expiration cycles prior to the commencement of trading, and will at that time make a rule filing with the Commission, pursuant to section 19(b)(3) of the Exchange Act, reflecting the final election.

The proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934, and in particular Section 6(b)(5) thereof in that the proposed rule change will facilitate trading of options on the Index.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Received from Members, Participants or Others

Comments were neither solicited nor received

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice is the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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 October 22, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary

September 25, 1985.

[FR Doc. 85-23444 Filed 9-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22454; File No. SR-PSE-85-21]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Pacific Stock Exchange, Inc. ("PSE") submitted on August 2, 1985, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Rule I of the Rules of the PSE Board of Governors through the addition of Sections 5(g) and 5(h). Sections 5(g) and 5(h) further define and limit the access of Exchange floor facilities to properly registered and authorized member employees and visitors. According to the PSE, the proposed rules are designed to maintain the necessary protection to the public and the Exchange in the use of the Exchange floor facilities, while still allowing members to have a non-registered employee or visitor on the floor for a temporary period for purposes other than engaging in trades. Because the mere participation by such a non-registered person in a transaction would be enough to establish a violation of the rules, the amendments should lessen the potential for a member to have a non-registered employee join in a transaction.

Notice of the proposed rule change together with the terms of the substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22318, August 12, 1985) and by publication in the **Federal Register** (50 FR 33445, August 19, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 25, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-23445 Filed 9-30-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 08/08-0047]

Colorado Growth Capital Inc.; Filing of an Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that Colorado Growth Capital, Inc., 2125 Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80302, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903 (1985)) for approval of a conflict of interest transaction.

Subject to SBA approval Colorado Growth Capital, Inc. proposes to invest in Cherokee Data Systems, Inc., 1880 South Flatiron Court, Suite 4, Boulder, Colorado 80301.

The proposed financing is brought within the purview of § 107.903(b) of the Regulations because Mr. Charles J. Siefert is a shareholder and officer of Cherokee Data Systems, Inc., and a shareholder and director of Colorado Growth Capital, Inc., and therefore is considered an Associate of Colorado Growth Capital, Inc. as defined by § 107.3 of the Regulations.

Notice is hereby given that any interested person may, not later than (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Denver, Colorado.

(Catalog of Federal Domestic Assistance Program No. 59-011, Small Business Investment Companies)

Dated: September 20, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-23344 Filed 9-30-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2205]

Florida; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 12, 1985, I find that the Counties of Franklin, Levy, Manatee, and Pinellas constitute a disaster loan area because of damage from Hurricane Elena and flooding beginning on or about August 29, 1985. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on November, 12, 1985, and for economic injury until June 12, 1986, at:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., S.W., Suite 822, Atlanta, Georgia 30303.

or other locally announced locations.

The interest rates are:

	Percent
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)	11.124

The number assigned to this disaster is 220508 for physical damage and for economic injury the number is 633400.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: September 16, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-23345 Filed 9-30-85; 8:45 am]

BILLING CODE 85-8025-01-M

[Declaration of Disaster Loan Area #2201; Amdt. #1]

Mississippi; Declaration of Disaster Loan Area

The above-numbered Declaration (50 FR 37459) is amended in accordance with the President's declaration of September 4, 1985, to include Pearl River County because of damage from Hurricane Elena and flooding beginning on or about September 2, 1985. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on November 4, 1985, and for economic injury until the close of business on June 4, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: September 12, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-23346 Filed 9-30-85; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 858-2524.

Type of Request: Regular Submission

Title of Information Collection: Electric Load Research Questionnaire

Frequency of Use: On Occasion

Type of Affected Public: Individuals or households, state or local governments, farms, businesses, or other for-profit, non-profit institutions, and small businesses or organizations

Small Business or Organizations Affected: Yes

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 2,745

Estimated Total Annual Burden Hours: 1,373

Need For and Use of Information: This information is required to evaluate the effects of demographic and other characteristics on the use patterns of electricity. This information is vital as input into ratemaking, cost-of-service, and forecasting procedures of TVA.

Dated: September 23, 1985.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 85-23373 Filed 9-30-85; 8:45 am]

BILLING CODE 8120-01-M

Paperwork Reduction Act of 1980, Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 858-2524.

Type of Request: Regular Submission

Title of Information Collection: 1986 Residential Survey: Customers of Municipal and Cooperative Distributors of TVA Power

Frequency of Use: Non-recurring

Type of Affected Public: Individuals or households

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 8,000

Estimated Total Annual Burden Hours: 2,664

Need For and Use of Information: The 1986 Residential Survey will provide information about the 2.6 million residential customers served by the municipal and cooperative distributors of TVA power. This information is required for load forecasting and program planning by several different branches with TVA.

Dated: September 23, 1985.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 85-23372 Filed 9-30-85; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC. 20220.

September 25, 1985.

Internal Revenue Service

OMB Number: 1545-0393.
Form Number: IRS Forms 109C and 109SC.
Type of Review: Revision.
Title: Duplicate of Refund Return Requested.

OMB Number: 1545-0170.
Form Number: IRS Form 4466.
Type of Review: Revision.
Title: Corporation Application for Quick Refund of Overpayment of Estimated Tax.

OMB Number: 1545-0183.
Form Number: IRS Form 4789.
Type of Review: Revision.
Title: Currency Transaction Report.

OMB Number: 1545-0216.
Form Number: IRS Form 5713 and Schedules A, B, and C.
Type of Review: Revision.
Title: International Boycott Report, Computation of International Boycott Factor, Specifically Attributable Taxes and Income, Tax Effect of the International Boycott Provisions.

OMB Number: 1545-0410.
Form Number: IRS Forms 6468 and 6469.
Type of Review: Extension.
Title: Tape Label for Form W-4 (6469); and How to Prepare Form 6469, Tape Label for Form W-4 (6468).

Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Bureau of the Public Debt

OMB Number: New.
Form Number: PD 974.
Type of Review: New.
Title: Certificate by Owner of United States Registered Securities Forged Requests for Payment of Assignment.

Clearance Officer: Peter Laugesen (202) 376-4802, Bureau of the Public Debt, Room 445, 999 E Street, NW., Washington, D.C. 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Customs Service

OMB Number: New.
Form Number: CF 331.
Type of Review: New.
Title: Manufacturing Drawback Entry and/or Certificate.

Clearance Officer: Vince Olive (202) 566-9181, U.S. Custom Service, Room 6321, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Comptroller of the Currency

OMB Number: 1557-0010.
Form Number: CC-7029-09.
Type of Review: Extension.
Title: Sample Resolutions and Amendments to Articles of Association.

Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-23447 Filed 9-30-85; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

[FA1 30-81/01]

State Veterans Cemetery, Arneytown, NJ; Application for Federal Assistance; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed Federal funding of the construction of the Arneytown Veterans Cemetery, Burlington Co., New Jersey, and has determined that the potential

environmental impacts will be minimal from the funding and resultant development of this project.

The proposed project consists of the development of approximately 90,000 gravesites, an administration/committal service building (approximately 3,059 Gross Square Feet (GSF)), public restrooms/utility building (approximately 1,009 GSF), and a maintenance building (approximately 4,225 GSF). The total site conists of 184.23 acres which will be developed in six phases over an approximate 20-year period.

Development of the project will cause minor short-term effects during construction in the form of air pollution (dust and fumes), soil erosion, and increased noise levels. There was a concern that the project might also affect an archeological site, a 19th Century farmstead. Based upon further survey work, it was determined by the VA and SHPO that there will be no effect to any archeological site or other historic property.

Permanent impacts from the project, in the form of habitat reduction and loss of farmland, will result from the clearing of 51 acres of woodlands and the use of 95 acres of cleared land. The farmland is *not*, however, considered prime agricultural land.

The State will adhere to all applicable Federal, State, and local environmental and historic preservation regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality. (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9 and including the completion of all necessary compliances with the National Historic Preservation Act, as amended. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, DC. Persons wishing to examine a copy of the document may do so at the following office: Ms. Susan Livingstone, Director, Office of Environmental Affairs (088B), Room 423, Veterans Administration, 811 Vermont Avenue, NW, Washington, DC 20420, (202) 389–3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: September 25, 1985.

By direction of the Administrator.

Everett Alvarez,

Deputy Administrator.

[FR Doc. 85–23393 Filed 9–30–85; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 190
Tuesday, October 1, 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

1

FEDERAL RESERVE SYSTEM:

(Board of Governors)

TIME AND DATE: 11:00 a.m., Monday, October 7, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-23515 Filed 9-27-85; 8:45 am]

BILLING CODE 6210-01-M

2

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 30, October 7, 14, and 21, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 30

Tuesday, October 1

2:00 p.m.
Discussion of Plant Issues with Regional Administrators (Public Meeting)

Thursday, October 3

10:00 a.m.
Status of Interpretation of Appendix R—Fire Protection (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (a) Delegation of Additional Rulemaking Authority to the Executive Director for Operations
2:00 p.m.
Continuation of 9/4 Discussion of Threat Level and Physical Security (Closed—Ex. 1)

Week of October 7

Tentative

Wednesday, October 9

2:00 p.m.
Continuation of 9/11 Discussion of Proposed Station Blackout Rule (Public Meeting)

Thursday, October 10

10:30 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 14

Tentative

Thursday, October 17

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 21

Tentative

Monday, October 21

11:00 a.m.
Status of Pending Investigations (Closed—Ex. 5 and 7)
2:00 p.m.
Year End Program Review (Public Meeting)

Tuesday, October 22

10:00 a.m.
Discussion of Fitness for Duty (Public Meeting)
2:00 p.m.
Briefing on Status of Safety Goal Evaluation (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Wednesday, October 23

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for River Bend (Public Meeting)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Julia Corrado,

Office of the Secretary.

September 26, 1985.

[FR Doc. 85-23554 Filed 9-27-85; 4:00 pm]

BILLING CODE 7590-01-M

3

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [50 FR 37110, September 11, 1985]

STATUS: Closed meetings.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATES PREVIOUSLY ANNOUNCED: Friday, September 6, 1985.

CHANGE IN THE MEETING: Additional meetings.

The following item was considered at a closed meeting held on Wednesday, September 18, 1985, at 3:30 p.m. and at 6:15 p.m.

Consideration of *amicus* participation and institution of injunctive action.

The following item was considered at a closed meeting held on Thursday, September 19, 1985, at 2:30 p.m.

Regulatory matter bearing enforcement implications.

Commissioners Cox, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers at (202) 272-2091.

John Wheeler,

Secretary.

[FR Doc. 85-23483 Filed 9-27-85; 8:45 am]

BILLING CODE 8010-01-M

4

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission

will hold the following meetings during the week of September 30, 1985.

Closed meetings will be held on Tuesday, October 1, 1985, at 2:30 p.m. and on Thursday, October 3, 1985, following the 2:30 p.m. open meeting. Open meetings will be held on Thursday, October 3, 1985, at 10:00 a.m. and at 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 1, 1985, at 2:30 p.m., will be:

Formal orders of investigation.
Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Consideration of *amicus* participation.

The subject matter of the closed meeting scheduled for Thursday, October 3, 1985, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Thursday, October 3, 1985, at 10:00 a.m., will be:

Consideration of whether to issue a release adopting amendments to the Customer Protection Rule, Rule 15c3–3 under the Securities Exchange Act of 1934, which will exclude the margin debit balances of certain persons who are related to principals of a broker-dealer or affiliated in a certain way with a broker-dealer from the Reserve Formula. The amendments will also exclude from the debit items the amount by which a broker-dealer's margin accounts receivable with a single customer exceeds a certain percentage of a broker-dealer's net capital prior to securities haircuts, unless the broker-dealer can demonstrate that such debit balances are directly related to credit items in the reserve formula. For further information, please contact Julio A. Mojica at (202) 272–2372.

The subject matter of the open meeting scheduled for Thursday, October 3, 1985, at 2:30 p.m., will be:

The Commission will hear oral argument on an appeal by Alan Bennett Harp, a securities salesman, from the decision of an administrative law judge. For further information, please contact R. Moshe Simon at (202) 272–7400.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Joan Stempel at (202) 272–2149.

John Wheeler,

Secretary.

September 24, 1985.

[FR Doc. 85–23439 Filed 9–26–85; 4:19 pm]

BILLING CODE 8010–01–M

Federal Register

Tuesday
October 1, 1985

Part II

Department of Justice

Bureau of Prisons

28 CFR Parts 503, 527, 540, and 544

Control, Custody, Care, Treatment, and Instruction of Inmates; Rules and Proposed Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 503

Control, Custody, Care, Treatment and Instruction of Inmates; Central and Regional Offices; Current Listing

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document contains a current listing of Bureau of Prisons Central and Regional Offices, Staff Training Centers, and institutions.

EFFECTIVE DATE: October 1, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: This document contains a current listing of Bureau of Prisons Central and Regional Offices, Staff Training Centers, and institutions. Prior listings have been published in the Federal Register May 1, 1981 (at 46 FR 24898), December 4, 1981 (at 46 FR 59507), and July 16, 1982 (at 47 FR 31246).

This listing is included in Title 28 of the Code of Federal Regulations for informational purposes. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date as pertains to this information have been determined inapplicable.

The Bureau of Prisons has determined that EO 12291 does not apply to this document since the document involves agency organization and management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this information, for purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 503

Organization and functions.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended by revising Part 503 as set forth below.

Dated: September 20, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

Subchapter A is amended by revising Part 503 to read as follows:

Subchapter A—General Management and Administration

* * * * *

PART 503—BUREAU OF PRISONS CENTRAL OFFICE, REGIONAL OFFICES, INSTITUTIONS, AND STAFF TRAINING CENTERS

Sec.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4003, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

PART 503—BUREAU OF PRISONS CENTRAL OFFICE, REGIONAL OFFICES, INSTITUTIONS, AND STAFF TRAINING CENTERS

§ 503.1 Bureau of Prisons Central Office.

The Bureau of Prisons Central Office is located at 320 First Street, NW, Washington, DC 20534.

§ 503.2 Bureau of Prisons Northeast Regional Office.

The Bureau of Prisons Northeast Regional Office is located at U.S. Customs House, 7th Floor, 2nd and Chestnut Street, Philadelphia, Pennsylvania 19106. The following institutions are located within this region.

(a) Federal Correctional Institution (FCI), Alderson, West Virginia 24910

(b) Federal Prison Camp (FPC, Allenwood), Montgomery, Pennsylvania 17752

(c) FCI, Danbury, Connecticut 06811

(d) United States Penitentiary (USP), Lewisburg, Pennsylvania 17837

(e) FCI, Loretto, Pennsylvania 15940

(f) FCI, Morgantown, West Virginia 26505

(g) Metropolitan Correctional Center (MCC), 150 Park Row, New York, New York 10007-1779

(h) FCI, Otisville, New York 10963

(i) FCI, Petersburg, Virginia 23804-1000

(j) FCI, Ray Brook, New York 12977-0300

§ 503.3 Bureau of Prisons Southeast Regional Office.

The Bureau of Prisons Southeast Regional Office is located at 523 McDonough Boulevard, SE, Atlanta, Georgia 30315. The following institutions are located within this region.

(a) FCI, Ashland, Kentucky 41101

(b) USP, Atlanta, Georgia 30315

(c) FCI, Old N. Carolina Highway 75, Butner, North Carolina 27509

(d) FPC, Eglin Air Force Base, Eglin, Florida 32542

(e) FCI, Lexington, Kentucky 40511

(f) FPC, Maxwell Air Force Base/Gunter Air Force Station, Montgomery, Alabama 36112

(g) FCI, 1101 John A Denie Road, Memphis, Tennessee 38134-0003

(h) MCC, 15801 SW 137th Avenue, Miama, Florida 33177

(i) FCI, Talladega, Alabama 35160

(j) FCI, Tallahassee, Florida 32301

§ 503.4 Bureau of Prisons North Central Regional Office.

The Bureau of Prisons North Central Regional Office is located at 10920 Ambassador Drive, Airworld Center, Kansas City, Missouri 64153. The following institutions are located within this region.

(a) MCC, 71 W. Van Buren Street, Chicago, Illinois 60605

(b) FPC, Duluth, Minnesota 55814

(c) USP, Leavenworth, Kansas 66048

(d) USP, Marion, Illinois 62959

(e) FCI, Milan, Michigan 48160

(f) FCI, Oxford, Wisconsin 53952

(g) Federal Medical Center (FMC), P.O. Box 4600, Rochester, Minnesota 55903-4600

(h) FCI, Sandstone, Minnesota 55072

(i) Medical Center for Federal Prisoners (MCFP), Springfield, Missouri 65808

(j) USP, Terre Haute, Indiana 47808

§ 503.5 Bureau of Prisons South Central Regional Office.

The Bureau of Prisons South Central Regional Office is located at 1607 Main, Suite 700, Dallas, Texas 75201. The following institutions are located within this region.

(a) FCI, Bastrop, Texas 78602

(b) FPC, Big Spring, Texas 79721-6085

(c) FCI, El Reno, Oklahoma 73036

(d) FCI, Fort Worth, Texas 76119

(e) Federal Detention Center (FDC), P.O. Box 5050, Oakdale, Louisiana 71463 (scheduled to open in early 1986)

(f) FCI, (La Tuna), Anthony, New Mexico-Texas 88021

(g) FCI, Seagoville, Texas 75159

(h) FCI, Texarkana, Texas 75501

§ 503.6 Bureau of Prisons Western Regional Office.

The Bureau of Prisons Western Regional Office is located (effective January 1986) at Belmont Shores, 1301 Shoreway Drive, Belmont, California 94002. The following institutions are located within this region.

(a) FPC, P.O. Box 500, Boron, California 93516

(b) FCI, (Englewood) 9595 W. Quincy, Littleton, Colorado 80123

(c) USP, Lompoc, California 93436

(d) FCI, Box 1680 Black Canyon Stage 1, Phoenix, Arizona 85029

(e) FCI, (Pleasanton), 5701 8th Street, Dublin, California 94568

(f) FCI, Safford, Arizona 85546

(g) MCC, San Diego, California 92101–6078

(h) FCI, Terminal Island, California 90731

(i) MCC, 8901 S. Wilmot Road, Tucson, Arizona 85706

§ 503.7 Bureau of Prisons Staff Training Centers.

The Bureau of Prisons Staff Training Centers are located at:

(a) Federal Law Enforcement Training Center, Building 21, Glynco, Georgia 31524

(b) Denver Staff Training Center, 15400 E. 14th Place, Suite 500, Aurora, Colorado 80011

(c) Food Management Training Center, c/o FCI, Ft. Worth, Texas 76119

(d) Trust Fund Training Center, c/o FCI, Ft. Worth, Texas 76119

[FR Doc. 85–23330 Filed 9–30–85; 8:45 am]

BILLING CODE 4410-05-M

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28 CFR Part 527

Control, Custody, Care, Treatment and Instruction of Inmates; Transfers to State Agents

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document amends the Bureau of Prisons final rule on Transfer of Inmates to State Agents for Production on State Writs. These amendments are intended to address, and to improve, the review process that is implemented when a request is made on behalf of a local or state court that an inmate be transferred to the physical custody of state or local agents pursuant to a state writ of habeas corpus ad prosequendum or ad testificandum.

EFFECTIVE DATE: October 1, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its final rule on Transfer of Inmates to State Agents for Production on State Writs. A final rule on this subject was published in the **Federal Register** July 1, 1981 (at 46 FR 34549). The present amendments are directed to the staff review process. In § 527.31(b), the phrase "which include those of the public" is added as one aspect of "federal interests". In § 527.31(g), the rule is revised to state that transfers in civil cases pursuant to a writ of habeas corpus ad testificandum must be cleared through the Regional Counsel, as well as the Warden. Because release by writ is a legal procedure, it is appropriate for the Regional Counsel to be directly involved in the decision-making, rather than being available for consultation, as required by the Bureau's present policy.

Another revision to paragraph (g) substitutes "twelve months" for "six months" as the suggested framework in which to consider postponement of the production until after the inmate's release from custody. As stated, this is a suggested time frame and does not alter the factors to be considered when recommending an inmate's transfer; specifically, if the case is substantial, where testimony cannot be obtained through alternative means such as depositions or interrogatories, and where security arrangements permit.

These amendments are intended to clarify the procedures for reviewing the transfer of inmates to state agents for production on state writs. They are not intended to place any increased burden on the inmate or on the public. For this reason, the Bureau of Prisons finds good cause under 5 U.S.C. 553 to publish these amendments as final changes, without a notice of proposed rulemaking, an opportuntity for public comment, or a delay in the effective date.

Members of the public may submit comments concerning these amendments by writing the previously cited address. These comments will be considered, but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this set of rulemaking since the rule involves agency management. After review of the law and the regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354) does not have a significant impact on a substantial number of small entities.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V is amended by revising Subchapter B, Part 527, Subpart D to read as follows.

Dated: September 20, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 527—TRANSFERS

In Subchapter B, Part 527, Subpart D is amended to read as follows:

Subpart D—Transfer of Inmates to State Agents for Production on State Writs

1. The authority citation for Part 527, Subpart D continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 527.31, paragraphs (b) and (g) are revised to read as follows:

§ 527.31 Procedures.

* * * * *

(b) The Warden shall authorize transfer only when satisfied that the inmate's appearance is necessary, that state and local arrangements are satisfactory, that the safety or other interests of the inmate (such as an imminent parole hearing) are not seriously jeopardized, and that federal interests, which include those of the public, will not be interfered with, or harmed. Authorization may not be given where substantial concern exists over any of these considerations.

* * * * *

(g) Transfers in civil cases pursuant to a writ of habeas corpus ad testificandum must be cleared through both the Regional Counsel and the Warden. Transfer ordinarily shall be recommended only if the case is substantial, where testimony cannot be obtained through alternative means such as depositions or interrogatories, and where security arrangements permit. Postponement of the production until after the inmate's release from federal custody will always be considered.

particularly if release is within twelve months.

* * * * *

[FR Doc. 85-23325 Filed 9-30-85; 8:45 am]
BILLING CODE 4410-05-M

28 CFR Part 540

Control, Custody, Care, Treatment, and Instruction of Inmates; Correspondence

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its final rule on correspondence. The revisions are intended to clarify the prior rule language and to address various issues that have arisen since the final rule was published in 1980.

EFFECTIVE DATE: November 1, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing final amendments to its rule on correspondence. The republished rule sets forth the correspondence procedures to be followed within Bureau institutions.

The Bureau published proposed amendments to its final rule in the **Federal Register** August 17, 1984 (at 49 FR 32966 et seq.). The amendments were intended to both clarify and to address issues that have arisen since publication of the existing rule. Interested persons were invited to submit comments on the proposed changes. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

In addition to the aforementioned amendments, other changes are also being made to the final rule. These changes are meant to clarify the intent of the existing rule, or are non-substantive in nature (e.g., make the rule gender-neutral, update cross-references), or relieve a restriction, or reflect changes mandated by a recent court decision. Based on the nature of these changes, the Bureau finds good cause under 5 U.S.C. 553 to include these changes within this final rule without a notice of proposed rulemaking, and an opportunity for public comment. In recognition of these revisions, and for ease of reading, the Bureau is republishing its entire rule on correspondence.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Correspondence—Summary of Changes

1. Section 540.2—Paragraph (a)(1) is revised to substitute § 540.17 for § 540.16. Paragraph (b)(4) is revised to clarify that the phrase "radio or television news program" refers to a program whose primary purpose is to report the news. Paragraph (c) is expanded to allow U.S. Probation Officers to have their incoming correspondence to inmates handled as special mail. A similar addition is made in § 540.12(b).

Several commenters objected to the special mail marking requirements (§ 540.18), stating it is not practical to require this, and that most court clerks, judges, prosecutors, and attorneys will not be aware of the requirement. One commenter suggested this provision be deleted, a second suggested that staff visually inspect all mail, and then separate mail that appears to meet the special mail qualifications. A third commenter, while not objecting to the special mail requirement, suggested that the rule be modified to treat as special mail that correspondence which "substantially conforms to the Bureau's present formulation".

The Bureau does not agree with these suggestions. The volume of correspondence, and the varied forms of identification that can be placed on an envelope, make it impractical to require staff to assess each piece of mail to determine if the letterhead or other marking qualifies for special mail handling. The Bureau recognizes various types of correspondence as special mail, and to ensure appropriate recognition by staff, it is appropriate to require that such mail carry specific identification. Also, not all mail from § 540.2(c) correspondents may be special mail on every occasion. For example, mail from an attorney may occasionally not be related to the attorney-client relationship. This requirement is a minimal burden on correspondents, resulting in significant administrative advantage in speeding up the processing of mail. Contrary to the thrust of one comment, the Bureau's special mail marking is not new. In addition, the requirement has been, and is, known through publication in the **Federal Register.**

2. Section 540.10—Proposed § 540.10 becomes final § 540.10.

3. Section 540.11—Proposed § 540.11, Mail Depositories, is now being finalized. The final rule clearly identifies information to be included in the return address. A similar change is made in proposed, now final, § 540.12(d). The information required in a return address is the same as stated in proposed § 540.21(b).

4. Section 540.12—Based on a new final § 540.11, previously designated final §§ 540.11-20 become new final §§ 540.12-21. In new § 540.12, the last sentence of Part II is reworded to clearly indicate that an inmate who does not want to receive his or her general correspondence must make this request in writing. Absent this written declaration, the inmate's general correspondence is subject to being opened and read, as specified in this rule.

5. Section 540.13—The extraneous phrase "because of content" is deleted. Except as specified in the rule, the Warden is to notify the sender in writing of the rejection of correspondence, and the reasons for same.

6. Section 540.14—Based on the recent court decision in *Abbott* v. *Richardson* (United States District Court, District of Columbia, C.A. No. 73-1047), the Bureau has deleted former final § 540.13(a), which stated that the Bureau could not limit the number of letters an inmate may receive unless that number placed an unreasonable burden on the institution. Hereafter, no limit will be imposed on the number of incoming letters an inmate may receive. As a result of this deletion, paragraphs (b)-(e) now become paragraphs (a)-(d).

In paragraph (b)(3), "§ 540.17" is substituted for "§ 540.16". Based on the requirement that an inmate's outgoing correspondence contain a return address, § 540.14(b)(4) is added, allowing an inmate's outgoing general correspondence to be opened if the envelope has an incomplete return address. This provision is necessary to allow staff to identify the inmate sender, so that the letter may be returned for the adding of a proper return address.

We disagree with a comment that describes proposed paragraph (e), now final paragraph (d), as vague and overbroad. The paragraph is intended to, and we believe it does, provide staff with guidance on when correspondence

may be rejected. A comment that subparagraph (1) incorrectly "presumes that mailroom staff and other supervisors are schooled" in what is non-mailable under law or postal regulation fails to recognize that each mailroom has a copy of the domestic mail manual; plus, staff can seek advice from the local servicing postmaster. We also disagree with the comment that subparagraph (2) does not distinguish between "advocacy of principle and advocacy of action". The rule very clearly refers to activities which may lead to the use of physical violence or group disruption. There is no intent to prevent what the commenter refers to as the "mere discussion of unpopular political, economic, social or cultural ideas". We do not agree that subparagraph (3) is "superfluous" and that it cannot be implemented. Subparagraph (3) concerns the rejection of correspondence which contains information of escape plots, of plans to commit illegal activities, or to violate Bureau rules or institution guidelines. Contrary to the comment, mailroom staff and their supervisors are able to seriously apply this paragraph, both on the basis of their own knowledge and training, and on their access to resource persons and materials. No claim is made that staff is aware of every Federal crime, but the absence of this capability certainly doesn't make the rule "superfluous".

With respect to subparagraph (4), this is simply re-stating one of the existing criteria for rejecting correspondence. We believe it is beyond the scope of this rulemaking to accept the suggestion that we assess this entry on the basis of public comment submitted on a previously published proposed rule on prohibition against an inmate conducting a business while confined. A commenter objects to subparagraph (5), stating that the phrases "obscenity" and "gratuitous profanity", as standards for the acceptability of mail, provide no guidance to staff. The commenter also asks that the term "threats" be narrowed. The question language was inserted in the rule May 20, 1982, based on language contained in a January 29, 1982 court judgment in the case of *Samuels, et al.* v. *Smith, et al.* (United States District Court, Southern District of Indiana, TH 79-124-C). Our experience since May 1982 suggests that the language adequately expresses the basis for rejection.

A commenter to subparagraph (7) states "there are no possessions held more dearly by prisoners than personal photographs of loved ones—even sexually explicit photos". The commenter suggests that were consider this entry in light of the Ninth Circuit opinion in *Pepperling* v. *Crist*, 678 F. 2d 787 (1982). The Bureau believes its policy is consistent with this holding. Other courts have supported the Bureau's policy approach. The decision to exclude sexually explicit material is determined on the basis of the standard of whether the material would be detrimental to an individual's personal safety or security, or to institution good order, if it were in the inmate's possession. We do not believe it is practical to adopt a suggestion that inmates be allowed to retain such photographs, and then expect them to keep them secured (e.g., in a personal locker) "on pain of incurring discipline".

7. Section 540.15—In paragraph (a), "§ 540.14(d)" is substituted for "§ 540.13(e)". Based on the *Abbott* decision, the Bureau has deleted former final § 540.15(a)(6), ". . . having participated in major criminal activity of a sophisticated nature", and (a)(7), ". . . notoriety or being highly publicized", as factors to consider in determining whether an inmate is placed on restricted general correspondence. Based on the same decision (*Abbott*), the Bureau has reworded final § 540.15(a)(2), narrowing its scope to attempting to solicit funds or items (e.g., samples), or subscribing to a publication without paying for the subscription. This language replaces the previous rule language, "attempting regularly to correspond with persons or businesses where the addressee is known by the inmate only through such sources as advertisements in newspapers, magazines, telephone directories, etc.".

Paragraphs (c) through (e) are reworded although their intent is unchanged. The reference in paragraph (d) is changed to read §§ 540.16 and 540.17.

8. Section 540.16—The reference in paragraph (b) is revised to read § 540.15.

9. Section 540.17—The Bureau has decided to withdraw proposed § 540.17(b), concerning correspondence between inmates within the same institution. Proposed § 540.17(a) becomes the introductory paragraph to § 540.17. Proposed § 540.17(a) (1) and (2) becomes final § 540.17 (a) and (b). For clarity, final § 540.17(a) adds the phrase "at institutions of all security levels". A commenter to proposed § 540.17 objects to this rule stating it has been so narrowly construed at the institutional level that little inmate-to-inmate correspondence is allowed. The commenter believes that to allow such mail poses little risk. The Bureau, however, believes its rule is necessary to help ensure institution security and good order. The rule clearly identifies the specific conditions under which such correspondence is allowed, and allows the Warden to approve additional reasons in other exceptional circumstances.

10. Section 540.18—A commenter questions the meaning of the phrase "qualification of any enclosure" as special mail. The rule is intended to prevent impermissible content or items of general correspondence (for example, a letter from a friend) from being enclosed in correspondence provided special mail status. There is no intent that qualified enclosures will be read. In fact, we expect that enclosures in special mail will quickly evidence special mail qualifications—for example, a court decision or legal form. In addition, the fact that such mail is opened in the inmate's presence should help resolve those few occasions where an enclosure is not clearly identifiable and affords protection from abuse. Paragraph (b) is reworded, but its intent is unchanged.

11. Section 540.19—Paragraph (a) is expanded to recognize that staff may ask (although may not require) the inmate to sign for the incoming legal mail.

12. Section 540.20—Former final § 540.19 now becomes new final § 540.20.

13. Section 540.21—A commenter on paragraph (d) states that the rule allowing the Warden to impose restrictions on free mailings to prevent abuse is "too broad" and could be used to interfere with an inmate's right of access to the courts. The Bureau does not believe its rule is unnecessarily broad, and considers its policy to be responsive to the commenter's concern. The rule is directed to a situation, for example, where an inmate spends all of his or her funds on non-legal matters, while knowing there are legal materials to be mailed. Most inmates within the Bureau of Prisons are eligible for paid employment and have the opportunity to budget. Within this context, and to assist the inmate, the Bureau has now implemented a procedure whereby the purchase of postage stamps will no longer be charged against the inmate's monthly commissary spending limitation, thus expanding both the inmate's use of funds and the number of postage stamps that may be purchased each month. At the same time, provisions continue to exist for an inmate without the necessary funds or sufficient postage to request that staff provide the inmate with the necessary

postage stamps for the required legal mailing.

Paragraph (i) is clarified by stating that holdovers and pre-trial commitments are provided a reasonable number "of stamps for the mailing" of letters at government expense. While a commenter to parargraph (j) objects to the fact that attorneys cannot send self-addressed stamped envelopes to clients, the Bureau believes that to allow such an approach lends itself to the introduction of contraband. As an alternative, and pursuant to institution rules, persons in the community may send the inmate money for the purchase of postage stamps.

14. Section 540.22—For clarity, paragraph (b)(2) adds the phrase "with the Bureau of Prisons". A commenter objects to paragraph (d), saying it is "wrong to bar such services [express mail/private carriers] as a matter of agency regulation". The commenter suggests that the rule be amended to allow express mail and private carriers when the expense is billed to a third party, or when the inmate has sufficient funds to pay the cost. The cost factor, however, is not the basis for this rule. The Bureau's rule bars private carriers because they may compromise institution security. The U.S. Postal Service provides adequate service. Further, private carriers would impose a significant administrative burden (e.g., special accounts, special processing, and receipting).

15. Section 540.23—Paragraph (a) is expanded to allow the Warden to approve an inmate to receive funds from persons other than the inmate's family or friends. Based on this change, paragraph (c) is revised to reference paragraph (a). A commenter to paragraph (b) states that the rule causes undue hardship on the sender of the negotiable instrument (can require a double payment of postage if the instrument is returned to the sender). The commenter says the rule is unnecessary, that the information can be obtained from the envelope which has the inmate's register number, or from searching the inmate locator. This solution, however, is not feasible, since the envelope doesn't go with the negotiable instrument, but is instead used to forward to the inmate other materials (e.g., correspondence sent with the negotiable instrument, a receipt for the instrument). Paragraph (a) specifies those persons from whom the inmate may receive funds, and it is believed appropriate for the inmate to be expected to notify such persons of the requirement for both the inmate's name and register number to be included on the instrument.

16. Section 540.24—Based on new §§ 540.11, 540.22 and 540.23, existing final § 540.21 becomes new final § 540.24.

17. Section 540.25—Proposed § 540.25 now becomes final § 540.25.

List of Subjects in 28 CFR Part 540

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 522(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V is amended by revising Subchapter C, Part 540, Subparts A and B as set forth below.

Dated: September 20, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

1. The authority citation for Part 540 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Part 540 is amended by revising Subparts A and B to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

Subpart A—General

Sec.

Subpart B—Correspondence

Subpart A—General

§ 540.2 Definitions.

(a) "General Correspondence" means incoming or outgoing correspondence other than "special mail". "General Correspondence" includes packages sent through the mail.

(1) "Open General Correspondence" means general correspondence which is not limited to a list of authorized correspondents, except as provided in § 540.17.

(2) "Restricted General Correspondence" means general correspondence which is limited to a list of authorized correspondents.

(b) "Representatives of the News Media" means persons whose principal employment is to gather or report news for:

(1) A newspaper which qualifies as a general circulation newspaper in the community in which it is published. A newspaper is one of "general circulation" if it circulates among the general public and if it publishes news of a general character of general interest to the public such as news of political, religious, commercial, or social affairs. A key test to determine whether a newspaper qualifies as a "general circulation" newspaper is to determine whether the paper qualifies for the purpose of publishing legal notices in the community in which it is located or the area to which it distributes;

(2) A news magazine which has a national circulation and is sold by newsstands and by mail subscription to the general public;

(3) A national or international news service; or

(4) A radio or television news program, whose primary purpose is to report the news, of a station holding a Federal Communications Commission license.

(c) "Special Mail" means correspondence *sent to* the following: President and Vice President of the U.S., the U.S. Department of Justice (including the Bureau of Prisons), U.S. Attorneys Offices, Surgeon General, U.S. Public Health Service, Secretary of the Army, Navy, or Air Force, U.S. Courts (including U.S. Probation Officers), Members of the U.S. Congress, Embassies and Consulates, Governors, State Attorneys General, Prosecuting Attorneys, Directors of State Departments of Corrections, State Parole Commissioners, State Legislators, State Courts, State Probation Officers, other Federal and State law enforcement offices, attorneys, and representatives of the news media.

"Special Mail" also includes correspondence *received from* the following: President and Vice President of the U.S., attorneys, Members of the U.S. Congress, Embassies and Consulates, the U.S. Department of Justice (excluding the Bureau of Prisons

but including U.S. Attorneys), other Federal law enforcement officers, State Attorneys General, Prosecuting Attorneys, Governors, U.S. Courts (including U.S. Probation Officers), and State Courts. For incoming correspondence to be processed under the special mail procedures (see §§ 540.18–19), the sender must be adequately identified on the envelope, and the front of the envelope must be marked "Special Mail—Open only in the presence of the inmate".

Subpart B—Correspondence

§ 540.10 Purpose and scope.

The Bureau of Prisons encourages correspondence that is directed to socially useful goals. The Warden shall establish correspondence procedures for inmates in each institution, as authorized and suggested in this rule.

§ 540.11 Mail depositories.

The Warden shall establish at least one mail depository within the institution for an inmate to place outgoing correspondence. The Warden may establish a separate mail depository for outgoing special mail. A return address, containing the inmate's name and register number, P.O. Box, city, state, and zip code, is necessary for each item placed in a mail depository.

§ 540.12 Controls and procedures.

(a) The Warden shall establish and exercise controls to protect individuals, and the security, discipline, and good order of the institution. The size, complexity, and security level of the institution, the degree of sophistication of the inmates confined, and other variables require flexibility in correspondence procedures. All Wardens shall establish open general correspondence procedures.

(b) Staff shall inform each inmate in writing promptly after arrival at an institution of that institution's rules for handling of inmate mail. This notice includes the following statement:

The staff of each institution of the Bureau of Prisons has the authority to open all mail addressed to you before it is delivered to you. "Special Mail" (mail from the President and Vice President of the U.S., attorneys, Members of the U.S. Congress, Embassies and Consulates, the U.S. Department of Justice (excluding the Bureau of Prisons but including U.S. Attorneys), other Federal law enforcement officers, State Attorneys General, Prosecuting Attorneys, Governors, U.S. Courts (including U.S. Probation Officers), and State Courts) may be opened only in your presence to be checked for contraband. This procedure occurs only if the sender is adequately identified on the envelope and the front of the envelope is marked "Special Mail—Open only in the presence of the inmate." Other mail may be opened and read by the staff.

If you do not want your *general* correspondence opened and read, the Bureau will return it to the Postal Service. This means that you will not receive such mail. You may choose whether you want your general correspondence delivered to you subject to the above conditions, or returned to the Postal Service. Whatever your choice, special mail will be delivered to you, after it is opened in your presence and checked for contraband. You can make your choice by signing Part I or Part II.

Part I—General Correspondence to be Returned to the Postal Service

I have read or had read to me the foregoing notice regarding mail. I do not want my general correspondence opened and read. I REQUEST THAT THE BUREAU OF PRISONS RETURN BY GENERAL CORRESPONDENCE TO THE POSTAL SERVICE. I understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

(Name) _____

(Reg. No.) _____

(Date) _____

Part II—General Correspondence to be Opened, Read, and Delivered

I have read or had read to me the foregoing notice regarding mail. I WISH TO RECEIVE MY GENERAL CORRESPONDENCE. I understand that the Bureau of Prisons may open and read my general correspondence if I choose to receive same. I also understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

(Name) _____

(Reg. No.) _____

(Date) _____

Inmate (Name), (Reg. No.), refused to sign this form. He (she) was advised by me that the Bureau of Prisons retains the authority to open and read all general correspondence. The inmate was also advised that his (her) refusal to sign this form will be interpreted as an indication that he (she) wishes to receive general correspondence subject to the conditions in Part II above.

Staff Member's Signature _____

Date _____

(c) Staff shall inform an inmate that letters placed in the U.S. Mail are placed there at the request of the inmate and the inmate must assume responsibility for the contents of each letter. Correspondence containing threats, extortion, etc., may result in prosecution for violation of federal laws. When such material is discovered, the inmate may be subject to disciplinary action, the written material may be copied, and all material may be referred to the appropriate law enforcement agency for prosecution.

(d) An inmate shall ensure that each of the inmate's outgoing envelopes contains that inmate's name and register number, P.O. Box, city, state, and zip code.

§ 540.13 Notification of rejections.

When correspondence is rejected, the Warden shall notify the sender in writing of the rejection and the reasons for the rejection. The Warden shall also give notice that the sender may appeal the rejection. The Warden shall also notify an inmate of the rejection of any letter addressed to that inmate, along with the reasons for the rejection and shall notify the inmate of the right to appeal the rejection. The Warden shall refer an appeal to an official other than the one who originally disapproved the correspondence. The Warden shall return rejected correspondence to the sender unless the correspondence includes plans for or discussion of commission of a crime or evidence of a crime, in which case there is no need to return the correspondence or give notice of the rejection, and the correspondence should be referred to appropriate law enforcement authorities. Also, contraband need not be returned to the sender.

§ 540.14 General correspondence.

(a) Institution staff shall open and inspect all incoming general correspondence. Incoming general correspondence may be read as frequently as deemed necessary to maintain security or monitor a particular problem confronting an inmate.

(b) Outgoing mail in Security Level 1, 2, and 3, and of pre-trial detainees in all institutions may be sealed by the inmate and is sent out unopended and uninspected. Staff may open an inmate's outgoing general correspondence:

(1) If there is reason to believe it would interfere with the orderly running of the institution, that it would be threatening to the recipient, or that it would facilitate criminal activity;

(2) If the inmate is on a restricted correspondence list;

(3) If the correspondence is between inmates (See § 540.17); or

(4) If the envelope has an incomplete return address.

(c) Outgoing mail in Security Level 4, 5, and 6 and administrative institutions, except "special mail", may not be sealed by the inmate and may be inspected and read by staff.

(d) The Warden may reject correspondence sent by or to an imate if it is determined detrimental to the security, good order, or discipline of the institution, to the protection of the public, or if it might facilitate criminal activity. Correspondence which may be rejected by a Warden includes, but is not limited to, correspondence which contains any of the following:

(1) Matter which is nonmailable under law or postal regulations;

(2) Matter which depicts, describes, or encourages activities which may lead to the use of physical violence or group disruption;

(3) Information of escape plots, of plans to commit illegal activities, or to violate Bureau rules or institution guidelines;

(4) Direction of an inmate's business (See § 541.13, Prohibited Act No. 408). An inmate, unless a pre-trial detainee, may not direct a business while confined.

This does not, however, prohibit correspondence necessary to enable an inmate to protect property and funds that were legitimately the inmate's at the time of commitment. Thus, for example, an inmate may correspond about refinancing an existing mortgage or sign insurance papers, but may not operate a mortgage or insurance business while in the institution.

(5) Threats, extortion, obscenity, or gratuitous profanity;

(6) A code;

(7) Sexually explicit material (for example, personal photographs) which by its nature or content poses a threat to an individual's personal safety or security, or to institution good order; or

(8) Contraband. (See § 500.1 of this chapter. A package received without prior authorization by the Warden is considered to be contraband.)

§ 540.15 Restricted general correspondence.

(a) The Warden may place an inmate on restricted general correspondence based on misconduct or as a matter of classification. Determining factors include the inmate's:

(1) Involvement in any of the activities listed in § 540.14(d);

(2) Attempting to solicit funds or items (e.g., samples), or subscribing to a publication without paying for the subscription;

(3) Being a security risk;

(4) Threatening a government official; or

(5) Having committed an offense involving the mail.

(b) The Warden may limit to a reasonable number persons on the approved restricted general correspondence list of an inmate.

(c) The Warden shall use one of the following procedures before placing an inmate on restricted general correspondence.

(1) Where the restriction will be based upon an incident report, procedures must be followed in accordance with inmate disciplinary regulations (Part 541, Subpart B of this Chapter).

(2) Where there is no incident report, the Warden:

(i) Shall advise the inmate in writing of the reasons the inmate is to be placed on restricted general correspondence;

(ii) Shall give the inmate the opportunity to respond to the classification or change in classification; the inmate has the option to respond orally or to submit written information or both; and

(iii) Shall notify the inmate of the decision and the reasons, and shall advise the inmate that the inmate may appeal the decision under the Administrative Remedy Procedure.

(d) When an inmate is placed on restricted general correspondence, the inmate may, except as provided in §§ 540.16 and 540.17:

(1) Correspond with the inmate's spouse, mother, father, children, and siblings, unless the correspondent is involved in an violation of correspondence regulations, or would be a threat to the security or good order of the institution;

(2) Request other persons also to be placed on the approved correspondence list, subject to investigation, evaluation, and approval by the Warden; with prior approval, the inmate may write to a proposed correspondence to obtain a release authorizing an investigation; and

(3) Correspond with former business associates, unless it appears to the Warden that the proposed correspondent would be a threat to the security or good order of the institution, or that the resulting correspondence could reasonably be expected to result in criminal activity. Correspondence with former business associates is limited to social matters.

(e) The Warden may allow an inmate additional correspondence with persons other than those on the inmate's approved mailing list when the correspondence is shown to be necessary and does not require an addition to the mailing list because it is not of an ongoing nature.

§ 540.16 Inmate correspondence while in segregation and holdover status.

(a) The Warden shall permit an inmate in holdover status (i.e., enroute to a designated institution) to have correspondence privileges similar to those of other inmates insofar as practical.

(b) The Warden shall permit an inmate in segregation to have full correspondence privileges unless placed on restricted general correspondence under § 540.15.

§ 540.17 Correspondence between confined inmates.

An inmate may be permitted to correspond with an inmate confined in any other penal or correctional institution, providing the other inmate is either a member of the immediate family, or is a party or a witness in a legal action in which both inmates are involved. The Warden may approve such correspondence in other exceptional circumstances, with particular regard to the security level of the institution, the nature of the relationship between the two inmates, and whether the inmate has other regular correspondence. The following additional limitations apply:

(a) Such correspondence at institutions of all security levels may always be inspected and read by staff at the sending and receiving institutions (it may not be sealed by the inmate); and

(b) The Wardens of both institutions must approve of the correspondence.

§ 540.18 Special mail.

(a) The Warden shall open incoming special mail only in the presence of the inmate for inspection for physical contraband and the qualification of any enclosures as special mail. The correspondence may not be read or copied if the sender is adequately identified on the envelope, and the front of the envelope is marked "Special Mail—Open only in the presence of the inmate".

(b) In the absence of either adequate identification or the "special mail" marking indicated in paragraph (a) of this section appearing on the envelope, staff may treat the mail as general correspondence and may open, inspect, and read the mail.

(c) Outgoing special mail may be sealed by the inmate and is not subject to inspection.

(d) Staff shall stamp the following statement directly on the back side of the inmate's outgoing special mail: "The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosure to the above address."

§ 540.19 Legal correspondence.

(a) Staff shall mark each envelope of incoming legal mail (mail from courts or attorneys) to show the date and time of

receipt, the date and time the letter is delivered to an inmate and opened in the inmate's presence, and the name of the staff member who delivered the letter. The inmate may be asked to sign as receiving the incoming legal mail. This paragraph applies only if the sender has marked the envelope as specified in § 540.18.

(b) The inmate is responsible for advising any attorney that correspondence will be handled as special mail only if the envelope is marked with the attorney's name and an indication that the person is an attorney, and the front of the envelope is marked "Special Mail—Open only in the presence of the inmate". Legal mail shall be opened in accordance with special mail procedures (see § 540.18).

(c) Grounds for the limitation or denial of an attorney's correspondence rights or privileges are stated in Part 543, Subpart B. If such action is taken, the Warden shall give written notice to the attorney and the inmate affected.

(d) In order to send mail to an attorney's assistant or to a legal aid student or assistant, an inmate shall address the mail to the attorney or legal aid supervisor, or the legal organization or firm, to the attention of the student or assistant.

(e) Mail to an inmate from an attorney's assistant or legal aid student or assistant, in order to be identified and treated by staff as special mail, must be properly identified on the envelope as required in paragraph (b) of this section, and must be marked on the front of the envelope as being mail from the attorney or from the legal aid supervisor.

§ 540.20 Inmate correspondence with representatives of the news media.

(a) An inmate may write through "special mail" to representatives of the news media specified by name or title (see § 540.2(b)).

(b) The inmate may not receive compensation or anything of value for correspondence with the news media. The inmate may not act as reporter or publish under a byline.

(c) Representatives of the news media may initiate correspondence with an inmate. Staff shall open incoming correspondence from representatives of the media and inspect for contraband, for its qualification as media correspondence, and for content which is likely to promote either illegal activity or conduct contrary to Bureau regulations.

§ 540.21 Payment of postage.

(a) Except as provided in paragraphs (d), (e), (f), and (i) of this section, postage charges are the responsibility of the inmate. The Warden shall ensure that the inmate commissary has postage stamps available for purchase by inmates.

(b) Writing paper and envelopes are provided at no cost to the inmate. Inmates who use their own envelopes must place a return address on the envelope, containing their name and register number, P.O. Box, city, state, and zip code.

(c) Inmate organizations will purchase their own postage.

(d) An inmate who has neither funds nor sufficient postage and who wishes to mail legal mail (includes courts and attorneys) or Administrative Remedy forms will be provided the postage stamps for such mailing. To prevent abuses of this provision, the Warden may impose restrictions on the free legal and administrative remedy mailings.

(e) When requested by an inmate who has neither funds nor sufficient postage, and upon verification of this status by staff, the Warden shall provide the postage stamps for mailing a reasonable number of letters at government expense to enable the inmate to maintain community ties. To prevent abuses of this provision, the Warden may impose restrictions on the free mailings.

(f) Mailing at government expense is also allowed for necessary correspondence in verified emergency situations for inmates with neither funds nor sufficient postage.

(g) Inmates must sign for all stamps issued to them by institution staff.

(h) Mail received with postage due is not ordinarily accepted by the Bureau of Prisons.

(i) Holdovers and pre-trial commitments will be provided a reasonable number of stamps for the mailing of letters at government expense.

(j) Inmates may not be permitted to receive stamps or stamped items (e.g., envelopes embossed with stamps, postal cards with postage affixed) other than by issuance from the institution or by purchase from commissary.

§ 540.22 Special postal services.

(a) An inmate, at no cost to the government, may send correspondence by registered, certified, or insured mail, and may request a return receipt.

(b) An inmate may insure outgoing personal correspondence (e.g., a package containing the inmate's hobbycrafts) by completing the appropriate form and applying sufficient postage.

(1) In the event of loss or damage, any claim relative to this matter is made to the United States Postal Service, either by the inmate or the recipient. The United States Postal Service will only indemnify a piece of insured mail for the actual value of an item, regardless of declared value.

(2) Inmate packages forwarded as a result of institution administration are considered official mail, except as otherwise specified (for example, hobbycraft articles mailed out of the institution). Official mail is not insured. If such an item is subsequently lost or damaged in the mail process the inmate may file a tort claim with the Bureau of Prisons (see Part 543, Subpart C of this Chapter).

(c) Certified mail is sent first class at the inmate's expense.

(d) An inmate may not be provided such services as express mail, COD, private carriers, or stamp collecting while confined.

§ 540.23 Inmate funds received through the mails.

(a) An inmate, upon completing the appropriate form, may receive funds from family or friends or, upon approval of the Warden, from other persons for crediting to the inmate's trust fund account.

(b) An inmate is responsible for advising persons forwarding the inmate funds that all negotiable instruments, such as checks and money orders, should give both the inmate's name and register number, thereby helping to ensure a deposit to the proper inmate's account. Negotiable instruments not accepted because they are incorrectly prepared will be returned to the sender, with a letter of explanation. A copy of this letter will be sent to the inmate.

(c) An inmate may not receive through the mail unsolicited funds, nor may the inmate solicit funds or initiate requests which might result in the solicitation of funds from persons other than as specified in paragraph (a) of this section.

(d) An inmate may not receive through the mail funds for direct services provided by the government, such as medical services.

§ 540.24 Returned mail.

Staff shall open and inspect for contraband all undelivered mail returned to an institution by the Post Office before returning it to the inmate. The purpose of this inspection is to determine if the content originated with the inmate sender identified on the letter or package; to prevent the transmission of material, substances, and property which an inmate is not permitted to possess in the institution; and to determine that the mail was not opened

or tampered with before its return to the institution. Any remailing is at the inmate's expense. Any returned mail qualifying as "special mail" is opened and inspected for contraband in the inmate's presence.

§ 540.25 Change of address and forwarding of mail for inmates.

(a) Staff shall make available to an inmate who is being released or transferred appropriate Bureau of Prisons and U.S. Postal Service forms for change of address.

(b) Inmates are responsible for informing their correspondents of a change of address.

(c) Postage for mailing change of address cards is paid by the inmate.

(d) Except as provided in paragraphs (e)–(g) of this section, all mail received for a released or transferred inmate will be returned to the U.S. Postal Service for disposition in accordance with U.S. Postal Service regulations.

(e) Staff shall use all means practicable to forward special mail.

(f) Staff shall forward inmate general correspondence to the new address for a period of 30 days.

(g) Staff shall permit an inmate released temporarily on writ to elect either to have general correspondence held at the institution for a period not to exceed 30 days, or returned to the U.S. Postal Service for disposition.

(1) If the inmate refuses, to make this election, staff at the institution shall document this refusal, and any reasons, in the inmate's central file. Staff shall return to the U.S. Postal Service all general correspondence received for such as inmate after the inmate's departure.

(2) If the inmate does not return from writ within the time indicated, staff shall return to the U.S. Postal Service all general correspondence being held for that inmate for disposition in accordance with postal regulations.

[FR Doc. 85-23326 Filed 9-30-85; 8:45 am]
BILLING CODE 4410-05-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

Control, Custody, Care, Treatment, and Instruction of Inmates; Visiting Regulations

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: The Bureau of Prisons is publishing proposed amendments to its rule on visiting regulations. These amendments are intended to clarify the Bureau's policy as to visiting times within the institution, and on obtaining background information necessary for preparing the inmates list of visitors. In addition, the Bureau's rule on supervision of visits is being amended to state that the visiting area may be monitored.

DATE: Comments must be received on or before November 18, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** proposed amendments to its rule on visiting regulations. The final rule on this subject was published in the **Federal Register** June 30, 1980 (at 45 FR 44232 et seq.)

The proposed amendments clarify existing rule provisions and address security concerns. Section 540.42, "Visiting times", states, in part, "At a minimum, the Warden shall permit visiting on Saturdays, Sundays, and holidays." The intent of this regulation when promulgated was to require each Warden to establish a visiting schedule for the institution which includes Saturdays, Sundays, and holidays; not a visiting schedule for each inmate which includes Saturdays, Sundays, and holidays. In *O'Rourke* v. *Smith, et al.* Civil Number 81 CIV. 6466 (US Dist Ct., SDNY, 1983), the presiding Judge found that § 540.42 required that visitors be permitted to visit on both weekend days, rather than on one day or the other. The *O'Rourke* case was satisfactorily resolved, and the order was vacated. Accordingly the Bureau determined that it was appropriate to delay adopting clarifying language until there were other changes to be made to the visting rule. Based on *O'Rourke* as well as current challenges to this provision, has decided to publish this change ot its visiting rule.

As revised, the language in existing § 540.42(a). A new paragraph (b) is added, stating that consistent with available resources and with concerns of institution security, the Warden may limit the visiting period to ensure that approved visitors have the opportunity to visit. The rule uses the example of weekend visiting, stating that to accommodate the volume of visitors to the institution it may be necessary to limit some inmates and visitors to visiting on Saturdays, and others on Sundays, without visiting on both days.

In § 540.51, final paragraph (b)(2) states that staff may request background information from potential visitors who are not members of the inmate's immediate family, before placing them on the inmate's approved visiting list. A question has arisen as to how this provision applies where there has not been sufficient time to obtain such information. This situation is most likely to occur in the case of a pretrial inmate. To clarify the Bureau's policy, proposed § 540.51(b)(2) states that where there is little or not information available on either the inmate and/or the visitor, the visit may be denied pending the availability of information, where justified by other circumstances. This position is necessary to help ensure institution security and to prevent the introduction of contraband into the institution.

In § 540.51, paragraph (g) is expanded to authorize the Warden to establish procedures for special monitoring of the visiting area. This includes monitoring of restrooms within the visiting area, provided the Warden determines there is a reasonble suspicion (as defined in §511.11) that the visitor and/or inmate is engaged, or attempting or about to engage, in criminal behavior or other prohibited behavior. The Warden is required to provide notice to both visitors and inmates of the potential for special monitoring of the visiting area.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 770, 320 1st Street, NW, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. The proposed rules may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 540

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V as follows: In Subchapter C, Part 540, amend Subpart D to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

Subpart D—Visiting Regulations

A. The authority citation for Part 540 would continue to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-099.

B. In Part 540, Subpart D, revise § 540.42 to read as follows:

§ 504.42 Visiting times.

(a) Each Warden shall establish a visiting schedule for the institution. At a minimum, the Warden shall establish visiting hours at the institution on Saturdays, Sundays, and holidays. The restriction of visiting to these days may be a hardship upon some families and arrangements for other suitable hours shall be made if at all possible. Where staff resources permit, the Warden may establish evening visiting hours.

(b) Consistent with available resources, such as space limitations and staff availability, and with concerns of institution security, the Warden may limit the visiting period. With respect to weekend visits, for example, some or all inmates and visitors may be limited to visiting on Saturday or Sunday, but not on both days, in order to accommodate the volume of visitors. There is no requirement that every visitor has the opportunity to visit on both days of the weekend, nor that every inmate has the opportunity to have visits on both days of the weekend. C. In Part 540, Subpart D, revise paragraphs (b)(2) and (g)

introductory text of § 540.51 to read as follows:

* * * * *

(b) * * *

(2) Staff may request background information from potential visitors who are not members of the inmate's immediate family, before placing them on the inmate's approved visiting list. Where little or no information is available on the inmate's potential visitor, visiting may be denied, pending receipt and review of necessary information, including information which is available on the inmate and/or the inmate's offense, including alleged offenses.

* * * * *

(g) *Supervision of visit.* Staff shall supervise each inmate visit to prevent the passage of contraband and to ensure the security and good order of the institution. The Warden may establish procedures to enable monitoring of the visiting area, including restrooms located within the visiting area. The Warden may monitor a restroom within the visiting area when there is reasonable suspicion that the visitor and/or inmate is engaged, or attempting or about to engage, in criminal behavior or other prohibited behavior. The Warden must provide notice to both visitors and inmates of the potential for monitoring the visiting area.

* * * * *

Dated: September 24, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 85-23348 Filed 9-30-85; 8:54 am]

BILLING CODE 4410-05-M

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28 CFR Part 540

Control, Custody, Care, Treatment, and Instruction of Inmates; Correspondence

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed Rule.

SUMMARY: The Bureau of Prisons is publishing proposed amendments to its final rule on Correspondence. Amendments are being proposed to §§ 540.13, 540.14, and 540.21. In § 540.13, the Bureau is proposing new paragraph (b) describing the procedure to follow when an inmate elects not to receive general correspondence. In § 540.14, the phrase "pre-trial detainees in all institutions" is deleted. In § 540.21, paragraph (b) is expanded to require that inmates using business reply mailers include the name of the institution as part of the inmate's mailing address.

DATE: Comments must be received on or before November 18, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW, Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons publishes these proposed amendments to its rule on correspondence. The final rule on correspondence is published elsewhere in this edition of the **Federal Register.**

In § 540.13, "Notification of rejections", paragraph (b) states that when the inmate elects not to receive general correspondence, the returned envelope will be stamped prior to its return to the sender. The stamp is to notify the sender that the inmate has elected not to receive general correspondence, and to advise the writer to contact the institution if the letter concerns a question or problem over which the institution has jurisdiction.

The proposed amendment to § 540.14, "General correspondence", is intended to address a security concern created by the existing rule. Section 540.14(b) allows for the outgoing general correspondence in Security Level 1, 2, and 3 institutions, and of pre-trial detainees in all institutions to be sealed by the inmate and to be sent out unopened and uninspected. Based on security concerns, existing § 540.14(c) states that the outgoing general correspondence in Security Level 4, 5, and 6 and administrative institutions may not be sealed by the inmate, and may be inspected and read by staff. Because a pre-trial detainee may be housed in one of the higher security level or administrative institutions, this means one group of inmates in the institution (pre-trial detainees) can mail sealed outgoing general correspondence, while a second group (sentenced inmates) may not. This has resulted in the pre-trial inmates being used to send out sealed general correspondence for sentenced inmates. Such action poses a danger to the security and good order of the institution and to the protection of the public, as it increases the risks of the mail being used for such activities as the introduction of contraband, or transmission of escape plots. It is for this reason that the Bureau of Prisons is proposing to delete the phrase, "and of pre-trial detainees in all institutions" from § 540.14(b). This deletion means that the security level of the institution will determine whether an inmate's outgoing general correspondence may be sent out sealed or unsealed.

In § 540.21, "Payment of postage", paragraph (b) is being amended to require that inmates using business reply mailers shall include the name of the correctional institution as part of the inmate's mailing address.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 770, 320 1st Street, NW, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 540

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V as follows: In Subchapter C, Part 540, amend Subpart B to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

Subpart B—Correspondence

A. The authority citation for Part 540 would continue to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

B. In Part 540, Subpart B, amend § 540.13 by designating the present text as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 540.13 Notification of rejections.

* * * * *

(b) When correspondence is rejected by the inmate as a result of the inmate having elected not to receive general correspondence, staff shall stamp the following statement (or a similar statement) directly on the back side of the correspondence, prior to its return to the sender: "The enclosed letter is being returned to you, since the addressee has refused to accept delivery of this letter. The letter has been neither opened nor inspected. If the letter concerns a question or problem over which this facility has jurisdiction, you may wish to return the material addressed to the Warden, for further information or clarification."

C. In Part 540, Subpart B, revised § 540.14(b) introductory text to read as follows:

§ 540.14 General correspondence.

* * * * *

(b) Outgoing mail in Security Level 1, 2, and 3 institutions may be sealed by the inmate and ordinarily is sent out unopened and uninspected. Staff may open an inmate's outgoing correspondence:

* * * * *

C. In Part 540, Subpart B, § 540.21(b) is revised to read as follows:

§ 540.21 Payment of postage.

* * * * *

(b) Writing paper and envelopes are provided at no cost to the inmate. Inmates must place a return address on the envelope, including their name and register number, P.O. Box, city, state, and zip code. Inmates using business reply mailers shall include, in addition to the foregoing identification, the name of the Federal Correctional Institution where the inmate is confined (e.g., Federal Correctional Institution, Otisville).

* * * * *

Dated: September 20, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 85-23340 Filed 9-30-85; 8:45 am]

BILLING CODE 4410-05-M

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28 CFR Part 540

Control, Custody, Care, Treatment, and Instruction of Inmates; Volunteer and Citizen Involvement Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is publishing a proposed rule on the Bureau's volunteer and citizen involvement program. The rule is intended to set forth the Bureau's policy with respect to using the services of volunteers and private citizens.

DATE: Comments on the propsoed rule must be received on or before November 18, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the Federal Register a proposed rule on the Bureau's volunteer and citizen involvement program. This rule states that consistent with maintaining institution security and good order, the Bureau of Prisons encourages the use of volunteers and private citizens in offering inmates a variety of services, both during confinement and in preparation for release. The rule discusses, among other areas, the screening and selection of persons for volunteer and citizen involvement, the orientation and training they receive, and their supervision.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 770, 320 1st Street, NW, Washington, DC 20534. Comments received will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 540

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V Part 540 as follows:

1. The authority citation for Part 540 would continue to read as follows:

Authority: 5 U.S.C. 301, 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99

2. Add new Subpart G to Part 540 to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

* * * * *

Subpart G—Volunteer and Citizen Involvement Program

Sec.

Subpart G—Volunteer and Citizen Involvement Program

§ 540.80 Purpose and scope.

Consistent with maintaining institution security and good order, the Bureau of Prisons encourages the use of volunteers and private citizens in offering inmates a variety of services, both during confinement and in preparation for release.

(a) As used in this rule, the term "citizen involvement" refers to those persons who have an occasional involvement with the institution (e.g., to participate in athletic events).

(b) As used in this rule, the term "volunteer" refers to those persons who donate their time and effort to enhance the activities and programs of the Bureau of Prisons.

§ 540.81 Program responsibility.

The Warden shall delegate to a staff member the responsibility for coordinating the institutions s volunteer and citizen involvement program.

§ 540.82 Screening and selection.

(a) To the extent possible, volunteer and citizen involvement should represent all segments of society.

(b) Citizen involvement on an occasional basis (e.g., for athletic events, entertainment programs, religious groups) is to be screened and authenticated by the sponsoring institution department.

(c) Regularly scheduled volunteers are to be selected only after careful consideration the available information, and a personal appearance by the

volunteer before an institution screening committee.

(d) Volunteers may not provide professional service without a prior showing of certification, licensing, or other indication of professional competence.

(e) A person who is not selected may appeal the denial of selection to the Warden of the institution.

§ 540.83 Approval.

(a) Except as provided in paragraph b., the Warden has the final authority to approve a person for participation in the volunteer and citizen involvement program.

(b) Ex-inmates requesting permission to participate in the volunteer and citizen involvement program require the approval of the Warden and, if under community supervision, of the supervising probation or parole officer.

(c) Staff shall issue identification cards to those persons approved as volunteers. Persons approved for citizen involvement are not required to have identification cards, but there may be identification requirements established by the Warden.

§ 540.84 Orientation and training.

(a) Citizen Involvement. Individuals (groups) within this category shall receive a basic orientation to, and overview of, the institution. This includes, but is not limited to, the conduct expected of the citizen, and a general discussion on prison contraband.

(b) *Volunteers.* Prior to assuming their assignment, volunteers shall receive an initial orientation and training session discussing the history of the Federal Bureau of Prisons and its policies, as well as the applicable institution guidelines. Volunteers shall also receive information on various other areas, including, but not limited to, an overview of the volunteer program, and a written description of volunteer duties. Volunteers will be expected to agree in writing to abide by Bureau of Prisons regulations and institution guidelines, with particular emphasis given to those regulations and guidelines relating to prison security, the introduction of contraband, and the confidentiality of information.

(c) Volunteers and citizens are encouraged to work with the Program Coordinator in establishing policy and procedures for the volunteer and citizen involvement program.

§ 540.85 Supervision.

The Warden at each Security Level 2–6 and administrative institution is to establish procedures to ensure that no volunteer or citizen program participant is allowed inside the institution unless that person (group) is provided adequate staff supervision. An exception may be made where the volunteer or citizen has waived supervision, provided this waiver has been accepted by the Bureau of Prisons.

§ 540.86 Evaluation of volunteers.

Volunteers are to be evaluated by the Program Coordinator at least once every 12 months. A summary of the evaluation should be shared with the volunteer.

§ 540.87 Termination.

The Warden may limit, postpone, discontinue, or otherwise terminate the institution access and activities of any volunteer, citizen, or volunteer or citizen group for sound correctional reasons.

§ 540.88 Placement on inmate visiting list.

Approval by the Regional Director is required for either a present or past participant in the volunteer and citizen involvement program to be added to an inmate's visiting list. Ordinarily, this approval is not granted.

§ 540.89 Inmate orientation.

Inmates are to be provided, as part of the institution's A&O Program, with an orientation to the volunteer services available at the institution. Staff are to post a current schedule of those volunteer at the institution. Staff are to post a current schedule of those volunteer services available to inmates in at least one appropriate area of the institution.

Dated: September 20, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 85–23349 Filed 9–30–85; 8:45 am]

BILLING CODE 4410–05–M

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28 CFR Part 544

Control, Custody, Care, Treatment, and Instruction of Inmates; Vocational Training Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rules.

SUMMARY: In this document, the Bureau of Prisons is publishing a proposed rule on vocational training programs, and amendments to its rule on minimum standards for administration, interpretation, and use of education tests. The rule on vocational training programs provides Bureau of Prisons policy in this area. Amendments to the rule on education tests revises the provisions on who is to be given the Stanford Achievement Test (SAT).

DATE: Comments on the proposed rules must be received on or before November 18, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC. 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** a new rule on vocational Training programs, and amendments to its final rule on minimum standards for administration, interpretation, and use of education tests.

The Bureau's proposed rule on vocational training programs sets forth Bureau of Prisons policy, which is intended to allow interested inmates the opportunity to obtain a marketable skill. the Bureau's rule on education tests was last published in the **Federal Register** October 22, 1982 (at 47 FR 47168 et seq.). The present amendments provide for SAT tests to be given to newly committed inmates, unless specifically exempted under existing § 544.11, within 30 days of the inmate's arrival at the institution. An SAT is also to be given to an inmate whom the Adult Basic Education teacher identifies as able to function at the 6.0 academic grade level.

The Bureau of Prisons has determined that these rules are not major rules for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to these rules since the rules involve agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), do not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC. 20534. Comments received will be considered before final action is taken. The proposed rules may be changed in light of the comments received. No oral hearing are contemplated.

In consideration of the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V as follows:

I. In Subchapter C, revise Part 544 by amending Subpart B and adding a new Subpart M to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

Subpart B—Minimum Standards for Administration, Interpretation, and Use of Education Tests

A. The authority citation for Part 544 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

B. In § 544.12, revise paragraph (a)(1) and add a new paragraph (a)(3) to read as follows:

§ 544.12 Procedures.

(a) * * *

(1) Except as specified in § 544.11, a newly committed inmate shall be required to take the SAT within 30 days of the inmate's arrival at the institution. For the non-English speaking inmate, another appropriate standardized test may be used to determine the inmate's current level of academic achievement.

(2)* * *

(3) An inmate whom the Adult Basic Education teacher tentatively identifies as able to function at the 6.0 academic grade level.

* * * * *

C. Add new Subpart M to read as follows:

Subpart M—Vocational Training Programs

Sec.
544.120 Purpose and scope.
544.121 Definition.
544.122 Applicability.
544.123 Implementation.

Subpart M—Vocational Training Programs

§ 544.120 Purpose and scope.

(a) Each Federal Bureau of Prisons institution provides vocational training programs to allow an interested inmate the opportunity to obtain a marketable skill. "Live work" is to be included within each vocational training program.

(b) Vocational training programs will be combined with pre-industrial programs of the same general skill area, with "live work" provided by Federal Prison Industries, Inc. (UNICOR). Similar cooperative training efforts, to include "live work", shall also be developed for non-industrial areas.

§ 544.121 Definition.

As used in this rule, the term "live work" refers to a product or service produced by the Statement for actual use by the institution, UNICOR, or another agency. It is characterized by a specific end-product or service goal, as opposed to repetitive classroom work done for training purposes.

§ 544.122 Applicability.

The provisions of this rule apply to all vocational training programs, regardless of funding source, except:

(a) Programs granted an exception by the Regional Director.

(b) Exploratory programs of 100 hours or less;

(c) Vocational assessment programs.

§ 544.123 Implementation.

(a) A specified portion of all vocational training programs is to consist of live work.

(b) Duplication of Services within the institution among training programs, other departments, and UNICOR shall be eliminated.

(c) Vocational training programs shall be combined with pre-industrial training programs offering similar or related training.

Dated: September 20, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 85–23341 Filed 9–30–85; 8:45 am]

BILLING CODE 4410–05–M

federal register

Tuesday
October 1, 1985

Part III

Department of Health and Human Services

Office of Child Support Enforcement
Social Security Administration

45 CFR Parts 205 and 305
Child Support Enforcement Program; Aid to Families With Dependent Children; Revision of Child Support Enforcement Program Audit Regulations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

Social Security Administration

45 CFR Parts 205 and 305

Child Support Enforcement Program; Aid to Families With Dependent Children; Revision of Child Support Enforcement Program Audit Regulations

AGENCY: Office of Child Support Enforcement (OCSE), and Social Security Administration (SSA), HHS.

ACTION: Final rule.

SUMMARY: These final rules amend Office of Family Assistance (OFA) and OCSE regulations at 45 CFR 205.146(d) and Part 305 to implement section 9 of Pub. L. 98–378, the Child Support Enforcement Amendments of 1984. The rules will strengthen the Child Support Enforcement Program by providing the States with audit and penalty provisions that will encourage program improvement. For a detailed discussion of the changes see Supplementary Information. Also, see the discussion under the heading "Paperwork Reduction Act" regarding information collection requirements.

EFFECTIVE DATES: Section 9 of Pub. L. 98–378 is effective on and after October 1, 1983. These regulations are effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Fitzgerald, Policy Branch, OCSE, (301) 443–5350.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

Section 9 of Pub. L. 98–378 amends sections 403(h) and 452(a)(4) of the Act regarding the Child Support Enforcement program audit requirements. Section 452(a)(4) of the Act was amended by replacing the requirement for an annual review of State IV–D programs with a requirement for a review at least once every three years (or not less than annually in the case of any State which is being penalized, or is operating under a corrective action plan in accordance with section 403(h)). Section 403(h)(1) of the Act was amended by substituting a "substantial compliance" standard for the existing "full compliance" test used to determine whether a State has an effective IV–D program meeting the requirements of title IV–D of the Act. Section 403(h)(3) now specifies that a State which is not in full compliance with the title IV–D requirements shall be determined to be in substantial compliance with the requirements only if the Secretary determines that any noncompliance with the requirements is of a technical nature which does not adversely affect the performance of the program.

Section 403(h) was further amended to provide for a corrective action period and to substitute a graduated penalty for the flat five percent reduction of a State's AFDC funds for any quarter beginning after September 30, 1983. Section 403(h)(1) provides for a reduction of not less than one nor more than two percent in an initial finding, not less than two nor more than three percent if the finding is the second consecutive such finding made as a result of a review, or not less than three nor more than five percent if the finding is the third or subsequent finding made as a result of a review. Under section 403(h)(2)(A), a reduction will be suspended for a quarter if: (1) The State submits a corrective action plan within a period specified by the Secretary which contains steps necessary to achieve substantial compliance within a time period the Secretary finds appropriate; (2) the Secretary approves the plan and amendments thereto; and (3) the Secretary finds that the corrective action plan (or any amendment that is approved) is being fully implemented and the State is progressing toward substantial compliance in accordance with the timetable in the plan. Under paragraph (h)(2)(B), the penalty shall be suspended until the Secretary determines that: (1) The State has achieved substantial compliance; (2) the State is no longer implementing its corrective action plan; or (3) the State is implementing or has implemented its corrective action plan but has failed to achieve substantial compliance within the appropriate time period. Under paragraph (h)(2)(C), a penalty shall not be applied to any quarter during a suspension period if the State achieves substantial compliance. If a State is implementing its corrective action plan but fails to achieve substantial compliance within the time period allowed, the penalty will be applied to all quarters ending after the expiration of the suspensin period until the first quarter throughout which the State IV–D program is in substantial compliance. If a State is not implementing its corrective action plan, the penalty will be applied as if the suspension had not occurred.

Although these statutory changes are effective beginning October 1, 1983, these proposed regulations have varying effective dates for different provisions as discussed below.

Under the existing section 452(a)(1) of the Act, the Director, OCSE, may establish standards for locating absent parents, establishing paternity and obtaining child support and support for the spouse (or former spouse) with whom the absent parent's child is living as he determines to be necessary to assure that State programs will be effective. The performance indicators in these regulations are established under the authority of section 452(a)(1).

Regulatory Provisions

Frequency of Audit

Previous regulations at 45 CFR 305.10 required OCSE to conduct an annual audit of State Child Support Enforcement programs to determine whether each State has an effective IV–D program. To implement the provision of the amended section 452(a)(4) of the Act regarding the frequency of audit, the regulations at § 305.10, Audit, require OCSE to conduct an audit of State IV–D programs, at least once every three years, or at least annually in the case of any State which is being penalized to evaluate the effectiveness of the programs and determine that they meet the requirements of title IV–D of the Act.

Under this provision, OCSE has flexibility regarding the frequency of audit during the three-year period. OCSE may conduct an audit of each State's IV–D program once every two years, continue to conduct annual audits or vary the audit frequency among States (e.g., audit some States twice a year and others every 2 years). OSCE plans to conduct an audit, at least once a year, in any State that is not meeting the performance-related criteria in effect for fiscal year 1986 and any subsequent fiscal year. Nonetheless, we will conduct an audit of each State's IV–D program at least once every three years. We will conduct an audit more frequently than on an annual basis at the request of any State that is being penalized for not meeting State plan-related criteria. States should be aware that any audit conducted in this situation may result in an increased penalty for the State if the State is not found in substantial compliance. The audit will cover a one-year or shorter period (see 45 CFR 305.11).

Current Measurement of Program Effectiveness

Previous audit and penalty regulations at 45 CFR Part 305 prescribed audit criteria for an effective IV–D program and provided for an annual audit and imposition of the penalty if a State was found not to have an effective program.

Those regulations defined an effective program as one that is in compliance with each of several specified IV–D State plan requirements. In order to be in compliance with a particular State plan requirement, the State had to meet specific regulatory criteria which, for the most part, required States to have and use written procedures to carry out the requirement. Thus, if a determination was made that a State had and used written procedures and/or met other criteria with regard to each State plan requirement, the State was not subject to the penalty.

OCSE has completed annual audits during the past few years. After reviewing the findings, we believe that the audits have encouraged States to establish Child Support Enforcement programs that carry out the activities described in the IV–D State plan. Nevertheless, a State may have and be using procedures for each State plan requirement and not be operating its program in an effective manner. The House of Representatives, Committee on Ways and Means, in House Report No. 98–527, page 44, indicates that the audit should focus on program effectiveness rather than on simple compliance with processes. The Senate, Committee on Finance, in Senate Report No. 98–387, page 32, indicates that the Department should be developing performance measures which will enable OCSE auditors to determine whether States are effectively attaining each of the important objectives of the program. The Report further indicates that, based on the experience in the program to date, it should be possible to set standards which represent minimum acceptable levels of success in carrying out the various objectives of the Child Support Enforcement program. We agree that, because State IV–D programs have been in operation for ten years, sufficient time has passed to allow States to reach a degree of maturity where it is no longer necessary to focus solely on compliance with the IV–D State plan.

Having reviewed the results of the audits for the first four periods, we have concluded that the current audit regulations do not enable us to adequately measure program effectiveness. We therefore have revised 45 CFR Part 305, Audit and Penalty, as described below.

Substantial Compliance Standard

In these regulations, a State must meet both State plan-related audit criteria and performance-related audit criteria to be found to have an effective program.

To implement the provisions of the amended section 403(h)(1) of the Act regarding the use of a substantial compliance standard and section 304(h)(3) of the Act regarding the determination OCSE will make as to whether noncompliance with requirements is of a technical nature that does not adversely affect program performance, we amended the regulations at § 305.20, Audit criteria.

Previously, OCSE regulations at § 305.20(a) listed IV–D State plan requirements that a State must satisfy to have an effective IV–D program. To implement substantial compliance, the new § 305.20(a)(1) lists ten selected criteria that must be fully met in order for a State to be found to meet the corresponding IV–D State plan requirements. The new § 305.20(a)(2) contains nine selected criteria and specifies that the procedures required by each criterion must be used in 75 percent of the cases reviewed in order for the State to be found to meet the corresponding IV–D State plan requirements. These provisions are effective beginning with fiscal year 1984. We consider the 75 percent standard to be rigorous because prior audit findings indicate that many States were not meeting that audit criteria in 75 percent of the cases reviewed. However, we believe that the 75 percent standard is attainable by all States and will strengthen the program by providing the States with a measure of program activity that will encourage improvement. In addition, we believe that the use of a 75 percent standard is reasonable because the audit criteria listed in § 305.20(a)(2) relate to program activities that have been IV–D State plan requirements applicable to all IV–D cases since the inception of the IV–D program in July, 1975.

The revised § 305.20(b) contains additional audit criteria OCSE will use, beginning with the October 1, 1984 through September 30, 1985 audit period, to determine whether the State meets the IV–D State plan requirements contained in 45 CFR Part 302. The new § 305.20(b)(1) incorporates the criteria listed in § 305.20(a)(1) and lists seven additional criteria, all of which must be fully met in order for the State to be found to meet the corresponding IV–D State plan requirements. The criteria added beginning in fiscal year 1985 apply only to State plan requirements that were effective before fiscal year 1985. Thus, States were aware of these requirements prior to fiscal year 1985 and we have merely added audit criteria to measure requirements which were effective for that fiscal year.

The new § 305.20(b)(2) incorporates the criteria listed in § 305.20(a)(2), lists six additional criteria, and specifies that the procedures required by each criterion must be used in 75 percent of the cases reviewed. As already noted, we believe that the use of a 75 percent standard is both rigorous and reasonable because the audit criteria referred to and listed in § 305.20(b)(2) relate to case activities that have been IV–D State plan requirements since the inception of the IV–D program, or for several years.

The new § 305.20(c) contains additional State plan-related audit criteria and new performance-related audit criteria OCSE will use for the period October 1, 1985 through September 30, 1987 to determine whether the State is in substantial compliance with the requirements of title IV–D of the Act. The new § 305.20(c)(1) incorporates the criteria listed in § 305.20 (a)(1) and (b)(1) and lists twelve additional criteria, all of which must be fully met in order for the State to be found to meet the corresponding IV–D State plan requirements.

The new § 305.20(c)(2) incorporates the criteria listed in § 305.20 (a)(2) and (b)(2), lists ten additional criteria, and specifies that the procedures required by each criterion must be used in 75 percent of the cases reviewed.

The new § 305.20(c)(3) requires the State to meet the performance-related audit criteria prescribed in the new 45 CFR 305.98(c).

The new § 305.20(d) contains State plan-related audit criteria and new performance-related audit criteria OCSE will use, for the period October 1, 1987 through September 30, 1988 and all subsequent audit periods, to determine whether the State has an effective IV–D program in substantial compliance with the requirements of title IV–D of the Act. The new § 305.20(d)(1) incorporates the criteria listed in § 305.20 (a)(1), (b)(1) and (c)(1), all of which must be met in order for the State to be found to meet the corresponding IV–D State plan requirements. In addition, the new § 305.20(d)(2) incorporates the criteria listed in § 305.20 (a)(2), (b)(2) and (c)(2), each of which must be met for 75 percent of the cases reviewed. The new § 305.20(d)(3) lists one additional criterion which must be met in order for the State to be found to meet the corresponding IV–D State plan requirement.

The new § 305.20(d)(4) requires the State to meet the audit criteria referred to in § 305.98(d) relating to the performance indicators in § 305.98 (a) and (b).

The new § 305.20 (a), (b) and (c) do not include all of the State plan-related audit criteria in 45 CFR Part 305. However, they do cover each of the IV-D State plan requirements prescribed in section 454 of the Act. The criteria addressed in § 305.20 involve IV-D functions and activities that we consider to be essential to an effective IV-D program. The criteria that were left out include having staff to perform IV-D functions covered in § 305.20, performing functions and activities that are otherwise covered by criteria in § 305.20, and performing functions and activities we do not consider to be essential to effective program performance. Nonetheless, we may at some later date, as discussed below, revise the criteria addressed in § 305.20 as a result of future audit findings.

OCSE will use only the State plan-related audit criteria listed or referred to in § 305.20 (a), (b), (c) and (d) in determining whether a State has an effective program in substantial compliance with the requirements of title IV-D of the Act. Nonetheless, audits of State IV-D programs will cover all of the State plan-related criteria in Part 305 (i.e., §§ 305.21 through 305.36 for the period October 1, 1983 through September 30, 1984, and §§ 305.21 through 305.43 for the period October 1, 1984 through September 30, 1985, and §§ 305.21 through 305.56 for all subsequent periods.) The audit reports will include audit findings on each criterion. After reviewing future audit findings, OCSE may revise § 305.20(c) to include additional audit criteria.

Beginning with the fiscal year 1986 audit period, a State must substantially comply with both State plan-related audit criteria and performance-related audit criteria to be found to have an effective IV-D program. A failure to comply under either set of criteria may result in imposition of the penalty. (See the discussion below under the headings: "Technical Changes to 45 CFR Part 305," for details regarding the deletion of the current § 305.20(b); "Performance Indicators," for details regarding the new performance indicators; and "Audit Criteria Relating to Performance Indicators," for details regarding scoring based on the performance indicators.)

The effect of these revisions in the audit and penalty regulations is that a substantial compliance standard as defined in section 403(h)(3) of the Act and § 305.20 will be the basis for determining whether States have effective IV-D programs. Under this standard, the State must, beginning with the fiscal year 1984 audit period, meet selected State plan-related criteria and, beginning with the fiscal year 1986 audit period, meet both selected State plan-related and performance-related criteria to be found to have an effective IV-D program. No failure to meet these criteria may be construed as noncompliance of a technical nature. A State will be subject to the penalty if it fails to meet either the selected plan-related or performance-related audit criteria prescribed in § 305.20.

Audit Criteria Relating to IV-D State Plan Requirements

Previously, OCSE regulations at §§ 305.21 through 305.36 prescribed audit criteria for determining program effectiveness. The criteria were based on the statutory IV-D State plan requirements prescribed in section 454 of the Act at the inception of the IV-D program in July, 1975. Since then, several mandatory and optional IV-D State plan provisions, including provisions added by the Child Support Enforcement Amendments of 1984, have been added to section 454 of the Act. To measure program effectiveness under section 403(h) of the Act, OSCE must determine whether the State is in substantial compliance with the requirements of title IV-D of the Act. Therefore, we have added new §§ 305.37 through 305.43 to the audit regulations to specify additional audit criteria OCSE will use to determine whether the State is in substantial compliance with the requirements of title IV-D of the Act as of the fiscal year 1985 audit period. We have also added new §§ 305.44 through 305.55 to the audit regulations to specify audit criteria OCSE will use to determine whether the State is in substantial compliance with the requirements of title IV-D of the Act as of the fiscal year 1986 audit period. The criteria prescribed in §§ 305.21 through 305.42, §§ 305.44 through 305.47 and §§ 305.49 through 305.54 apply to all States. However, the criteria prescribed in §§ 305.43, 305.48 and 305.55 only apply to States that have elected to implement the corresponding State plan provision. In addition, the criteria prescribed in § 305.42 only apply to States for fiscal year 1985 that elect to implement the corresponding State plan provision and will apply to all States effective October 1, 1985. Thus, OCSE will use audit criteria to determine whether a State is in compliance only with IV-D State plan requirements that apply to the State.

Finally, we issued proposed regulations in the **Federal Register** (48 FR 35468) on August 4, 1983 that amend the non-statutory State plan requirement at § 302.80 to specify that the IV-D agency shall perform certain medical support activities. States will be required, in order to be in compliance, to have and use written procedures which meet the requirements for medical support as published in the final regulations. Audit criteria will be effective upon publication of the final regulations. At the time that final medical support regulations are published, specific audit criteria will be published as interim final regulations.

Performance Indicators

In November, 1981, the Deputy Director, OCSE, established a task group to develop specific performance indicators to be used to evaluate State IV-D programs. During the development of these indicators, the task group reviewed the performance indicators used in several States. This review helped to identify indicators that are appropriate for evaluating all State IV-D programs. Also, contacts were made with other Federal agencies to identify systems and methodologies which could be used in conjunction with a performance indicator system; however, the agencies contacted did not run programs similar to the IV-D program. In addition, the task group solicited and received extensive input from State Child Support Enforcement agencies during the development of the performance indicators. In February, 1982, the proposed performance indicators were presented to the Executive Board of the National Council of State Child Support Enforcement Administrators at a meeting held in Alexandria, Virginia. In May, 1982, a revision of the proposed performance indicators were distributed to State IV-D Directors at the National Council of State Child Support Enforcement Administrators meeting held in Chevy Chase, Maryland. After that meeting, the Council conducted a survey of State IV-D Directors to determine their views on the proposed performance indicators. In July, 1982, the Executive Board of the IV-D Directors Council and OCSE representatives discussed the results of the survey at a meeting held in Kansas City, Missouri. In May, 1983, the IV-D Directors were again briefed on the proposed performance indicators at the National Council of State Child Support Enforcement Administrators meeting held in Crystal City, Virginia. Lastly, in August, 1983, the IV-D Directors were briefed at a National Reciprocal and Family Support Enforcement Association meeting in St. Louis. Several changes were made to the proposed performance indicators as a result of this meeting. The indicators prescribed

in this regulation are similar to those agreed to by the IV–D Directors.

In developing the seven performance indicators prescribed in the new § 305.98 (a) and (b), we took the following factors into consideration. First, the data necessary to use each performance indicator reflect State IV–D operations and are not overly burdensome to collect. Second, performance indicators are as objective as possible at this point in time.

The House of Representatives, Committee on Appropriations, in House Report No. 97–894, page 83, indicates that the concept of child support enforcement is good social and fiscal policy; however, it (the committee) cannot indefinitely support a program with such a negative cost-benefit ratio. The Committee also indicates in House Report No. 98–357, page 93, that it remains concerned over the cost effectiveness of the Child Support Enforcement program. In addition, the House of Representatives, Committee on Ways and Means, in House Report No. 98–527, page 44, indicates that the Federal Government pays 70 percent of the States' child support enforcement administrative costs and ought to be getting its money's worth in terms of firm and effective establishment and enforcement of AFDC and non-AFDC support obligations. OCSE also believes that the cost effectiveness of the IV–D program is an important aspect of program operations. Therefore, we have added a new § 305.98(a) (1) and (2) to prescribe two performance indicators OCSE will use to evaluate the cost effectiveness of State IV–D programs as of fiscal year 1986. These indicators are: (1) AFDC IV–D collections over total IV–D expenditures (less laboratory costs incurred in determining paternity at State option); and (2) non-AFDC IV–D collections over total IV–D expenditures (less laboratory costs incurred in determining paternity at State option). We believe that the use of these indicators will help to improve the cost effectiveness of State IV–D programs. The collection and expenditure data necessary to compute these indicators are currently submitted to the Federal Government on the OCSE–34 and OCSE–41 reports. The States have been submitting these data to us since 1975. Thus, these performance indicators will not impose an additional burden on the States. In addition, the new performance indicators are as objective as possible at this point in time.

OCSE believes that the collection of support to reimburse assistance payments made to the family is an important aspect of the IV–D program. This is consistent with section 457 of the Act which provides for using support collections made with respect to AFDC recipients to reimburse both the State and Federal share of the current assistance payment. Therefore, we have added a new performance indicator at § 305.98(a)(3) to evaluate the reimbursement rate of assistance payments made to those receiving AFDC for reasons other than unemployment. This indicator will be used beginning in fiscal year 1986. We believe that the use of this performance indicator will help to increase the percentage of assistance payments made to those receiving AFDC for reasons other than unemployment that are reimbursed via AFDC support collections. It should be noted that section 2640 of Pub. L. 98–369 requires the first $50 of support collected periodically which represents monthly support payments to be paid to the AFDC family. These payments will be treated and reported as AFDC IV–D collections. The collection and assistance payments data necessary to compute this indicator are submitted to the Federal government on the OCSE–34 and the SSA–41 reports. The States have been submitting both AFDC IV–D collection and AFDC assistance payment data to the Federal government since 1975. Thus, the new performance indicator will not place an additional burden on the States. We believe this indicator is also as objective as possible.

One basic purpose of the Child Support Enforcement program is to reduce or avert welfare costs by increasing the collection of support from absent parents. Since the collection of support is an important aspect of the IV–D program, we believe that State collection activity should be considered in determining whether a State has an effective IV–D program. Therefore, we have added a new § 305.98(b) to prescribe four performance indicators OCSE will use to evaluate the collection of support as of fiscal year 1988. The indicators are: (1) Ratios designating either AFDC or non-AFDC collections on support due (for a fiscal year) as the numerator and either total AFDC or non-AFDC support due (for the same fiscal year) as the denominator; and (2) ratios designating either AFDC or non-AFDC collections on support due (for prior periods) as the numerator and either total AFDC or non-AFDC support due (for the same periods) as the denominator. Beginning with fiscal year 1986, section 13 of Pub. L. 98–378 requires the Secretary to report to Congress for each fiscal year the data necessary to compute these indicators. Since these indicators will not be effective until the audit period beginning October 1, 1987 (fiscal year 1988), States will have sufficient time to prepare and report the necessary data (i.e., the amount of current support due during the fiscal year). We will amend the OCSE–34 report to accomplish this.

The performance indicators discussed above measure certain aspects of the IV–D program. We recognize that these indicators do not address IV–D functions such as cost avoidance and establishing paternity. We have not developed performance indicators that address all IV–D functions at this time because many of the States cannot easily collect and maintain the data necessary to use performance indicators other than the indicators we have developed. As State data collection systems and techniques improve and we evaluate results from research projects currently underway, we intend to propose additional performance indicators, including those measuring paternity establishment and cost avoidance. Nonetheless, we believe that the new performance indicators will better enable us to determine whether each State has an effective IV–D program. The indicators are consistent with section 452(a)(1) of the Act which requires the Director, OCSE to establish standards to assure that State programs will be effective.

Audit Criteria Relating to Performance Indicators

In developing these regulations, we considered two options regarding the use of performance indicators to evaluate State IV–D programs. In considering these options, we focused on identifying a system that would ensure that the AFDC and non-AFDC portions of the IV–D program be given equal weight. Under the first option considered, a national standard would be developed for the AFDC portion of the IV–D program and a second standard would be developed for the non-AFDC portion of the program. Under this dual standard system, States could not compensate for unacceptable performance in one portion of the IV–D program with excellent performance in the other portion of the program. Nonetheless, we have decided to use a single standard system in which AFDC and non-AFDC indicators are given equal weight rather than the dual standard system for the following reasons. First, States, in general, do not have functioning cost accounting systems to allocate costs between the AFDC and non-AFDC portions of the

IV-D program. Therefore, we cannot compare AFDC collections with actual AFDC expenditures or non-AFDC collections with actual non-AFDC expenditures. Our only meaningful expenditure data are for total expenditures. Second, we believe that there would be little difference in the States at a risk under a dual standard system and under a single standard.

We will combine the scores on the performance indicators into a single composite score for each State and use a single national standard by which to assess program performance. We have added a new § 305.98(c)(1) to evaluate the ratios of the performance indicators in paragraph (a) of this section on the basis of a 100 point scoring system. The tables in § 305.98(c)(1) (i) through (iii) show the scores States will receive for different levels of performance on each performance indicator. Under this scoring system, equal weight is given to the AFDC and non-AFDC components of the IV-D program. A maximum of 50 points can be scored on the two AFDC-related performance indicators in § 305.98(a) (1) and (3) (25 points for each indicator). Similarly, a maximum of 50 points can be achieved on the single non-AFDC performance indicator in § 305.98(a)(2).

The regulations at § 305.98(c)(2) specify that to be found to meet the audit criteria, a State's total score must equal or exceed 70, as illustrated by the examples in the regulation. In developing this standard, our goal was to define a minimum level of acceptable performance. We believe that achievement of a score of 70 on these three performance indicators represents the minimum level of acceptable performance at this time. However, because of the changing and evolving nature of the program, we intend to revise this scoring system for fiscal year 1988 to reflect anticipated improvements in State program performance.

The new § 305.98(d) indicates that we will evaluate State performance according to the indicators in § 305.98 (a) and (b) on the basis of a scoring system we will describe and update by regulation once every two years. In fiscal year 1987, we will publish the scoring system to be used during the following two fiscal years.

Table 1 shows the results of applying this scoring system to the States for fiscal year 1983. The table indicates the level of performance achieved by the States in each of the performance indicators in § 305.98(a), the scores which would be awarded for each of the performance indicators and the total score which would be used to determine whether a State meets the audit criteria.

The table also shows the level of performance of the nation as a whole. In fiscal year 1983, the national averages were $1.27, $1.65 and 6.6 percent on each of the three performance indicators in § 305.98(a). This would result in individual scores of 24, 50 and 20 for a total score of 94. The table indicates that 18 States would have achieved scores of less than 70 in fiscal year 1983. These States are marked by an asterisk. Finally, we note that a score of 70 can be achieved by levels of performance as low as $.90, $.90 and 4.0 percent on the three performance indicators in § 305.98(a). Thus, we feel that a score of 70 is clearly achievable.

TABLE 1

State	Indicator one	Score	Indicator two	Score	Indicator three	Score	Total score
Alabama*	0.85	18	0.09	4	10.6	25	47
Alaska	0.44	10	1.97	50	5.9	15	75
Arizona*	0.25	6	1.55	50	2.3	5	61
Arkansas	1.01	22	0.62	28	13.3	25	75
California	1.08	22	0.92	40	4.6	10	72
Colorado	1.17	22	0.98	40	9.4	25	87
Connecticut	1.73	25	1.56	50	12.7	25	100
Delaware	0.69	14	1.76	50	8.4	25	89
DC*	0.49	10	0.22	12	3.0	5	27
Florida*	0.66	14	0.55	24	4.3	10	48
Georgia*	1.38	24	0.25	12	6.0	20	56
Guam*	0.82	18	0.42	20	6.1	20	58
Hawaii	1.21	24	1.51	50	5.3	15	89
Idaho	1.76	25	0.41	20	17.8	25	70
Illinois*	1.16	22	0.80	36	2.3	5	63
Indiana	2.61	25	0.46	20	12.1	25	70
Iowa	3.29	25	1.64	50	13.5	25	100
Kansas	1.50	25	0.41	20	8.6	25	70
Kentucky	0.82	18	1.74	50	5.0	15	83
Louisiana	0.75	16	1.25	48	7.2	25	89
Maine	2.86	25	0.62	28	13.3	25	78
Maryland	1.70	25	3.02	50	12.4	25	100
Massachusetts	2.04	25	1.61	50	13.6	25	100
Michigan	2.36	25	4.26	50	8.6	25	100
Minnesota	1.48	25	1.11	44	10.0	25	94
Mississippi*	1.55	25	0.12	8	8.0	25	58
Missouri	1.27	24	0.73	32	8.1	20	76
Montana	1.63	25	0.52	24	7.7	25	74
Nebraska	1.12	22	4.62	50	7.3	25	97
Nevada	0.53	12	1.09	44	16.8	25	81
New Hampshire	1.21	24	4.08	50	11.2	25	99
New Jersey	1.14	22	2.83	50	8.1	25	97
New Mexico*	0.90	20	0.53	24	6.7	20	64
New York*	0.79	16	1.22	48	3.9	5	69
North Carolina	1.53	25	0.98	40	16.3	25	90
North Dakota	1.55	25	0.55	24	13.5	25	74
Ohio*	1.68	25	0.07	4	5.1	15	44
Oklahoma*	0.60	14	0.26	12	4.7	10	36
Oregon	1.15	22	2.10	50	12.6	25	97
Pennsylvania	1.10	22	5.56	50	6.4	20	92
Puerto Rico*	0.27	6	9.21	50	2.9	5	61
Rhode Island	1.97	25	1.39	48	6.3	20	93
South Carolina	2.08	25	0.50	24	7.9	25	74
South Dakota	1.81	25	0.56	24	12.4	25	74
Tennessee	0.79	16	1.92	50	6.9	20	86
Texas*	0.72	16	0.47	20	7.0	25	61
Utah*	1.75	25	0.29	12	21.6	25	62
Vermont*	2.74	25	0.21	12	7.2	25	62
Virgin Islands	0.44	10	1.70	50	4.7	10	70
Virginia*	1.53	25	0.24	12	7.0	25	62
Washington	1.56	25	0.89	36	10.1	25	86
West Virginia*	1.30	24	0.05	4	5.8	15	43
Wisconsin	1.92	25	0.80	36	8.8	25	86
Wyoming	2.12	25	0.61	28	7.1	25	78
National average	1.27	24	1.65	50	6.6	20	94

Data as reported by States as of June 1, 1984.

* States that would have achieved a score less than 70 in fiscal year 1983.

Notice and Corrective Action Period

Previous regulations at 45 CFR 305.50 provided that a State is subject to an immediate five percent reduction of its AFDC funds if, on the basis of an audit, a determination is made that the State failed to have an effective program meeting the requirements of section 402(a)(27) of the Act. Under this requirement, the Secretary could not suspend penalties during corrective action periods or take into account subsequent improvements before imposing the penalty.

To implement the provision of the amended section 403(h)(2) of the Act regarding the corrective action period provided to the State, we have added a new regulation at § 305.99, Notice and corrective action period, to specify that, if a State is found by the Secretary on

the basis of the results of the audit described in Part 305 not to comply substantially with the requirements of title IV–D of the Act, OCSE will notify the State in writing of such finding. The regulation further requires the notice to cite the State for noncompliance, list the unmet audit criteria, apply the penalty and give the reasons for the Secretary's findings. The notice must also identify any audit criteria listed in § 305.20 (a)(2), (b)(2) or (c)(2) that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed), specify that the penalty may be suspended if the State meets the conditions specified in § 305.99(c) and specify the conditions prescribed in § 305.99(d) that result in terminating the suspension of the penalty. The regulations at § 305.99(c) specify that the penalty will be suspended for a period of time not to exceed one year from the date of notice, if the following conditions are met: (1) The State submits a corrective action plan to the appropriate Regional Office within 60 days of the date of the notice, which contains a corrective action period not to exceed one year from the date of the notice and which contains steps necessary to achieve substantial compliance with the requirements of title IV–D of the Act; (2) the corrective action plan and any amendments are approved by the Secretary within 30 days of receipt of the plan, or approved automatically because the Secretary took no action within the 30-day period; and (3) the Secretary finds that the plan (or any amendment approved by the Secretary) is being fully implemented by the State and that the State is progressing to achieve substantial compliance with the unmet criteria cited in the notice. The regulations at § 305.98(d) specify that the penalty will remain suspended until the Secretary determines that the State has achieved substantial compliance with the unmet criteria cited in the notice and maintained substantial compliance with any marginally-met criteria cited in the notice, the State is no longer implementing its corrective action plan, or the State has implemented its corrective action plan but has failed to achieve substantial compliance with the unmet criteria cited in the notice and maintain substantial compliance with any marginally-met criteria cited in the notice. In the event that a State fails to meet audit criteria relating to the performance indicators prescribed in § 305.98, the State must meet those criteria as of the first full fiscal year after the corrective action period. This is necessary because these criteria must be measured on a fiscal year basis. If the State achieves substantial compliance within the corrective action period, the State will not be subject to a reduction of its Federal AFDC funds. However, if the State is no longer implementing its corrective action plan or has implemented its corrective action plan but failed to achieve substantial compliance with the unmet criteria cited in the notice, and maintain substantial compliance with any marginally-met criteria cited in the notice, the State will be subject to a reduction of its Federal AFDC funds in accordance with § 305.100. For State plan-related criteria, this determination will be made as of the first full quarter after the end of the corrective action period. For performance-related criteria, this determination will be made as of the first full fiscal year after the corrective action period.

The regulations at § 305.99(e) specify that a corrective action plan disapproved under § 305.99(b) is not subject to appeal. Because the Congress has given the Secretary discretion to determine whether or not to approve a corrective action plan, disapproval of a corrective action plan is not subject to appeal.

The regulations at § 305.99(f) specify that only one corrective action period is provided to a State in relation to a given criterion when consecutive findings of noncompliance are made on that criterion.

We believe that any State found to be operating a IV–D program which does not substantially comply with one or more of the requirements in the Act could, with diligent effort, develop and carry out a plan for bringing the program into substantial compliance within the specified period.

Imposition of the Penalty

Previous regulations at 45 CFR 305.50 provided that if, on the basis of the audit, a determination is made that a State does not have an effective program meeting the requirements of section 402(a)(27) of the Act, the State is subject to a five percent reduction of its Federal AFDC funds. Under that provision, a State found not to have an effective IV–D program was subject to the flat percent penalty regardless of whether it was the first or a subsequent occasion that such determination was made.

Under the new statute a State found not to have an effective IV–D program is subject to a penalty only if the State fails to achieve substantial compliance with unmet criteria cited in the notice, or fails to maintain substantial compliance with any marginally-met criteria cited in the notice.

To implement the provision of the amended section 403(h) of the Act regarding the graduated penalty, we have amended § 305.50, Penalty for failure to have an effective Child Support Enforcement program, by redesignating the regulation as § 305.100, revising paragraph (a), redesignating paragraphs (b) and (c) as (e) and (f) and adding new paragraphs (b), (c) and (d). Section 305.100(a) specifies that if the Secretary determines, on the basis of the results of the audit conducted under Part 305, that a State does not substantially meet the requirements in title IV–D of the Act and failed to achieve substantial compliance with such requirements within the corrective action period approved by the Secretary under § 305.99, payments to the State under title IV–A of the Act must be reduced for the period prescribed in the new § 305.100(c) and (d) by: (1) not less than one nor more than two percent for a period beginning in accordance with paragraph (c) or (d) of this section and not to exceed the one-year period following the end of the suspension period; (2) not less than two nor more than three percent if it is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period and not to exceed one year; or (3) not less than three nor more than five percent if it is the third or a subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period.

Under paragraph (b), the penalty will not be applied if the State achieves substantial compliance with the unmet criteria identified in the notice and maintains substantial compliance with any marginally-met criteria cited in the notice within the corrective action period approved by the Secretary under § 305.99. Under paragraph (c), if the penalty suspension ends because the State is no longer implementing the corrective action plan, the penalty will be applied as if the suspension had not occurred. Under paragraph (d), if the penalty suspension ends because the State is implementing its corrective action plan but has failed to achieve substantial compliance with the unmet criteria identified in the notice and maintain substantial compliance with any marginally-met criteria cited in the notice within the corrective action period approved by the Secretary under § 305.99, the penalty will be effective for any quarter that ends after the expiration of the suspension period until

the first quarter thoughout which the State IV–D program is in substantial compliance with the requirements of title IV–D of the Act.

This is illustrated by the following examples. OCSE conducts an audit of a State Child Support Enforcement program for fiscal year 1984 in the spring of 1985. After reviewing the audit findings, a determination is made that the State did not substantially comply with the requirements of title IV–D of the Act because it did not meet two of the audit criteria prescribed in § 305.20(a)(1). A notice dated July 1, 1985 is sent to the State in accordance with § 305.99. The notice indicates the criteria that resulted in the finding of noncompliance and the criteria that the State only marginally met, indicates that the penalty is in effect, specifies the conditions under which the penalty may be suspended and specifies the conditions that result in termination of suspension of the penalty. The State submits an approved corrective action plan which specifies a 10-month corrective action period (July 1, 1985 through April 30, 1986). After the corrective action period, OCSE conducts a follow-up on the initial audit to determine whether the State is now in substantial compliance with respect to the criteria identified in the notice. Based on the findings, a determination is made that the State implemented its corrective action plan but failed to achieve substantial compliance with the unmet criteria identified in the notice during the suspension period. The State's Federal AFDC payments will be reduced by not less than one nor more than two percent of such payments from the beginning of the quarter in which the corrective action period expires (in this case, from April 1, 1986) and up to a year from the end of the corrective action period (April 30, 1987).

An audit will be conducted at least once a year in the case of a State that is being penalized. Suppose OCSE conducts a second consecutive audit in May, 1987 and a determination is made that the State has continued to fail to achieve substantial compliance during the audit period with those unmet criteria specified in the initial notice. The State's Federal AFDC payments will be reduced between two and three percent as of May 1, 1987 for a period not to exceed one year.

Suppose OCSE conducts a third consecutive audit in May, 1988. After reviewing the audit findings, a determination is made that the State was in substantial compliance as of August 1, 1987 with the criteria on which it is being penalized. The reduction in Federal AFDC funds will cease as of October 1, 1987. The State's Federal AFDC payments were reduced between two and three percent from May 1, 1987 until October 1, 1987.

Since the penalty would be taken against the AFDC program administered by States under title IV–A of the Act, the Social Security Administration's Office of Family Assistance would assume responsibility for making the appropriate penalty reductions. Revisions to the penalty provisions at 45 CFR 205.146(d) are included in this document to implement amendments to section 403(h) of the Act.

In the second example, OCSE conducts an audit of a State Child Support Enforcement program for fiscal year 1984 in the spring of 1985. After reviewing the audit findings, a determination is made that the State did not substantially comply with the requirements of title IV–D of the Act because it did not meet two of the audit criteria listed in § 305.20(a)(1). The finding also identifies two of the audit criteria listed in § 305.20(a)(2) that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed). A notice dated July 1, 1985 is sent to the State in accordance with § 305.99. The notice lists the criteria that resulted in the finding of noncompliance and the criteria that the State marginally met, indicates that the penalty is in effect, specifies the conditions under which the penalty may be suspended, and specifies the conditions that result in termination of suspension of the penalty. The State submits an approved corrective action plan which specifies a 10-month corrective action period (July 1, 1985 through April 30, 1986). After the corrective action period, OCSE conducts a follow-up on the initial audit to determine whether the State is now in substantial compliance with respect to the criteria identified in the notice. Based on the findings, a determination is made that the State implemented its corrective action plan but is not in substantial compliance because, although it met the criteria in the notice that resulted in a finding of noncompliance, it failed to meet the criteria in the notice that it had previously met on a marginal basis. The State's Federal AFDC payments will be reduced by not less than one nor more than two percent of such payments from the beginning of the quarter in which the corrective action period expires (in this case, from April 1, 1986 and up to a year from the end of the corrective action period (April 30, 1987).

OCSE immediately conducts a complete audit of the State Child Support Enforcement program for fiscal year 1985. Based on the findings, a determination is made that the State did not achieve substantial compliance with one of the audit criteria listed in § 305.20(b)(1). A noticed dated July 1, 1986 is sent to the State in accordance with § 305.99. The notice indicates the criterion that resulted in the finding of noncompliance, indicates that the penalty is in effect, specifies the conditions under which the penalty may be suspended and specifies the conditions that result in termination of suspension of the penalty. After the corrective action period, OCSE conducts an audit to determine whether the State is now in substantial compliance with the one audit criterion listed in § 305.20(b)(1) in the second notice. At the same time, OCSE conducts an audit in accordance with § 305.10(b) to determine whether the State is in substantial compliance with the requirements of title of IV–D of the Act, including the two criteria listed in § 305.20(a)(2) on which it is being penalized. After reviewing the audit findings, a determination is made that the State was in substantial compliance as of November 1, 1986 with the two criteria specified in the initial notice on which it is being penalized. The reduction in Federal AFDC funds will cease as of January 1, 1987. The State's Federal AFDC payments were reduced between one and two percent from April 1, 1986 through December 31, 1986. A determination is subsequently made that the State achieved substantial compliance with respect to the one audit criterion listed in § 305.20(b)(1) in the second notice. The increased penalty due to a subsequent audit findings is not applied.

Application of the Regulations

For program audits for any fiscal year beginning after October 1, 1983, OCSE will: (1) Conduct an audit of the effectiveness of State Child Support Enforcement programs at least once every three years (see § 305.10); (2) use the "substantial compliance" standard specified in § 305.20 to determine whether each State has an effective IV–D program; (3) provide any State found not to have an effective program in substantial compliance with the requirements of title IV–D of the Act with a corrective action period in accordance with § 305.99; (4) provide for the use of the graduated penalty prescribed in § 305.100; and (5) specify in accordance with § 305.100 the period during which the penalty is to be imposed.

OCSE will use the new audit criteria specified in §§ 305.37 through 305.43 for program audits beginning with the October 1, 1984 through September 30, 1985 audit period. The new audit criteria specified in §§ 305.44 through 305.46, 305.48 through 305.56 and § 305.98(c) will be effective for fiscal years beginning after September 30, 1985. The audit criteria referred to in § 305.47 and § 305.98(d) will be effective for fiscal years beginning after September 30, 1987. OCSE has been conducting financial and statistical systems reviews in the States to determine whether State systems for recording, summarizing and reporting financial and statistical data are reliable in terms of accuracy, completeness and timeliness. Although these audit regulations do not address the review of State financial and statistical systems, OCSE, as part of the audit process, will review these systems during any audit conducted for a period beginning on or after October 1, 1983 to ensure that the data used to determine whether a State meets the performance-related audit criteria are reliable. The States are using these results to take corrective action. OCSE will continue to apply the previous audit regulations to all program audits for fiscal years beginning prior to October 1, 1983.

Technical Changes to 45 CFR Part 305

We have made the following technical changes to the audit and penalty regulations to conform with the revisions discussed above. We have revised § 305.0, Scope, by substituting descriptions of the new § 305.10, § 305.20, §§ 305.21 through 305.56, § 305.98 and § 305.100 for the descriptions of the current § 305.10, §§ 305.20 through 305.36 and § 305.50. In addition, we added a description of the new § 305.99. We have amended § 305.10, Timing and scope of audit, by making reference to criteria specified in §§ 305.21 through 305.56 and § 305.98 instead of §§ 305.20 through 305.36.

We have also revised § 305.11, Audit period, by deleting the description of the first audit period (January 1, 1977 through September 30, 1977) and the reference to an annual audit. Since the first compliance audit has been conducted, it is no longer necessary to describe the first audit period in the regulation. In addition, we have revised § 305.11 to specify that any audit conducted when the State is being penalized under § 305.100 may cover a period of less than one year.

We have revised the title of § 305.20 because the current title "Audit criteria" does not reflect the content of the regulation. We believe that the title "Effective support enforcement program" better reflects the content of the regulation. Previously, OCSE regulations at § 305.20(b) required the IV-D agency to be receiving notice from the IV-A agency pursuant to 45 CFR 235.70 and the State to be obtaining assignment of support rights in accordance with 45 CFR 232.11 in order for the State to be found to have an effective IV-D program. However, the corresponding audit criteria were deleted from 45 CFR Part 305 via final regulations published in the **Federal Register** (47 FR 24716) on June 8, 1982. Therefore, we have deleted the previous § 305.20(b).

We have amended the audit regulations at 45 CFR 305.24(b) to reflect the requirement in Pub. L. 98-378 that States have in effect procedures for the establishment of paternity for any child at any time prior to the child's 18th birthday. We have also amended the audit regulations at 45 CFR 305.24(c) and 305.25(a)(1) to reflect the requirement in P.L. 98-378 that States provide support enforcement services to recipients of foster care maintenance assistance under title IV-E of the Act.

OCSE regulations at 45 CFR 305.33(f) require the States to have and use written procedures for collecting any fees required by 45 CFR 302.35(e). In final regulations published in the **Federal Register** (46 FR 54554) on November 3, 1981, OCSE moved the fee provision at 45 CFR 302.35(e) to 45 CFR 303.70(e)(2). Therefore, we have amended 45 CFR 305.33(f) to reflect this change.

Previously, OCSE regulations at § 305.34 indicated that OCSE would not audit to determine whether the State has entered into written cooperative agreements with appropriate courts and law enforcement officials when necessary to provide IV-D services. To enable OCSE to audit all requirements under the Act, we have revised §305.34 to permit OCSE to use State plan-related audit criteria to determine whether the State has entered into written cooperative agreements with appropriate courts and law enforcement officials when necessary to provide IV-D services.

45 CFR 305.12 and 305.13 are not amended by these proposed rules.

Public Comment

A notice of proposed rulemaking was published on October 5, 1984 (see 49 FR 39488). The comment period ended on December 4, 1984. In addition, four public hearings were held on the following dates and at the locations listed to obtain the broadest public participation possible: October 10—Chicago; October 12—Dallas; October 15—Seattle; October 17—Washington, D.C.

We also received 21 written comments from State and local agencies and one from an organization.

Meetings to discuss the proposed regulations were held with the following groups: the National Child Support Enforcement Legislative Committee of the National Child Support Enforcement Association; the National Conference of State Legislatures; the National Governors' Association; the National Council of State Child Support Enforcement Administrators; the American Public Welfare Association; the National District Attorneys' Association; the National Council of Juvenile and Family Court Judges; and staff of the Senate Committee on Finance and the House of Representatives Committee on Ways and Means.

We have grouped the comments by subject and discuss them below along with our responses.

General Comments

1. *Comment:* One commenter indicated that the establishment of audit criteria by one branch of HHS will promote the use of multiple audit guides and complicate single concept auditing as prescribed in the "Single Audit Act of 1984." The commenter also indicated that Attachment P of Office of Management and Budget (OMB) Circular A-102 prohibits Federal agencies from imposing additional requirements for audit unless required by Federal law or approved by OMB.

Response: We agree that Attachment P of OMB Circular A-102 prohibited Federal agencies from adding requirements for audit except when added by law or approved by OMB. Title IV-D of the Act requires the Secretary to establish within the Department of Health and Human Services a separate organizational unit under the direction of a designee of the Secretary who shall perform all the functions related to the administration of the Federal Child Support Enforcement program. The statute specifically requires the Secretary's designee to conduct a complete audit of each State IV-D program and determine for the purposes of the penalty provision in title IV-D of the Act whether the actual operation of the program conforms to the requirements of title IV-D of the Act. The audit must be conducted not less often than once every three years or not less often than annually in the case of any State whose Federal Aid to Families with Dependent Children (AFDC) funds are being

reduced as the result of an audit finding or which is operating under a corrective action plan. These audits are performed by the Audit Division, OCSE.

Section 9 of Pub. L. 98–378 made several changes to the provisions in titles IV–A and IV–D of the Act which govern the audit of State Child Support Enforcement programs. To implement these changes, we published proposed regulations in the **Federal Register** on October 5, 1984. The proposed regulations and the final regulations in this document were both approved by OMB.

On October 5, 1984, the President signed into law Pub. L. 98–502, the Single Audit Act of 1984. Under the new law, a State or local government shall have a financial or financial and compliance audit made in accordance with the requirements of the new law and implementing regulations that covers any fiscal year which begins after December 31, 1984 in which it receives $100,000 or more in Federal financial assistance. In addition, a State or local government shall have a financial or financial and compliance audit made in accordance with the requirements of the new law and implementing regulations, or in accordance with the laws and regulations governing the programs it participates in, that covers any fiscal year beginning after December 31, 1984 in which it receives an amount equal to or more than $25,000 but less than $100,000 in Federal financial assistance. The new law indicates that an audit conducted in accordance with the requirements of the law shall replace any financial or financial and compliance audit of an individual financial assistance program which a State or local government is required to conduct under any other Federal law or regulations. However, economy and efficiency audits, program results audits and program evaluations are not required to be conducted in accordance with the provisions of the new law. In addition, the new law provides that a Federal agency may conduct any additional audits necessary to carry out its responsibilities under Federal law or regulation. Audits conducted by OCSE to evaluate State IV–D programs in accordance with the regulations in this document are necessary to meet the requirements in titles IV–A and IV–D of the Act. The OCSE audit described in this document is not a financial or financial and compliance audit as described in the new law. The General Accounting Office (GAO) document entitled "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" defines financial and compliance audits, economy and efficiency audits and program results audits. We believe that audits conducted by OCSE in accordance with these final regulations fall within the scope of "program results audits" as defined in the GAO standards. In accordance with the Single Audit Act of 1984, OCSE will, to the extent feasible, rely upon and not duplicate the financial or financial and compliance audit and any other audit conducted in accordance with the new law.

OMB has published a new Circular A–128, "Audits of State and Local Governments", in the **Federal Register** (50 FR 19114) to implement the Single Audit Act of 1984. The Circular supersedes Attachment P of OMB Circular A–102. HHS is in the process of formally implementing the circular.

2. *Comment:* One commenter indicated that the audit and penalty provisions of section 9 of Pub. L. 98–378 may be unconstitutional because they have a retroactive effective date.

Response: We believe that the retroactive effective date of section 9 will not make it more difficult for the States to meet the audit standards and that there is no constitutional impediment. Under prior Federal law, OCSE was required to conduct an audit using audit criteria based on IV–D State plan requirements to determine whether a State had an effective IV–D program. For the fiscal year 1984 audit period, OCSE will use the same audit criteria that were used under prior Federal law in determining whether a State has an effective IV–D program. For the fiscal year 1985 audit period, we plan to use seven additional audit criteria to evaluate State IV–D programs because Federal law requires the audit to cover all State plan requirements under title IV–D of the Act. We believe that the new audit criteria are no more stringent than the audit criteria used under prior Federal law because the new criteria are based on corresponding State plan requirements that were in effect as of fiscal year 1983, except the recovery of direct payments provisions that became effective as of the fifth day (October 5, 1982) of fiscal year 1983.

3. *Comment:* One commenter recommended that, in a county-administered State, the case sample be drawn from at least 75 percent of all local jurisdictions during the audit period because the results are projected as statewide. A second commenter indicated that a probe sample is invalid. Two other commenters indicated that, because we have increased the number of criteria to be reviewed, a large sample of cases will have to be pulled to come up with a statistically significant number of cases for each criterion. Another commenter asked whether cases to be audited will be chosen from those which were active at some point during the audit period. The commenter also asked about the treatment of cases opened near the end of the audit period.

Response: The sampling methodology used by OCSE will provide statistically reliable results for each criterion measured. OCSE agrees that sometimes the case sample will have to be drawn from a number of jurisdictions. However, the precise number of jurisdictions to be selected will vary depending on the circumstances in each State. Representative samples of cases can be selected for review without the necessity of always visiting at least 75 percent of the jurisdictions within States. OCSE believes that the use of an initial probe sample is both valid and appropriate. By probe sample we mean OCSE's current sampling approach in which a small initial sample (the probe sample) of cases is reviewed. If the results of the probe sample indicate that a State meets each audit criterion, no further cases are reviewed. If the results of the probe sample indicate that a State may not meet each audit criterion, then a larger sample of cases is chosen and reviewed. Thus, in many instances, the results of the probe sample will be sufficiently reliable to determine if a State meets each audit criterion. In all instances, the probe sample will enable OCSE to determine when an expanded sample will be necessary and the size of that expanded sample. This will result in a much more efficient use of audit resources without sacrificing validity and reliability. OCSE agrees that as the number of criteria increase the sample may have to be increased in order to ensure there will be a statistically significant number of cases for each criterion.

Beginning with the fiscal year 1984 audit period, the auditors will exclude from the sample cases closed prior to the audit period. Cases improperly referred by the IV–A agency and cases opened near the end of the audit period such that time was insufficient to take an action related to the necessary services during that period will also be excluded. The State will be evaluated on whether it took some action related to the required service on all cases not excluded from the sample.

4. *Comment:* One commenter asked about the possible conflict between requiring appropriate action on all cases and the regulations that permit case prioritization. Two other commenters

suggested that the regulations address and recognize the prioritization procedures in caseload management. Another commenter suggested that cases identified as low priority not result in an audit exception when selected by the auditors for review because they are not representative of the State's normal casework procedures.

Response: OCSE regulations on case management and prioritization offer States a means of enhancing the effectiveness and efficiency of their operations by improving the management of cases. Under those regulations, the State must ensure that no program services (e.g. locating absent parents) required to be performed under the IV-D State plan are systematically excluded by the priorization system. In addition, a State cannot neglect or ignore certain cases or classes of cases. As indicated above, any case selected for audit and not excluded from the sample will be evaluated to determine whether the State took some action during the audit period related to the services needed on the case during that period. A State cannot use case prioritization to justify its failure to take appropriate action on a case beyond the period normally required to take such action.

5. *Comment:* One commenter asked whether audits are more stringent in States where more data are available.

Response: Each case selected for audit and not excluded from the sample will be reviewed to determine whether the State took action during the audit period to provide the services needed during that period. The auditors will find it easier to determine when an action related to a necessary service was taken in States that maintain detailed case records. Therefore, we believe that these States will be better able to withstand the audit because they have better records.

6. *Comment:* Several commenters asked about the maintenance of consistency from one audit office to another so that States are evaluated in an equitable manner.

Response: As indicated in the regulations, the auditors will conduct the audits in accordance with the audit standards promulgated by the Comptroller General of the United States in the "Standards for Audits of Governmental Organizations, Programs, Activities, and Functions." In addition, the auditors will conduct the audits using the Program Compliance Audit Guide developed by the OCSE Audit Division. The Audit Guide and audit regulations describe the requirements a State must meet for each audit criterion. The auditors will also prepare their findings in accordance with a uniform compliance audit report format. OCSE staff will visit various audit sites to monitor and evaluate audit activity to ensure consistency and accuracy. Interim audit reports will all be reviewed by the OCSE "Penalty Evaluation Committee." Lastly, OCSE staff will perform a selective quality control review of audit reports to consistency and accuracy.

7. *Comment:* Several commenters suggested that the audit report indicate the percentage of cases reviewed for each criterion that must be met in 75 percent of the cases reviewed. A commenter also suggested that the audit report should include the percentage of cases reviewed for each criterion that was met marginally, and a plus or minus standard deviation so that States know where they stand.

Response: For each audit criterion covered by the 75 percent standard, the audit report will specify the total number of cases reviewed for the criterion and the number of cases in which the criterion was met. The audit report will take into account the sampling error of the cases reviewed, and will clearly indicate which criteria were not met (that is, needed services were provided in less than 75 percent of the cases reviewed); which criteria were met only marginally (that is, needed services were provided in 75 to 80 percent of the cases reviewed); and which criteria were met in over 80 percent of the cases reviewed.

Frequency of Audit

8. *Comment:* One commenter suggested that the regulations be revised to specify that if a State, as the result of an audit, is found to be in substantial compliance with the requirements of title IV-D of the Act, the State will not be audited again until all the other States are audited.

Response: Federal law and the implementing audit regulations in this document require OCSE to conduct an audit of State IV-D programs, at least once every three years, to evaluate the effectiveness of the programs and determine whether they meet the requirements of title IV-D of the Act. Under these provisions, OCSE has discretion regarding the frequency of audit during the three-year period and is not prepared to say that under no condition will a State found to be in substantial compliance by an audit be audited again until all other States have been audited. OCSE may perform more frequent audits due to the size of the State, indications that the State may not be operating an effective IV-D program or some other reason.

Substantial Compliance Standard

9. *Comment:* The preamble to the proposed regulations indicated that current audit regulations do not enable OCSE to fully measure program effectiveness at this time. Several commenters indicated that, because the regulations continue to require the States to meet State plan-related audit criteria, including many additional State plan-related criteria, they still do not adequately measure program effectiveness. The commenters also indicated that the focus in the proposed regulations on "simple compliance with process" is contrary to Federal law and the intent of Congress as expressed in the House and Senate Reports quoted in the proposed regulations. Lastly, the commenters asked how will the new regulations enable HHS to measure program effectiveness better than under prior regulations.

Response: Since 1976, the audit and penalty regulations have included process-oriented audit criteria for determining program effectiveness based on State plan requirements. Federal law requires the audit to cover all of the State plan requirements under title IV-D of the Act. Since the inception of the IV-D program, several mandatory and optional State plan provisions, including provisions added by Pub. L. 98-378, have been added to title IV-D of the Act. We have added new audit criteria based on these State plan provisions. We recognize that the State plan-related audit criteria only measure one aspect of program effectiveness. However, we believe that these audit criteria represent good measures of compliance with State plan provisions. The Senate Report on H.R. 4325 indicates that audits conducted by OCSE should continue to measure compliance with process-related Federal requirements.

The Senate report on H.R. 4325 indicates that the audits must now focus on substantial compliance with both process-related Federal requirements and performance-related indicators. The Senate report in a lengthy discussion encourages the development and use of the performance indicators. Beginning with the fiscal year 1986 audit period, the regulations provide for the use of two performance indicators to measure the cost effectiveness of State IV-D programs and a third indicator to measure the reimbursement rate of assistance payments. Beginning with the fiscal year 1988 audit period, OCSE will use four additional performance indicators based on collection of accounts receivable to evaluate State

program effectiveness. We believe that these performance indicators adequately measure program effectiveness. As State programs continue to mature, we will develop and adjust performance indicators to reflect this maturation.

10. *Comment:* One commenter asked about the Federal course of action when a State is found to be in substantial compliance under the regulations but fails to meet the national standard of 70 on the performance-related criteria.

Response: Beginning with the fiscal year 1986 audit period, the regulations specify that, on the basis of the results of an audit, a State must be found to substantially comply with both State plan-related audit criteria and performance-related audit criteria to be found to have an effective IV–D program. A State's failure to score 70 or above on the performance-related audit criteria will result in an audit finding that the State did not substantially comply with the requirement of title IV–D of the Act which will lead to imposition of the penalty. If the score does not reach 70 by the end of the fiscal year following the fiscal year in which the audit report was issued, financial sanctions will be imposed.

11. *Comment:* One commenter suggested that we permit the waiver of a finding that the State did not substantially comply with the requirements of title IV–D of the Act when the State can demonstrate that socio-economic factors beyond its control directly influenced its expenditures or collections.

Response: Revised Federal law and regulations do not provide for the waiver of any finding that the State did not substantially comply with the requirements of title IV–D of the Act, regardless of the reason for the finding. We believe that the performance-related criteria the State must meet during the fiscal year 1986 and 1987 audit periods represent the minimum level of acceptable performance at this time. Nonetheless, a State found not to have an effective IV–D program is given the opportunity to take the corrective action necessary to be in substantial compliance with the requirements of title IV–D of the Act prior to the loss of Federal AFDC funds.

12. *Comment:* Several commenters asked us to explain and provide examples of: "noncompliance of a technical nature." A commenter also asked that we explain the statement: "No failure to meet these criteria may be construed as noncompliance of a technical nature," on page 39491 of the proposed regulations.

Response: Section 403(h) of the Act specifies that a State which is not in full compliance with the requirements of title IV–D of the Act shall be determined to be in substantial compliance only if the Secretary determines that any noncompliance with the requirements is of a technical nature which does not adversely affect the performance of the program.

The regulations require the State to meet both State plan-related audit criteria and performance-related audit criteria to be found to have an effective program in substantial compliance with the requirements of title IV–D of the Act. The substantial compliance provisions do not include all of the State plan-related criteria in 45 CFR Part 305. However, they do cover each of the IV–D State plan requirements prescribed in title IV–D of the Act because Federal law requires the audit to cover all such requirements. The criteria addressed in the substantial compliance provisions also cover IV–D functions and activities that we consider to be essential to an effective IV–D program. The State must meet each criterion. Failue to meet any of these criteria or the performance-related criteria cannot be considered "noncompliance of a technical nature."

The substantial compliance provisions exclude criteria that involves staffing requirements, functions and activities that are covered by other audit criteria, and functions and activities we do not consider to be essential to an effective IV–D program. We consider these criteria to be technical in nature because they do not focus on program results. Although these criteria will be addressed in the audit report, a determination that a State failed to meet one or more of these criteria will not affect whether a State is found to have an effective IV–D program.

13. *Comment:* Several commenters also listed several State plan-related audit criteria, such as publicizing the availability of support enforcement services and incentive payments to States and political subdivisions, covered by the "substantial compliance" provisions that they suggested be treated as "noncompliance of a technical nature."

Response: Sections 5 and 14 of Pub. L. 98–378 add several new State plan requirements to title IV–D of the Act. Section 5 and the implementing program regulations prescribe the payment of incentive payments to political subdivisions. Section 14 and the implementing program regulation require the States to publicize the availability of support enforcement services. The audit criteria on publicizing the availability of support enforcement services, and payments of incentives to States and political subdivisions are based on the corresponding State plan requirements. We believe that the requirement to publicize the availability of support enforcement services is essential to an effective IV–D program because many families in need of child support are unaware that support enforcement services are available which they can afford. We also believe that the new incentive payment requirements are essential to the development of IV–D programs that emphasize the provision of support enforcement services to both AFDC and non-AFDC families and encourage the participation of political subdivisions in the IV–D program.

14. *Comment:* One commenter suggested that we delay the use of the seven additional State plan-related criteria we propose to add as of the fiscal year 1985 audit period to give the States time to bring their programs into compliance.

Response: The final regulations retain the seven additional audit criteria because Federal law requires the audit to cover all State plan requirements under title IV–D of the Act. The criteria added beginning in fiscal year 1985 apply only to State plan requirements that were in effect as of fiscal year 1983, except the recovery of direct payments provisions which became effective as of the fifth day (October 5, 1982) of fiscal year 1983. We believe that a delay in using these additional audit criteria is unwarranted because the States should already be meeting the corresponding State plan requirements.

15. *Comment:* One commenter objected to the provisions in the proposed regulations that require OCSE, beginning with the fiscal year 1986 audit period, to use audit criteria based on procedures that become effective as of that period because it is unrealistic to expect the States to have laws passed and procedures implemented immediately in 75 percent of the cases reviewed. The commenter suggested we postpone auditing these procedures for one year.

Response: Effective October 1, 1985, Pub. L. 98–378 requires the States to have State laws passed and implemented regarding certain mandatory procedures and requirements. However, section 3 of the new law and the implementing regulations at 45 CFR 302.70 permit the Secretary of Health and Human Services (HHS) to exempt a State from having to implement one or more of the mandatory procedures if the State can demonstrate that such procedure or

procedures will not improve the effectiveness and efficiency of the State IV–D program. In addition, section 3 of the new law permits the Secretary of HHS to grant a State a delay in implementation of one or more of the mandatory procedures until the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985, if the Secretary determines that a State needs legislation to implement these procedures.

Pub. L. 98–378 gives the States over a year to implement the new State plan requirements with an effective date of October 1, 1985. Therefore, since Pub. L. 98–378 added new State plan requirements with an effective date of October 1, 1985, the audit regulations contain corresponding State plan-related audit criteria that become effective as of the fiscal year 1986 audit period. Nonetheless, OCSE will exclude from the audit of a State's IV–D program any procedure covered by an exemption or delay in implementation granted by the Secretary during the period that such exemption or delayed implementation is in effect.

16. *Comment:* Several commenters suggested that, because prior audits indicated that many States were not meeting the audit criteria in 75 percent of the cases reviewed, the regulations should begin with a lower standard with a gradual increase to 75 percent. Several other commenters indicated that the 75 percent standard is too rigorous for the fiscal year 1984 audit period. Several commenters also suggested that, because it is impossible to bring a past period into compliance with rules issued after that period, we postpone use of the 75 percent standard.

Response: Prior to October 1, 1983 effective date of the audit and penalty provisions of section 9 of Pub. L. 98–378, Federal law and the audit regulations required the States to be in full compliance with the requirements of title IV–D of the Act to avoid imposition of a penalty. In addition, OCSE conducted audits and issued audit reports for each of five prior periods. The audits covered the same State plan-related audit criteria during each of these periods. Effective October 1, 1983, section 9 of the new law requires the States to be in substantial compliance with the requirements of title IV–D of the Act to avoid imposition of the penalty. Under the implementing audit regulations in this document, a less stringent 75 percent standard is used with respect to certain functional criteria in determining whether the State is in substantial compliance with the requirements of title IV–D of the Act.

17. *Comment:* One commenter indicated that, because of the large number of cases with arrearages, it is impossible for States to comply with the 75 percent standard for wage withholding during fiscal year 1986. The commenter suggested that we begin with a 25 percent standard for wage withholding in fiscal year 1986 and raise the standard in 25 percent increments until the 75 percent level is reached.

Response: The new law gives the States over a year to implement the wage withholding process. Thus, effective October 1, 1985, the States must initiate the wage withholding process in all cases in which there is a one-month arrearage. Beginning with the fiscal year 1986 audit period, all IV–D cases that require wage withholding will be subject to review under the wage and income withholding audit criteria. Although we agree the implementation will require a major effort on the part of most States, we believe it would be inappropriate to allow the low standards proposed by the commenter since that would effectively result in delaying the legislated implementation date.

18. *Comment:* Two commenters indicated that the regulations specify the use of both a 75 and an 80 percent standard in evaluating functional criteria.

Response: The regulations indicate that in order to be found in substantial compliance with the requirements of title IV–D of the Act, a State must have and use written procedures in 75 percent of the cases reviewed for each functional criterion. The regulations also indicate that the notice OCSE sends to a State found not to substantially comply with the requirements of title IV–D of the Act will list any audit criteria, including criteria covered by the 75 percent standard, that the State did not meet. The notice also will specify any functional audit criteria that the State met, but only marginally (that is, in 75 to 80 percent of the cases reviewed). Although the audit criteria the State marginally met cannot result in a finding of noncompliance or application of the penalty at the time of notice, the State must, during the corrective action period, maintain substantial compliance in the areas cited in the notice as marginally acceptable to avoid losing funds under the penalty. The regulations require the notice to indicate the functional audit criteria that the State only marginally met because we want to discourage the States from placing less emphasis on the marginal areas in order to improve their performance in areas that resulted in the finding of noncompliance. We encourage the States to improve their performance in all areas addressed in the notice.

19. *Comment:* One commenter indicated that it would not be appropriate to use audit criteria such as imposition of liens or posting security in 75 percent of all cases. A second commenter indicated that the regulations are unclear as to whether, for example, liens on personal property must be used in 75 percent of all cases with arrearages, be available for use in 75 percent of the cases with arrearages, or be used in 75 percent of the cases where liens are required by State procedure. A third commenter suggested that, if a determination that an action should not or cannot be taken in a case is properly documented, the case meets the substantial compliance requirements. A fourth commenter asked whether there can be cases in which no action was taken during the audit period, yet this nonaction will be considered as the "appropriate action." Another commenter indicated that it will be difficult to take an appropriate action on 75 percent of its cases without a great increase in personnel. The commenter also asked, if an appropriate action was taken in a prior fiscal year and no action was taken on a case during the audit period, would the case count against the State. Lastly, the commenter asked how ofter cases should be reviewed to assure appropriate action is taken. Another commenter asked whether a systems review of sources for address and other information on a case constitutes an appropriate action, in a case requiring location of the absent parent.

Response: The regulations specify that the procedures required by certain audit criteria must be used in 75 percent of the cases reviewed for each criterion in order for the State to be found to meet the corresponding IV–D State plan requirements. After the auditors have selected a sample of cases, the cases not excluded will be evaluated by criterion. This is illustrated by the following examples. If a review of the case record for the audit period indicated that action should be taken to establish paternity, the case would be reviewed under the establishing paternity criterion. In a second example, if a review of a case record for the audit period indicated that action should be taken to enforce the support obligation, the case would be reviewed under the enforcement of support obligation criterion. If the audit is for the fiscal year 1986 or a later audit period and the State in accordance with

statewide guidelines generally available to the public is required to impose a lien against the real or personal property of the absent parent the case also would be reviewed under the imposition of liens criterion. A case will be reviewed under criteria related to any services (e.g. enforcement of support obligation) that, based on the case record and any statewide guidelines, were necessary during the audit period. Beginning with the fiscal year 1984 audit period, unless the case was closed during a prior audit, period, closed during the current audit period and an action related to services was not necessary, improperly referred by the IV–A agency, or opened near the end of the audit period such that time was insufficient to take an action related to necessary services during the period, the State must take some action during the audit related to services necessary during that period. Under this requirement, a State must take action with respect to each criterion under which a case is reviewed. For example, if a case is reviewed under the establishing paternity criterion and the support obligations criterion, the State must take an action related to the services covered by each criterion. However, if time was insufficient to take an action to establish a support obligation before the end of the audit period, the case would be excluded from review under the support obligations criterion.

OCSE leaves to State discretion the determination of action to be taken in a given case in accordance with State guidelines so long as the action is an activity directly related to performing the necessary child support enforcement services during the audit period. We believe that the States should, at least once a year, take some action related to providing the necessary services on each case which is not otherwise excluded. The States should document in the case record any action taken. We encourage the States to obtain whatever resources are necessary to provide IV–D services to all cases in an efficient and effective manner. This includes the development of automated systems and the use of other techniques to improve program operations.

Except as indicated above, the States must take some action on the cases in their caseloads during each audit period (Federal fiscal year). If the State, through use of an automated system, checked one or more sources of locate information for a case that needs location services during the audit period, we believe that would constitute a locate action. In addition, we will count an action taken by a State during the audit period related to necessary services on a case even when the action does not result in successful performance of the service. However, if an action was taken on a case during a prior audit period, but no required action was taken during the audit period, the case would count against the State.

20. *Comment:* Two commenters suggested that we eliminate from the substantial compliance provisions the need to have written procedures.

Response: OCSE regulations require each State to operate a IV–D program on a statewide basis in accordance with standards for administration that are mandatory throughout the State. Under this requirement, the State must develop written procedures for the performance of each IV–D function and ensure that these procedures are used throughout the State. We believe that the development and use of written procedures helps to ensure that IV–D functions are carried out properly, efficiently, effectively and in a consistent manner in the State.

21. *Comment:* Two commenters recommended that the cooperative arrangement audit criteria be deleted from the list of criteria States must meet beginning with the fiscal year 1984 audit period because the audit regulation on cooperative arrangements indicates that OCSE will not separately audit cooperative agreements.

Response: Since the audit determines whether each State is in substantial compliance with the requirements of title IV-D of the Act, OCSE will use audit criteria to evaluate State performance separately on each State plan requirement. We believe that the audit criteria based on the State plan requirement on cooperative arrangements should not be deleted, but strengthened to better enable us to evaluate State performance. Therefore, we have revised the audit regulation on cooperative arrangements to permit OCSE to use State plan-related audit criteria to separately determine whether the State has entered into written cooperative agreements with appropriate courts and law enforcement officials when necessary to provide IV-D services.

Audit Criteria Relating to IV-D State Plan Requirements

22. *Comment:* One commenter asked that we address in the regulations the meaning of the term "written procedures."

Response: The regulations at 45 CFR 305.1(b) define the term "procedures" for purposes of the audit regulations as a written set of instructions which describe in detail the step-by-step actions to be taken by child support enforcement personnel in the performance of a specific function under the State's IV-D plan. The IV-D agency may issue general instructions on one or more functions, and delegate responsibility for the detailed procedures to the office, agency or political subdivision actually performing the function.

23. *Comment:* One commenter objected to the proposed change to the audit criteria on establishing paternity which requires an acknowledgement of paternity to have the same force and effect as a court finding of paternity because the State has been effectively using voluntary acknowledgements of paternity as the basis for establishing support obligations and State laws does not permit administrative establishment of paternity.

Response: Since the inception of the IV-D program in July 1975, OCSE regulations have required the IV-D agency to: (1) Attempt to establish paternity by court order or other legal process established under State law; or (2) establish paternity by acknowledgement if under State law such acknowledgement has the same legal effect as court-ordered paternity, including the right to benefits other than child support. In December, 1976, OCSE published corresponding audit criteria on this subject that became effective as of the fiscal year 1977 audit period. We are now revising the audit criteria on establishing paternity only to reflect the requirements in Pub. L. 98–378 that States have in effect laws providing for establishing paternity up to the child's 18th birthday. This change is effective as of the fiscal year 1986 audit period.

24. *Comment:* One commenter recommended that we define the phrase "sparsely populated geographical area" as used in the audit regulation on separation of cash handling and accounting functions so that States know when to apply for a waiver.

Response: The audit regulation on separation of cash handling and accounting functions indicates that the audit criteria do not apply sparsely populated geographical areas within the State if the State is granted a waiver by the Regional Office. The State plan provision on separation of cash handling and accounting functions permits the Regional Office to grant a waiver to sparsely populated geographical areas, where the separation of cash handling and accounting functions requirements would necessitate the hiring of an unreasonable number of additional staff. The IV-D agency must document the

adminstrative infeasibility and provide an alternative system of controls that reasonably ensures that support collections will not be misused. Under this provision, the Regional Office will determine, on a case-by-case basis, whether to grant a waiver based on the current circumstances within the State. We have not defined the phrase "sparsely populated geographical area" because it is not possible to do so in a consistent and fair manner on a national basis. However, since the circumstances in a State often change and may be unique to a particular State, the Regional Office will, on a case-by-case basis, develop criteria for determining what jurisdictions, if any, constitute a "sparsely populated geographical area."

25. *Comment:* Two commenters suggested that, because the collection of spousal support is an optional State plan provision through fiscal year 1985, the regulations be revised to indicate that spousal support will not be audited until fiscal year 1986.

Response: OCSE will use audit criteria based on optional State plan provisions only in States that have elected to implement the corresponding State plan provision. The audit criteria on spousal support only apply to States for fiscal year 1985 that elect to implement the corresponding State plan provision and will apply to all States effective October 1, 1985.

26. *Comment:* Two commenters recommended that we define the terms "regularly" and "frequently" as used in the audit regulation on publicizing the availability of support enforcement services so that States know what standard they must meet.

Response: The audit criteria on publicizing the availability of support enforcement services is based on a corresponding State plan provision that does not define the terms "regularly" and "frequently" as used in the provision. Since Federal law and the implementing program regulation do not define these terms, the auditors will use the meanings given to these terms in State guidelines and procedures in evaluating State performances based on the audit criteria.

27. *Comment:* One commenter objected to the regulation on medical support because it indicates that the audit criteria on medical support will become effective immediately upon publication without giving the States any lead time or opportunity to comment on the audit criteria.

Response: OCSE will publish final regulations on medical support and corresponding audit criteria in the same document. The audit criteria will be published as interim final regulations and be used by OCSE to evaluate State IV–D programs as of the first full fiscal year following the date the audit criteria are published. Since the criteria will be published as interim final rules, the public will be given a 60-day period to submit to us, in writing, any comments they have on the criteria. We will review any comments received and determine whether the audit criteria on medical support should be revised.

Performance Indicators

28. *Comment:* Several commenters stated that the indicators established by OCSE to determine the performance of a State are only indicators and should not be used to impose a penalty upon the States. The commenters said that the performance indicators are not actual measures of a State's performance during the audit period because: (1) The performance indicators do not reflect actual collections and expenditures for the year audited; (2) collections made during an audit period do not reflect expenditures incurred during that period and such expenditures result in collections during a subsequent period; (3) the two cost effectiveness performance indicators do not accurately reflect a State's performance in collecting AFDC or non-AFDC payments since non-AFDC expenditures are used in the AFDC indicator and AFDC expenditures are used in the non-AFDC indicator; and (4) the assistance payment factor in the reimbursement rate of assistance payments indicator is out of the control of the IV–D agency. Another commenter indicated that, because the two cost-effectiveness performance indicators each use total IV–D expenditures, they do not account for the difference in State economic, demographic and social welfare structures. Lastly, a commenter indicated that the reimbursement rate of assistance payments performance indicator is not consistent with the provision in Federal law which requires the Director, OCSE, to establish standards to assure that State programs are effective because factors controlling IV–A assistance payments are not standardized.

Response: Federal law gives OCSE flexibility regarding the criteria that are used to determine whether the State has an effective IV–D program in substantial compliance with the requirements of title IV–D of the Act and the Congress has urged OCSE to measure performance. The two cost-effectiveness indicators and the reimbursement rate of assistance payments indicator we plan to use beginning with the fiscal year 1986 audit period are based on data the States currently collect and report to OCSE. The four accounts receivable performance indicators we plan to use beginning with the fiscal year 1988 audit period are based on data the States will collect and report to OCSE as of fiscal year 1986. We recognize that these performance indicators do not address all aspects of the IV–D program. We are not proposing performance indicators that address all IV–D functions at this time because many of the States cannot easily collect and maintain the data necessary to use performance indicators other than the indicators we are proposing. As State data collection systems and techniques improve and we evaluate results from research projects currently underway, we intend to propose additional performance indicators.

We believe that adjustments to collection and expenditure data are cyclical in nature and even out over a period of time. States can keep adjustments to a minimum by submitting full and complete reports to OCSE in a timely manner. Under OCSE policy, any adjustment to collection or expenditure data for any prior period is combined with current quarter collection or expenditure data reported to OCSE. Departmental regulations limit adjustments to expenditures for a quarter to a two-year period which ends two years following the quarter in which the expenditure was made. We recognize that some portion of collections made during an audit period may result from expenditures made during a prior audit period and that expenditures made during an audit period are likely to result in recurring or some non-recurring collections during subsequent periods. Nonetheless, we believe that the States would find it difficult and expensive to collect and maintain the data necessary to compare a given collection to the amounts actually expended to make the collection.

We believe that the two cost-effectiveness performance indicators measure as well as possible the cost-effectiveness of State IV–D programs. Presently, because of State accounting systems and State reporting requirements, we cannot obtain a precise allocation of expenditures between the AFDC and non-AFDC portions of the IV–D program. Our only meaningful expenditure data are for total expenditures. We encourage the States to develop cost accounting systems for allocating expenditures between the AFDC and non-AFDC portions of the IV–D program. We will revise the performance indicators to replace total expenditures with AFDC

and non-AFDC expenditures once States are reporting these data to us in an accurate manner.

The collection of support to reimburse assistance payments made to the family is one of the primary objectives of the IV–D program. Although the size of the AFDC grant made to the family is not under the control of the IV–D agency, we have in-house statistical evidence that performance on the reimbursement rate of assistance payments performance indicator is not related to the size of the AFDC grant. Therefore, we believe that the reimbursement rate of assistance payments performance indicator is consistent with the provision in Federal law that requires the Director, OCSE, to establish standards to assure that State programs are effective, and that high AFDC grant States will not be systematically prejudiced.

We recognize that there are differences in AFDC caseload size from State to State, however, the reimbursement rate of assistance payments performance indicator measures a rate of recoupment and we expect that State IV–D agencies will commit resources commensurate to work requirements.

29. *Comment:* One commenter asked us to specify how the cost-effectiveness indicators and reimbursement rate of assistance payments indicator will be used in fiscal years 1986 and 1987.

Response: The regulations specify the procedures and criteria OCSE will use to evaluate State performance according to the two cost-effectiveness indicators and the reimbursement rate of assistance payments indicator in fiscal years 1986 and 1987. The procedures and criteria include using a 100-point scoring system that gives equal weight to the AFDC and non-AFDC components of the IV–D program, combining the scores on each performance indicator into a single composite score for each State and using a single national standard by which to assess program performance.

30. *Comment:* One commenter suggested that the regulations be revised to specify that the first $50 of support collected in public assistance cases will be reported as AFDC collections.

Response: Section 2640 of Pub. L. 98–369, the Deficit Reduction Act of 1984, amended titles IV–A and IV–D of the Act to require that the first $50 of support collected periodically for AFDC recipients which represents monthly support payments be paid to the family. Since these payments come out of AFDC IV–D collections, they are treated and reported as AFDC IV–D collections. We will amend the "Quarterly Report of Collections" to clearly indicate this. The two AFDC-related performance indicators each include AFDC IV-D collections as a variable. The indicators will include all amounts reported on the "Quarterly Report of Collections" as AFDC IV–D collections.

31. *Comment:* One commenter asked us to specify how the cost-effectiveness indicators treat expenditures incurred and collections made in interstate cases.

Response: The "Quarterly Report of Collections" and reporting instructions describe what constitutes AFDC IV–D collections and non-AFDC IV–D collections. The "Financial Status Report" used by the States to submit expenditures to OCSE and reporting instructions describe what constitutes IV–D expenditures. In evaluating State performance based on the cost-effectiveness indicators, OCSE will use these instructions.

32. *Comment:* One commenter suggested that the cost-effectiveness performance indicators be revised to exclude from IV–D expenditures systems development cost, interstate grant project costs and laboratory costs for determining paternity.

Response: The cost-effectiveness performance indicators are the same ratios OCSE will use in computing incentive payments to States beginning in fiscal year 1986. Under the new incentive payment regulations, the States may exclude laboratory costs from total IV–D expenditures. However, the States cannot exclude systems development, interstate project or any other costs from total IV–D expenditures for purposes of computing State incentive payments in accordance with section 5 of Pub. L. 98–378 and the implementing incentive payment regulations. Since the cost-effectiveness performance indicators are identical to the cost-effectiveness ratios used in the new incentive payment system, we believe that the cost-effectiveness performance indicators can only be revised to exclude laboratory costs for determining paternity. Therefore, we have revised the denominator of these performance indicators to exclude laboratory costs from total IV–D expenditures if the State computes and reports such costs to OCSE.

33. *Comment:* One commenter suggested that, because the high costs associated with establishing paternity may skew the results of dollars collected to dollars spent on a paternity case, the cost-effectiveness performance indicators should be "weighted" to allow for increased effort and costs in paternity cases.

Response: The Center for Health and Social Service Research, Inc., is studying the costs and benefits of establishing paternity under a grant awarded by OCSE. The project involves the development of a model for assessing the costs and benefits of paternity establishment systems and applying the model to systems in several jurisdictions. After we have received and evaluated the final report on this project, we intend to propose additional performance indicators for measuring the establishment of paternity. We also will determine whether the cost-effectiveness performance indicators should be "weighted" as suggested by the commenter. In the interim, the optional deletion of laboratory costs for establishing paternity from the denominator of the cost-effectiveness performance indicators should help to minimize any skewing of the scores on these indicators.

34. *Comment:* One commenter indicated that the cost-effectiveness performance indicators are unfair to high cost-of-living States because these States have high administrative costs and find it difficult to obtain high support orders.

Response: We are not aware of any data that supports or refutes the commenter's position that the cost-effective performance indicators are unfair to high cost-of-living States. Nonetheless, we believe that the cost-effectiveness performance indicators measure as well as possible the cost-effectiveness of State IV–D programs.

35. *Comment:* One commenter indicated that the cost-effectiveness performance indicator that measures the non-AFDC aspect of the IV–D program favors States where all non-AFDC child support payments are funneled through the IV–D agency.

Response: We do not believe that the non-AFDC cost-effectiveness performance indicator favors States that funnel all non-AFDC support payments through the IV–D agency because there is a maximum performance score on the non-AFDC performance indicator that can be obtained by States even when they do not funnel all non-AFDC payments through the IV–D agency. In determining the use of the performance indicators to evaluate State IV–D programs, we focused on identifying a system that would ensure that the AFDC and non-AFDC portions of the IV–D program be given equal weight. This is consistent with the House and Senate reports on H.R. 4325 which encourage States to develop and improve both the AFDC and non-AFDC portions of the IV–D program. Under the system we adopted, the ratios of the three performance indicators we will use during fiscal years 1986 and 1987 will be

evaluated on the basis of a 100-point scoring system. A maximum of 50 points can be scored on the two AFDC-related performance indicators (25 points for each indicator). Similarly, a maximum of 50 points can be achieved on the single non-AFDC performance indicator. To meet the audit criteria, a State's total score must equal or exceed 70.

36. *Comment:* One commenter objected to the reimbursement rate of assistance payments performance indicator because it does not account for the differences in State IV–A assistance payment levels. A second commenter objected to this indicator because it requires high grant States to maintain higher AFDC collections than low grant States to avoid a penalty.

Response: OCSE conducted a statistical analysis to determine whether the reimbursement rate of assistance payments performance indicator favors low grant States over high grant States. We determined that there is no correlation between the grant amount and the ability to perform well on the reimbursement rate of assistance payments performance indicator.

In discussing the mission of the Child Support Enforcement program, the House and Senate reports on H.R. 4325 indicate that one basic objective of the Child Support Enforcement program is the collection of support to reimburse assistance payments made to the family. This is consistent with Federal distribution requirements which provide for using support collections made with respect to AFDC recipients to reimburse both the State and Federal share of the current assistance payment. We believe that the use of the reimbursement rate of assistance payments performance indicator will help to focus attention on the recovery of assistance payments.

37. *Comment:* One commenter indicated that States with a level of performance higher than seven on the reimbursement rate of assistance payments performance indicator should receive a higher score than States with a level of performance of seven on the performance indicator.

Response: We believe that giving States with a level of performance higher than seven on the reimbursement rate of assistance payments performance indicator a score higher than States with a level of performance of seven on the performance indicator will encourage the States to place less emphasis on certain other aspects of the IV–D program so that they can improve program activity related to one specific performance indicator. We want to encourage the States to place equal emphasis on the AFDC and non-AFDC aspects of the IV–D program. We believe that the scoring system OCSE has developed to evaluate the ratios of the three performance indicators we will use during fiscal year 1986 and 1987 are consistent with this approach.

38. *Comment:* One commenter asked us to better define the phrase "less payments to unemployed parents" as used in the performance indicator regarding reimbursement rate of assistance payments.

Response: The States are required to submit assistance payments data to OFA on the "Quarterly Statement of Expenditures". This report includes a monthly breakout of assistance payments made to the family due to an unemployed parent when a State has elected the optional unemployed parents program. The report contains a brief description of these payments, which will be used in excluding assistance payments under the reimbursement rate of assistance payments performance indicator.

39. *Comment:* Several commenters indicated that the IV–A assistance payments variable in the reimbursement rate of assistance payments indicator should be revised to exclude assistance payments made to families due to the death or disability of one or more parents.

Response: OFA does not require the States to prepare and report the amount of IV–A assistance payments paid to families because of the death or disability of one or more parents. Since the States do not report data on death or disability-related assistance payments, we are unable to revise the performance indicator to exclude such payments.

40. *Comment:* One commenter asked whether we can justify the cost and effort required to produce, maintain and report the data necessary to use the accounts receivable performance indicators. A second commenter suggested that we accelerate the use and place greater emphasis on the accounts receivable performance indicators because they constitute a valid measure of IV–D program effectiveness.

Response: Since the collection of support on behalf of welfare and non-welfare families is a fundamental aspect of the IV–D program, we believe that State collection activity should be considered in determining whether a State has an effective IV–D program. Therefore, the regulations contain four accounts receivable performance indicators OCSE will use to evaluate the collection of support as of fiscal year 1988. We believe that the cost and effort required to produce, maintain and report the data necessary to use the accounts receivable performance indicators will be justified because the use of these indicators will help to focus attention on State collection activity.

The regulations also indicate that, beginning in fiscal year 1987, OCSE will describe and update in regulation once every two years the scoring system to be used during the following two years to evaluate State performance according to the accounts receivable and other performance indicators in effect. We plan to place significant emphasis on the accounts receivable performance indicators in the scoring system because they constitute a valid measure of IV–D program effectiveness. However, we believe that the accounts receivable performance indicators should not be over-emphasized because they measure only one aspect of the IV–D program.

Beginning with fiscal year 1986, section 13 of Pub. L. 98–378 requires the Secretary to report to Congress for each fiscal year the data necessary to compute the accounts receivable performance indicators. OCSE is developing a financial and statistical report the States will use to report accounts receivable and other data to OCSE as of fiscal year 1986. Since the States do not currently report to OCSE all the data necessary to compute the accounts receivable performance indicators, we believe that it would be unreasonable to accelerate the use of these indicators. Therefore, the indicators will not be effective until October 1, 1987 (fiscal year 1988), so that States will have sufficient time to prepare and report the necessary data in an accurate manner.

41. *Comment:* One commenter requested clarification regarding the fiscal years to be audited using the accounts receivable performance indicators.

Response: Beginning with the fiscal year 1988 audit period, OCSE will use the four accounts receivable performance indicators in determining whether each State has an effective IV–D program. The indicators OCSE will use to measure collection activity during the audit period are ratios designating either AFDC or non-AFDC collections on support due (for a fiscal year) as the numerator and either total AFDC or non-AFDC support due (for the same fiscal year) as the denominator. The indicators OCSE will use to measure collection activity prior to the audit period are ratios designating either AFDC or non-AFDC collections on support due (for prior periods) as the numerator and either total AFDC or non-AFDC support due (for the same periods) as the denominator. These indicators will include all AFDC and

non-AFDC support due prior to the audit period and all AFDC and non-AFDC collections on support due prior to the audit period.

42. *Comment:* One commenter asked about the meaning of the phrase "support due" as used in the accounts receivable performance indicators that become effective as of the fiscal year 1988 audit period.

Response: The phrase "support due" as used in the accounts receivable performance indicators means the amount of money which is to be paid on a regular basis by an absent parent or other legally responsible individual for the support of a child, or spouse or former spouse living with a child receiving IV–D services. This amount must be established by a court order, voluntary agreement (when such agreement is legally enforceable), or other legal process.

Audit Criteria Relating to Performance Indicators

43. *Comment:* One commenter indicated that the performance indicators should be geared to results attainable by all States. A second commenter indicated that a review of the table in the proposed regulations shows that over half of the States could fail to meet the national standard of 70. Another commenter recommended that we lower the score a State must equal or exceed to be found to meet the performance-related criteria because the table in the preamble of the proposed regulations shows that five of the top seven States in population do not meet the minimum score of 70 and a sixth State has a score of 72.

Response: Beginning with the fiscal year 1986 audit period, we will use three performance indicators to evaluate State IV–D programs. We will combine each State's scores on the performance indicators into a single composite score for the State and use a single national standard to assess program performance. We believe that the single national standard in the regulations is attainable by all States because it is not a floating standard dependent on other States' performance, but a fixed standard. In addition, the State scores included in the table in the proposed regulations are based on fiscal year 1983 data. Since OCSE will not use the three performance indicators addressed in the table and related standard score of 70 to evaluate State IV–D programs until the fiscal year 1986 audit period, we expect significant improvement in State scores by that fiscal year. We believe that achievement of a score of 70 on the three performance indicators represents the minimum level of acceptable performance at this time. We also believe that all States have the ability to achieve a score of 70 on the performance indicators regardless of their size.

44. *Comment:* One commenter indicated that State IV–D agencies need notice of the change in the scoring system at least two full years prior to the effective date of the change to make necessary adjustments to their programs.

Response: The regulations specify that, as of the fiscal year 1984 audit period, OCSE will evaluate State performance according to seven performance indicators on the basis of a scoring system that will be described and updated in regulation at lease once every two years beginning in fiscal year 1987. We believe that any scoring system prescribed in regulation will include a standard that is attainable by all States. We plan to involve the State IV–D Directors in the development of changes to the scoring system. Other interested parties will also be given an opportunity to comment on the proposed changes prior to any final publication of changes in the **Federal Register.** Lastly, we will publish any changes to the scoring system as a proposed rule with a 60-day comment period to give the public an opportunity to submit to us, in writing, any comments they have on this subject. Therefore, the States should have sufficient time to make any adjustments necessary to meet any standard prescribed in a scoring system.

Because the scoring system will be revised once every two years beginning in fiscal year 1987, one commenter asked whether a State found not to meet the performance-related audit criteria will be evaluated after the corrective action period according to the standard in effect during the period covered by the initial audit or the standard in effect during the period covered by the follow-up audit.

A State found not to meet performance-related audit criteria during an audit period will be evaluated after the corrective action period according to the performance-related standard in effect during the period covered by the initial audit and the performance-related standard in effect during the follow-up audit period. If a State is found to meet the performance-related standard in effect during the initial audit period, the State would be in substantial compliance with that standard. If the State fails to meet the performance-related standard in effect during the initial audit period, but meets the performance-related standard in effect during the follow-up audit period, the State would be considered in substantial compliance with the performance-related standard in effect during the initial audit period. If the State fails to meet either standard, the State's total Federal AFDC funds will be reduced in accordance with the regulations.

45. *Comment:* One commenter suggested that we specify in the regulations the criteria for measuring performance based on the accounts receivable performance indicators.

Response: The regulations indicate that, beginning with the fiscal year 1988 audit period, OCSE will use the accounts receivable performance indicators in determining whether each State has an effect IV–D program. The regulations also indicate that, once every two years beginning in fiscal year 1987, OCSE will describe and update in regulation the scoring system for evaluating State performance according to the cost-effectiveness, reimbursement rate of assistance payments and accounts receivable performance indicators, and any other performance indicators in effect.

Notice and Corrective Action Period

46. *Comment:* One commenter asked us to define the term "marginal" as used in the regulations.

Response: In describing the content of the notice to a State found not to substantially comply with the requirements of title IV–D of the Act, the regulations indicate that the functional State plan-related audit criteria the State met only marginally refers to audit criteria the State met in 75 to 80 percent of the cases reviewed.

47. *Comment:* Several commenters indicated that, because some States will not be able to take corrective action within the maximum one-year corrective action period due to the need for staff, or to revise State law, the regulations should be revised to specify that the State and OCSE will jointly determine the corrective action period. Several other commenters suggested that the regulations be revised to provide for a longer corrective action period when the necessary corrective action (e.g. development of an automated system) is likely to take more than one year. A commenter also pointed out that the regulations provide for a corrective action period of significantly less than one-year when the State fails to meet audit criteria related to the performance indicators.

Response: Federal law permits the Secretary to specify the length of the corrective action period. We believe that a one-year corrective action period is reasonable because the interim and

final audit reports inform each State of its deficiencies before the State receives a notice from OCSE regarding the Secretary's finding that the State did not substantially comply with the requirements of title IV–D of the Act. In addition, under prior Federal law and implementing audit regulations, OCSE conducted audits and issued audit reports for five prior periods. The reports identified many of the deficiencies in State IV–D programs. Also, OCSE has been conducting financial and statistical system reviews in the States to determine whether State systems for recording, summarizing and reporting financial and statistical data are reliable in terms of accuracy, completeness, and timeliness. As of April 19, 1985, OCSE has conducted systems reviews in 53 States and jurisdictions and issued 44 final audit reports. The States are using these results to take corrective action. To enable OCSE to provide any State with up to one-year corrective action period, we have revised the regulations to specify that the corrective action period granted to the State will not exceed one year from the date of the notice. Thus, a State can receive a corrective action period of up to one year when the State fails to meet State plan-related audit criteria and/or performance-related audit criteria.

48. *Comment:* Several commenters indicated that, because audits are often conducted six months or more after the end of the audit period, the suspension period for a State that failed to meet audit criteria related to performance indicators will be over or significantly less than a year by the time the State gets a notice.

Response: Consistent with the change discussed above, we have revised the regulations to specify what when a State fails to meet audit criteria the penalty may be suspended for a period not to exceed one year from the date of the notice. This provision applies when the State fails to meet State plan-related audit criteria and/or performance-related audit criteria.

49. *Comment:* Two commenters asked whether the corrective action plan might include making adjustments or corrections to a financial report, such as including collections or expenditures that occurred during the fiscal year, but were not reported, because local jurisidictions did not submit them in time.

Response: The corrective action plan cannot include making any adjustments or corrections to a financial report for a prior period. The regulations specify that the corrective action plan must contain the steps necessary to achieve substantial compliance with the requirements of title IV–D of the Act. The State will use the plan as a guide in working toward the achievement of substantial compliance with the unmet audit criteria as of the end of the corrective action period. If a notice of noncompliance to a State indicates that the State failed to meet the audit criteria on reports and maintenance of records because the State does not submit complete financial reports to OCSE, the State should include in its corrective action plan the steps necessary to insure that financial reports submitted to OCSE as of the end of the corrective action period are complete, and that future financial reports will be complete.

50. *Comment:* Several commenters recommended that the regulations be revised to permit States to amend and resubmit disapproved corrective action plans. Several commenters also recommended that OCSE assist the States in developing the corrective action plan.

Response: We believe that 60 days after being notified of noncompliance is sufficient time to develop an approvable corrective action plan. During this period, there will be time for consultation, if desired, with OCSE. We expect that States will submit approvable corrective action plans by showing a constructive approach to corrective action.

51. *Comment:* One commenter indicated that the regulations do not specify what happens if OCSE disapproves a corrective action plan.

Response: The regulations specify that if a State is found by the Secretary, on the basis of the results of an audit conducted under the regulations, not to comply substantially with the requirements of title IV–D of the Act, OCSE will notify the State in writing of such finding. The regulations require the notice to cite the State for noncompliance, list the unmet audit criteria, apply the penalty and give the reasons for the Secretary's finding. The notice also must specify the conditions under which the penalty will be suspended for a specified period of time. These conditions include the approval of a corrective action plan. Therefore, if the Secretary disapproves a corrective action plan, the penalty will be imposed as of the date of the notice of noncompliance to the State.

Review Following Corrective Action period

52. *Comment:* Two commenters asked about the scope of the review following the corrective action period. One commenter also asked when a finding of noncompliance and imposition of the penalty would occur as a result of the review.

Response: The regulations indicate that the review following the corrective action period will cover only the audit criteria specified in the notice of noncompliance to the State. The notice of noncompliance will specify any audit criteria the State failed to meet and any functional criteria that the State met only marginally. Federal AFDC payments will be reduced by not less than one nor more than two percent. The reduction will not exceed the one-year period following the end of the suspension period. The penalty will be increased to not less than two nor more than three percent of a State's Federal AFDC funds if the second consecutive finding as the result of an audit indicates that the State did not achieve substantial compliance with the same criterion or criteria. If the third consecutive audit indicates that the State still did not achieve substantial compliance with the same criterion or criteria, the penalty will be increased to not less than three nor more than five percent of a State's Federal AFDC funds.

Imposition of the Penalty

53. *Comment:* One commenter indicated that since the IV–A and IV–D programs are required to be single and separate, it seems inappropriate to penalize IV–A program for an ineffective IV–D program. A second commenter indicated that the penalty should be applied to the State's AFDC administrative funds, or more appropriately to the quarterly grant award for the IV–D program.

Response: Previous Federal law and regulations provided that, if on the basis of the audit a determination is made that a State does not have an effective IV–D program meeting the requirements of title IV–D of the Act, the State was subject to a five percent reduction of its Federal AFDC funds. Under current Federal law and regulations, if on the basis of the results of an audit the Secretary finds that the State's IV–D program does not comply substantially with the requirements of title IV–D of the Act, and the State fails to correct cited deficiencies or falls out of compliance in a marginal area listed in the notice, total payments to the State under title IV–A of the Act will be reduced by not less than one nor more than five percent of a State's Federal AFDC funds in accordance with the regulations. Federal law and regulations do not authorize any reduction in payments under title IV–D of the Act when a State found by the Secretary not

to substantially comply with the requirements of title IV–D of the Act fails to correct cited deficiencies or falls out of compliance in a marginal area.

54. *Comment:* One commenter asked us to specify how we will determine the percentage of the penalty imposed against a State. A second commenter asked us to develop standardized criteria for setting the penalty. A third commenter inquired as to how the States can determine the percentage of the penalty. The commenter also asked that we specify how we assure that the penalty is applied consistently among the States.

Response: OCSE will determine the penalty imposed on any State found not to substantially comply with the requirements of the title IV–D of the Act based on the gravity of the substantial compliance problems identified in the audit report and limited by the ranges prescribed in Federal law. The notice OCSE will send to any State found not to substantially comply with the requirements of title IV–D of the Act will specify the percentage of the penalty and the basis for setting the specific percentage. Penalties will be imposed on a consistent basis.

55. *Comment:* One commenter suggested that, because it is difficult to determine whether the 75-percent standard is reasonable for the first year covered by the new substantial compliance audit, the fiscal year 1984 audit should be a trial audit without the imposition of penalties. Because the audit criteria and 75-percent standard were not published until after the fiscal year 1984 audit period, a second commenter suggested that the regulations be revised to specify that the penalty is effective for quarters beginning after September 30, 1984. Another commenter suggested that the penalty be waived until at least the fiscal year 1986 audit period so that the State has adequate time to eliminate its case backlog.

Response: Prior to the October 1, 1983 effective date of the audit and penalty provisions of the new law, Federal law and the audit regulations required the States to be in full compliance with the requirements of title IV–D of the Act to avoid imposition of a penalty. In addition, OCSE conducted audits and issued audit reports for each of five prior periods. The audits covered the same State plan-related audit criteria during each of these periods and identified many of the deficiencies in State IV–D programs. The new law requires the use of a substantial compliance standard to determine whether each State has an effective Child Support Enforcement program and a graduated penalty of not less than one nor more than five percent of a State's Federal AFDC funds if a State is not in substantial compliance with title IV–D of the Act. We believe that the new standard is attainable by all States. The new law is effective for audit periods beginning on and after October 1, 1983. There is no waiver provision under the law.

56. *Comment:* One commenter asked us to clarify in the regulations whether the penalty increases when there is a consecutive finding of an audit exception, including marginally met criteria, that fall below the 75-percent standard, or when any new audit exception is found after a State is in penalty status.

Response: The penalty increases only if the second or third consecutive finding as the result of an audit indicates that a State did not achieve substantial compliance with the same criterion or criteria, including marginal criteria, that fall below the 75-percent standard. We have revised the regulations to clarify this matter.

Technical Changes From Proposed Regulations

In addition to the changes discussed above, we have made several editorial changes to the proposed regulations to correct typographical errors, simplify complex sentences and simplify adding new sections to Part 305 in the future. Some State plan-related audit criteria have been changed to reflect changes in State plan requirements as a result of the publication of final regulations implementing sections of Pub. L. 98–378.

Paperwork Reduction Act

The regulations contain information collection requirements which are subject to OMB approval under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The public is not required to comply with the information collection requirements until OMB approves then under section 3507 of the Paperwork Reduction Act. Comments regarding the information collection requirements should be directed to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC., 20503, Attention: Desk Officer for HHS. A notice will be published in the Federal Register when OMB approval is obtained. The collection, expenditure and assistance payment reports referred to in this document have been reviewed and approved by OMB under the following approval numbers:

1. OCSE–34 (Quarterly Report of Collections) 0960–0238.

2. OCSE–41 (Quarterly Report of Expenditures) 0960–0235.

3. SSA–41 (Quarterly Report of Expenditures) 0960–0294.

OCSE is developing a financial and statistical report that will include data necessary to compute the performance indicators regarding collection activity and will be submitted for OMB approval in sufficient time to allow implementation consistent with the requirements of the rule.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major is one that is likely to result in:

—An annual impact on the economy of $100 million or more;

—A major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or

—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 import markets.

These regulations amend the OCSE audit regulations to: (1) Require OCSE to conduct an audit of the effectiveness of State Child Support Enforcement programs at least once every three years; (2) require OCSE to use a "substantial compliance" standard to determine whether each State has an effective IV–D program; (3) provide that any State found not to have an effective IV–D program in substantial compliance with the requirements of Title IV–D of the Act be given an opportunity to take the corrective action necessary to be in substantial compliance with those requirements; (4) provide for the use of a graduated penalty of not more than five percent of a State's Federal AFDC funds; and (5) specify the period of time during which a penalty is effective. These changes are a direct result of the statute.

In order to be found to have an effective program in substantial compliance with the requirements of title IV–D of the Act, a State must, beginning with the fiscal year 1984 audit period, meet audit criteria listed in § 305.20. If a State is found by the Secretary, on the basis of the results of an audit, not to comply substantially with the requirements of title IV–D of the Act, OCSE will notify the State that the penalty may be suspended for a period of time not to exceed one year from the date of the notice, to allow the

State to take corrective action. If a State fails to take the corrective action necessary to achieve substantial compliance during the period prescribed in the notice, Federal AFDC funds to the State will be reduced in an amount not to exceed five percent until the first quarter throughout which the State IV–D program is found to substantially comply with the requirements of title IV–D of the Act.

The regulations may save some States funds they otherwise might have lost because a "substantial compliance" standard and corrective action period are used rather than the "full compliance" standard in determining whether a State meets the IV–D State plan requirements already addressed in the audit regulations. However, the penalty under prior law was never assessed. Nonetheless, the new regulations may cost the States money because they are more workable and enforceable than prior regulations. Audit results will depend on State performance. If State performance improves in response to this audit system, States (as well as the Federal government) would save money due to increased collections and decreased administrative costs. We therefore have no basis for projecting either net costs or savings to States.

These regulations also include performance indicators for evaluating State IV–D programs and new audit criteria related to the performance indicators that together will be used to assess State program effectiveness. The seven performance indicators in the regulations are designed to show: (1) The cost effectiveness of a State IV–D program; (2) the amount of IV–A assistance payments reimbursed by IV–D collections; and (3) the amount of support collected on the amount of support due for a fiscal year and the period prior to a fiscal year. The three indicators that will enable us to determine the cost effectiveness of State IV–D programs and the reimbursement rate for payments made to AFDC recipients will be effective as of the fiscal year 1986 audit period. The four performance indicators that will enable us to evaluate State collection activity will be effective as of the fiscal year 1986 audit period. To determine whether a State meets the performance-related criteria, its performance will be compared to the standard as described earlier.

Finally, these regulations include audit criteria based on IV–D State plan requirements, including criteria based on the Child Support Enforcement Amendments of 1984, that will be used to assess State program effectiveness. These criteria are similar to the criteria already in the regulations for other State plan requirements. The criteria prescribed in §§ 305.37 through 305.43 will be effective as of the fiscal year 1985 audit period. The criteria prescribed in §§ 305.44 through 305.56 will be effective as of the fiscal year 1986 audit period.

Under these regulations, a State must have an effective program in substantial compliance with the IV–D State plan requirements as measured by the audit criteria listed and referred to in § 305.20 in effect for the audit period to avoid a reduction of its Federal AFDC funds. We cannot estimate the number of States that may avoid losing AFDC funds because a "substantial compliance" standard and corrective action period were used rather than the "full compliance" standard in determining whether a State meets the current IV–D State plan requirements. In addition, we cannot estimate the number of States that may lose AFDC funds because they failed to meet the new State plan-related audit criteria and performance-related audit criteria.

Beginning with the fiscal year 1988 audit period, we will compare 1988 State performance to a new national standard in determining whether a State meets the performance-related criteria. Again, we do not have data sufficient to allow us to estimate the number of States that could lose AFDC funds because they failed to meet the new national standard.

These regulations could result in minor increases in Federal and State administrative costs. The States will not be required to perform any new program functions. Thus, additional Federal/State costs of conducting audits will be limited to the area of documenting State performance using criteria based on new IV–D State plan requirements and performance indicators for evaluating program effectiveness.

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (P.L. 96–354), that these regulations will not result in a significant impact on a substantial number of small entities because they primarily affect Federal and State governments.

List of Subjects

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance office, Grant programs/social programs, Public assistance programs, Reporting and recordkeeping requirements.

45 CFR Part 305

Child welfare, Grant programs/social programs, Accounting.

For the reasons discussed above, 45 CFR 205.146 is amended as follows:

PART 205—[AMENDED]

1. The authority citation for Part 205 continues to read as follows:

Authority: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302, unless otherwise noted.

2. Section 205.146 is amended by revising paragraphs (d) (1) and (2), and by adding a new paragraph (d)(3) to read as follows:

§ 205.146 [Amended]

* * * * *

(d) Penalty for failure to have an effective child support enforcement program.

(1) *General.* Pursuant to section 403(h) of the Act, notwithstanding any other provision of this chapter, total payments to a State under title IV–A of the Act for any quarters in any fiscal year, shall be reduced if a State is found by the Secretary to have failed to have an effective child support enforcement program in substantial compliance with the requirements of section 402(a)(27), as implemented by Parts 302 and 305 of this title. The reduction for any quarter (calculated without regard to any other reduction under this section) shall be:

(i) Not less than one nor more than two percent of such payments for a period beginning in accordance with § 305.100 (c) or (d) of this title not to exceed the one-year period following the end of the suspension period specified in the notice required by § 305.99 of this title;

(ii) Not less than two nor more than three percent of such payments if the finding is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period specified in the notice required by § 305.99 of this title not to exceed one year; or

(iii) Not less than three nor more than five percent of such payments if the finding is the third or subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period specified in the notice required by § 305.99 of this title.

(2) *Application of penalty.* (i) The penalty will be imposed for any quarter beginning after September 30, 1983.

(ii) The penalty will be imposed on the basis of the results of the audit

conducted pursuant to Part 305 of this title.

(3) *Notice, suspension, corrective action period.* Notice, suspension and corrective action provisions are set forth at 45 CFR 305.99.

PART 305—[AMENDED]

45 CFR Part 305 is amended as follows:

1. The authority citation for Part 305 is revised to read as follows:

Authority: Secs. 403(h), 404(d), 452(a) (1) and (4); and 1102 of the Social Security Act; 42 U.S.C. 603(h), 604(d), 652(a) (1) and (4), and 1302.

2. The table of contents is revised to read as follows:

PART 305—AUDIT AND PENALTY

Authority: Secs. 403(h), 404(d), 452(a)(1) and (4), and 1102 of the Social Security Act; 42 U.S.C. 603(h), 604(d), 652(a) (1) and (4), and 1302.

3. Section 305.0 is revised to read as follows:

§ 305.0 Scope.

This part implements the requirements in sections 452(a)(4) and 403(h) of the Act for an audit, at least once every three years, of the effectiveness of State Child Support Enforcement programs under title IV–D and for a possible reduction in Federal reimbursement for a State's title IV–A program pursuant to sections 403(h) and 404(d) of the Act. Sections 305.10 through 305.13 describe the audit. Section 305.20 defines an effective program for the purposes of this part. Sections 305.21 through 305.56 and § 305.98 establish audit criteria the Office will use to determine program effectiveness. Section 305.98 also establishes performance indicators the Office will use to determine State IV–D program effectiveness. Section 305.99 provides for the issuance of a notice and corrective action period if a State is found by the Secretary not to have have an effective IV–D program. Section 305.100 provides for the imposition of a penalty if a State is found by the Secretary not tc have had an effective program and fails to take corrective action and achieve substantial compliance within the period prescribed by the Secretary.

4. Section 305.10 and 305.11 are revised to read as follows:

§ 305.10 Timing and scope of audit.

(a) The Office will conduct an audit in accordance with sections 452(a)(4) and 403(h) of the Act, at least once every three years, to evaluate the effectiveness of each State's program in carrying out the purposes of title IV–D of the Act and to determine that the program meets the title IV–D requirements. The audit of each State's program meets the title IV–D requirements. The audit of each State's program will be a comprehensive review using the criteria prescribed in §§ 305.21 through 305.56 and § 305.98 of this part.

(b) The Office will conduct an annual comprehensive audit in the case of a State that is being penalized. For a State operating under a corrective action plan, the review at the end of the corrective action period will cover only the criteria specified in the notice of non-compliance as prescribed in § 305.99 of this part.

(c) During the course of the audit, the Office will:

(1) Make a critical investigation of the State's IV–D program through inspection, inquiries, observation, and confirmation; and

(2) Use the audit standards promulgated by the Comptroller General of the United States in the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

§ 305.11 Audit period.

The audit will cover the period October 1 through September 30 of each fiscal year audited and, when the State is operating under a corrective action plan, will cover the first full quarter after the corrective action period, and, beginning with the fiscal year 1986 audit period, when the State fails to meet audit criteria related to the performance indicators, will cover the fiscal year following the fiscal year in which a determination was made that performance was not in substantial compliance. The audit may cover a shorter period at State request when the State is being penalized under § 305.100 of this part.

5. Section 305.20 is revised to read as follows:

§ 305.20 Effective support enforcement program.

For the purposes of this part and section 403(h) of the Act, in order to be found to have an effective program in substantial compliance with the requirements of title IV–D of the Act, a State must meet the IV–D State plan requirements contained in Part 302 of this chapter measured as follows:

(a) For the fiscal year 1984 audit period:

(1) The following audit criteria must be met: Statewide operation. (45 CFR 305.21(d)) State financial participation. (45 CFR 305.22 (a) and (b)) Single and separate organizational unit. (45 CFR 305.23 (a) and (b)) Establishing paternity. (45 CFR 305.24(b)) Enforcement of support obligation. (45 CFR 26 (c) and (d)) Distribution of child support payment. (45 CFR 305.28(a)) State parent locator service. (45 CFR

305.33(e)) Cooperative arrangements. (45 CFR 305.34) Reports and maintenance of records. (45 CFR 305.35 (a) and (b)) Fiscal policies and accountability. (45 CFR 305.36(a))

(2) The procedures required by the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

Establishing paternity. (45 CFR 305.24(c))
Support obligations. (45 CFR 305.25 (a) and (b))
Enforcement of support obligation. (45 CFR 305.26 (a), (b), and (e))
Support payments to the IV–D agency. (45 CFR 305.27 (a), (b), and (d))
Distribution of support payment. (45 CFR 305.28(b))
Payments to the family. (45 CFR 305.29)
Individuals not otherwise eligible. (45 CFR 305.31 (a), (b), and (c))
Cooperation with other States. (45 CFR 305.32 (a), (b), (c), (d), (e), (f), and (g))
State parent locator service. (45 CFR 305.33 (a) and (g))

(b) Beginning with fiscal year 1985 audit period:

(1) The criteria prescribed in paragraph (a)(1) of this section and the following audit criteria must be met:

Bonding of employees. (45 CFR 305.37(a))
Separation of cash handling and accounting functions. (45 CFR 305.38(a))
Withholding of unemployment compensation. (45 CFR 305.39 (a) through (h))
Federal tax refund offset. (45 CFR 305.40(a))
Recovery of direct payments. (45 CFR 305.41(a))
Spousal support. (45 CFR 305.42(a))
90 percent Federal financial participation for computerized support enforcement systems. (45 CFR 305.43)

(2) The procedures required by the criteria prescribed in paragraph (a)(2) of this section and the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

Bonding of employees. (45 CFR 305.37(c))
Separation of cash handling and accounting functions. (45 CFR 305.38(c))
Withholding of unemployment compensation. (45 CFR 305.39(i))
Federal tax refund offset. (45 CFR 305.40(b))
Recovery of direct payments. (45 CFR 305.41(b))
Spousal support. (45 CFR 305.42(b))

(c) For the fiscal year 1986 and 1987 audit periods:

(1) The criteria prescribed in paragraphs (a)(1) and (b)(1) of this section and the following criteria must be met:

Publicizing the availability of support enforcement services. (45 CFR 305.44)
Notice of collection of assigned support. (45 CFR 305.45(a))
Incentive payments to States and political subdivisions. (45 CFR 305.46(a))
Payment of support through the IV–D agency or other entity. (45 CFR 305.48 (a) and (b))
Wage or income withholding. (45 CFR 305.49(a))
Expedited processes. (45 CFR 305.50(a))
Collection of overdue support by State income tax refund offset. (45 CFR 305.51(a))
Imposition of liens against real and personal property. (45 CFR 305.52(a))
Posting security, bond or guarantee to secure payments of overdue support. (45 CFR 305.53(a))
Making information available to consumer reporting agencies. (45 CFR 305.54(a))
Imposition of late payment fees on absent parents who owe overdue support. (45 CFR 305.55(a))
Medical support. (To be determined)

(2) The procedures required by the criteria prescribed in paragraphs (a)(2) and (b)(2) of this section and the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

Notice of collection of assigned support. (45 CFR 305.45(b))
Incentive payments to States and political subdivisions. (45 CFR 305.46(b))
Payment of support through the IV–D agency or other entity. (45 CFR 305.48(c))
Wage or income withholding. (45 CFR 305.49(b))
Expedited processes. (45 CFR 305.50(b))
Collection of overdue support by State income tax refund offset. (45 CFR 305.51(b))
Imposition of liens against real and personal property. (45 CFR 305.52(b))
Posting security, bond or guarantee to secure payment of overdue support. (45 CFR 305.53(b))
Making information available to consumer reporting agencies. (45 CFR 305.54(b))
Imposition of late payment fees on absent parents who owe overdue support. (45 CFR 305.55(b))
Medical support. (To be determined)

(3) The criteria prescribed in § 305.98(c) of this part relating to the performance indicators prescribed in paragraph (a) of that section must be met.

(d) For fiscal year 1988 and future audit periods:

(1) The criteria prescribed in paragraphs (a)(1), (b)(1) and (c)(1) of this section must be met.

(2) The procedures required by the criteria prescribed in paragraphs (a)(2), (b)(2) and (c)(2) of this section must be used in 75 percent of the cases reviewed for each criterion.

(3) The criteria prescribed in 45 CFR 305.47, Guidelines for setting child support awards, must be met.

(4) The criteria referred to in § 305.98(d) of this part relating to the performance indicators prescribed in paragraphs (a) and (b) of that section must be met.

6. Section 305.24 is amended by revising paragraphs (b) and (c) to read as follows:

§ 305.24 Establishing paternity.

* * * * *

(b) Have established and use written procedures for establishing the paternity of any child at least until the child's 18th birthday:

(1) By court order or other legal process established by State law; and

(2) By acknowledgment, if under State law such acknowledgment has the same legal effect as court ordered paternity, including the rights to benefits other than child support.

(c) By utilizing such written procedures to establish the paternity of any child born out of wedlock whose paternity has not previously been established and with respect to whom there is an assignment pursuant to § 232.11 of this title or section 471(a)(17) of the Act in effect or with respect to whom there is an application for child support services pursuant to § 302.33 of this chapter;

* * * * *

7. Section 305.25 is amended by revising paragraph (a)(1) to read as follows:

§ 305.25 Support obligations.

(a) * * *

(1) With respect to whom there is an assignment pursuant to § 232.11 of this title or section 471(a)(17) of the Act in effect or with respect to whom there is an application for child support services pursuant to § 302.33 of this chapter.

* * * * *

§ 305.28 [Amended]

8. Section 305.28 is amended by inserting a comma and the reference "302.52" after the reference "302.51" wherever it appears in that section.

§ 305.33 [Amended]

9. 45 CFR 305.33 is amended by removing the citation "§ 302.35(e)" where it appears in paragraph (f) and inserting in its place the citation "§ 303.70(e)(2)."

10. Section 305.34 is revised to read as follows:

§ 305.34 Cooperative arrangements.

For the purpose of this part, in order to be found in compliance with the State plan requirements for cooperative arrangement (45 CFR 302.34), a State must enter into written cooperative agreements with appropriate courts and law enforcement officials when necessary to establish and enforce support obligations, collect support and cooperate with other States in these functions.

11. Sections 305.37 through 305.56 are added to read as follows:

§ 305.37 Bonding of employees.

For the purposes of this part, to be found in compliance with the State plan requirement for bonding of employees (45 CFR 302.19), a State must:

(a) Have written procedures to ensure that every person, including the individuals prescribed in § 302.19(b) of this chapter, who, as a regular part of his or her employment, receives, disburses, handles or has access to or control over funds collected under the Child Support Enforcement program is covered by a bond against loss resulting from employee dishonesty;

(b) Have written procedures for obtaining a bond in an amount which the State IV–D agency deems adequate to indemnify the State IV–D program for loss resulting from employee dishonesty; and

(c) Use the written procedures specified above.

§ 305.38 Separation of cash handling and accounting functions.

(a) For the purposes of this part, to be found in compliance with the State plan requirement for the separation of cash handling and accounting functions (45 CFR 302.20), a State must have written administrative procedures:

(1) Designed to assure that persons, including the individuals specified in § 302.20(b) of this chapter, responsible for handling cash receipts of support do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of support receipts; and

(2) Designed to assure use of generally accepted accounting principles.

(b) The requirements prescribed in paragraph (a) of this section do not apply to sparsely populated geographic areas within the State granted a waiver under § 302.20(c) of this chapter by the Regional Office.

(c) The State must use the written procedures specified above.

§ 305.39 Withholding of unemployment compensation.

For the purposes of this part, to be found in compliance with the State plan requirement for the withholding of unemployment compensation (45 CFR 302.65), a State must:

(a) Have negotiated a cost effective cooperative agreement with the State Employment Security Agency (SESA) that provides for:

(1) Exchange of information;

(2) The withholding of unemployment compensation benefits to satisfy unmet support obligations;

(3) Payment of withheld unemployment compensation by the SESA to the IV–D agency; and

(4) Reimbursement of administrative costs of the SESA by the IV–D agency.

(b) Have written procedures to determine, based on information provided by the SESA, whether individuals who apply for or receive unemployment compensation owe support obligations that are being enforced by the IV–D agency;

(c) Have written procedures for arranging for the withholding of unemployment compensation:

(1) Pursuant to a voluntary agreement with the individual who owes support; or

(2) Pursuant to legal process under State or local law;

(d) Have written criteria for selecting cases to pursue by the withholding of unemployment compensation process for the collection of past-due support;

(e) Have written procedures for providing a receipt at least annually to an individual who requests a receipt for the support paid by the withholding of unemployment compensation, if receipts are not provided through other means;

(f) Have written procedures for maintaining direct contact with the SESA in its State as prescribed in § 302.65(c)(5) of this chapter;

(g) Have written procedures for the reimbursement of the administrative costs incurred by the SESA that are actual, incremental costs attributable to the process of withholding of unemployment compensation for support purposes insofar as these costs have been agreed upon by the SESA and the IV–D agency;

(h) Have written procedures to review and document, at least annually, the State withholding of unemployment compensation program, including the case selection criteria and costs of the withholding process versus the amounts collected and, as necessary, modify the procedures and renegotiate the services provided by the SESA to improve program and cost effectiveness;

(i) Use of written procedures specified above; and

(j) Have personnel performing the activities described above.

§ 305.40 Federal tax refund offset.

For the purpose of this part, to be found in compliance with the State plan requirement for Federal tax refund offset (45 CFR 302.60), a State must:

(a) Have written procedures to obtain payment of past-due support from Federal tax refunds in accordance with section 464 of the Act, § 303.72 of this chapter and regulations of the Internal Revenue Service at 26 CFR 301.6402–5;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.41 Recovery of direct payments.

For the purposes of this part, to be found in compliance with the State plan requirement for recovery of direct payments (45 CFR 302.31(a)), a State must:

(a) Have written procedures to:

(1) Notify the IV–A agency whenever a determination is made that directly received payments have been retained, if the State elects the IV–A recovery method; or

(2) Recover retained direct support payments in accordance with the standards in § 303.80 of this chapter if the State elects the IV–D recovery method.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

§ 305.42 Spousal support.

For the purposes of this part, to be found in compliance with the State plan provision for the collection of spousal support (45 CFR 302.31(a)), a State must:

(a) Have written procedures for the collection of spousal support from a legally liable person when:

(1) A support order has been established for the spouse;

(2) The spouse or former spouse is living with the child(ren) for whom the individual is liable for child support; and

(3) The support order established for the child(ren) is being enforced under the IV–D plan.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

§ 305.43 90 percent Federal financial participation for computerized support enforcement systems.

For the purposes of this part, to be found in compliance with the State plan requirement for the establishment of a computerized support enforcement system eligible for 90 percent Federal financial participation (45 CFR 302.85), a State's system must meet the requirements in § 307.10 of this chapter.

§ 305.44 Publicizing the availability of support enforcement services.

For the purposes of this part, to be found in compliance with the State plan requirement for publicizing the availability of support enforcement services (45 CFR 302.30), a State must publicize regularly and frequently the availability of support enforcement services under the State plan through public service announcements that include:

(a) Information on any application fees imposed for such services; and

(b) A telephone number or postal address where further information may be obtained.

§ 305.45 Notice of collection of assigned support.

For the purposes of this part, to be found in compliance with the State plan requirement for providing notice of collection of assigned support (45 CFR 302.54), a State must:

(a) Have written procedures for:

(1) Sending, at least annually, a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title; and

(2) Listing separately in the notice support payments collected from each absent parent when more than one absent parent owes support to the family; and

(3) Indicating in the notice the amount of support collected which was paid to the family.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

§ 305.46 Incentive payments to States and political subdivisions.

For the purposes of this part, to be found in compliance with the State plan requirement for incentive payments to States and political subdivisions (45 CFR 302.55), the State must:

(a) Have written procedures:

(1) To require that, if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be paid an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with § 303.52(d) of this chapter, and

(2) To consider the efficiency and effectiveness of the political subdivision in carrying out the activities under the State plan in determining the amount of the incentive payments made to the political subdivision.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

§ 305.47 Guidelines for setting child support awards.

For the purposes of this part, to be found in compliance with the State plan requirement for guidelines for setting child support awards (45 CFR 302.56), a State must:

(a) Establish guidelines by law or by judicial or administrative action for setting child support award amounts within the State;

(b) Have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts, but the guidelines need not be binding on those persons;

(c) Base the guidelines on specific descriptive and numeric criteria that result in a computation of the support obligation; and

(d) Include a copy of the guidelines in its State plan.

§ 305.48 Payment of support through the IV-D agency or other entity.

For purposes of this part, to be found in compliance with the optional State plan provision for payment of support through the IV-D agency or other entity (45 CFR 302.57), a State must:

(a) Have written procedures for the payment of support through the State IV-D agency or entity designated to administer the State's withholding system upon request of either the absent parent or custodial parent, regardless of whether or not arrearages exist or withholding procedures have been instituted;

(b) Have written procedures to:

(1) Monitor all amounts paid and dates of payments and record them on an individual payment record;

(2) Ensure prompt payment to the custodial parent; and

(3) Require the requesting parent to pay a fee for the cost of providing the service not to exceed $25 annually and not to exceed State costs;

(c) Use the written procedures specified above; and

(d) Have personnel performing the functions specified above.

§ 305.49 Wage or income withholding.

For the purposes of this part, to be found in compliance with the State plan requirement for wage or income withholding (45 CFR 302.70(a)(1)), a State must:

(a) Have written procedures for carrying out a program of withholding in accordance with § 303.100 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.50 Expedited processes.

For the purposes of this part, to be found in compliance with the State plan requirement for expedited process (45 CFR 302.70(a)(2)), a State must:

(a) Have written expedited procedures to establish and enforce child support obligations having the same force and effect as those established through full judicial process in accordance with § 303.101 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.51 Collection of overdue support by State income tax refund offset.

For the purposes of this part, to be found in compliance with the State plan requirement for collection of overdue support by State income tax refund offset (45 CFR 302.70(a)(3)), a State must:

(a) Have written procedures for obtaining overdue support from State income tax refunds on behalf of recipients of aid under the State's title IV-A or IV-E plan with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, and on behalf of individuals who apply for services under §302.33 of this part, in accordance with § 303.102 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.52 Imposition of liens against real and personal property.

For the purposes of this part, to be found in compliance with the State plan requirement for the imposition of liens against real and personal property (45 CFR 302.70(a)(4)), a State must:

(a) Have written procedures for the imposition of liens against the real and

personal property of absent parents who owe overdue support in accordance with § 303.103 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.53 Posting security, bond or guarantee to secure payment of overdue support.

For the purposes of this part, to be found in compliance with the State plan requirement for posting security, bond or guarantee to secure payment of overdue support (45 CFR 302.70(a)(6)), a State must:

(a) Have written procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of support in accordance with § 303.104 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.54 Making information available to consumer reporting agencies.

For the purposes of this part, to be found in compliance with the State plan requirement for making information available to consumer reporting agencies (45 CFR 302.70(a)(7)), a State must:

(a) Have written procedures for making information regarding the amount of overdue support owned by an absent parent available to consumer reporting agencies in accordance with § 303.105 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.55 Imposition of late payment fees on absent parents who owe overdue support.

For the purposes of this part, to be found in compliance with the optional State plan provision for imposing late payment fees on absent parents who owe overdue support (45 CFR 302.75), a State must:

(a) Have written procedures for uniformly applying the late payment fee in accordance with § 302.75 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.56 Medical support.

For the purposes of this part, to be found in compliance with the State plan requirement for medical support, a State must meet requirements that will be published as final regulations on medical support effective upon publication of the requirements.

12. Section 305.98 is added to read as follows:

§ 305.98 Performance indicators and audit criteria.

(a) Beginning with the fiscal year 1986 audit period, the Office will use the following performance indicators in determining whether each State has an effective IV–D program.

(1) AFDC IV–D collections divided by total IV–D expenditures (less laboratory cost incurred in determining paternity at State option);

(2) Non–AFDC IV–D collections divided by total IV–D expenditures (less laboratory costs incurred in determining paternity at State option); and

(3) AFDC IV–D collections divided by IV–A assistance payments (Less payments to unemployed parents).

(b) Beginning with the fiscal year 1988 audit period, the Office will use the performance indicators prescribed in paragraph (a) of this section and the following performance indicators in determining whether each State has an effective IV–D program.

(1) AFDC IV–D collections on support due (for a fiscal year) divided by total AFDC support due (for the same fiscal) year);

(2) Non-AFDC IV–D collections on support due (for a fiscal year) divided by total non-AFDC support due (for the same fiscal year);

(3) AFDC IV–D collections on support due (for prior periods) divided by total AFDC support due (for the same periods); and

(4) Non-AFDC IV–D collection on support due (for prior periods) divided by total non-AFDC support due (for the same periods).

(c) The Office shall use the following procedures and audit criteria to measure State performance in fiscal years 1986 and 1987.

(1) The ratio for each of the performance indicators in paragraph (a) of this section will be evaluated on the basis of the scores in the tables in paragraphs (c)(1)(i) through (iii) of this section. The tables show the scores the States will receive for different levels of performance.

(i) Dollar of AFDC IV–D collections per dollar of total IV–D expenditures (less laboratory costs incurred in determining paternity at State option).

Level of performance	Score
$.00	0
$.01–$.09	2
$.10–$.19	4
$.20–$.29	6
$.30–$.39	8
$.40–$.49	10
$.50–$.59	12
$.60–$.69	14
$.70–$.79	16
$.80–$.89	18
$.90–$.99	20
$1.00–$1.19	22
$1.20–$1.39	24
$1.40 or more	25

(ii) Dollar of non-AFDC IV–D collections per dollar of total IV–D expenditures (less laboratory cost incurred in determining paternity at State option).

Level of performance	Score
$.00	0
$.01–$.09	4
$.10–$.19	8
$.20–$.29	12
$.30–$.39	16
$.40–$.49	20
$.50–$.59	24
$.60–$.69	28
$.70–$.79	32
$.80–$.89	36
$.90–$.99	40
$1.00–$1.19	44
$1.20–$1.39	48
$1.40 or more	50

(iii) AFDC IV–D collections divided by IV–A assistance payments (less payments to unemployed parents).

Level of performance (in percent)	Score
0 to 1.9 percent	0
2 to 3.9 percent	5
4 to 4.9 percent	10
5 to 5.9 percent	15
6 to 6.9 percent	20
7 or more	25

(2) To be found to meet the audit criteria, a State's total score must equal or exceed 70.

Examples. A State achieves levels of performance of $1.22, $1.35 and 6.5 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 24, 48 and 20 on these performance indicators. The State would be found to meet the audit criteria because the total score is 92.

A State achieves levels of performance of $.65, $.65 and 2.5 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 14, 28 and 5 on these performance indicators. The State would be found not to meet the audit criteria because the total score is 47.

A State achieves levels of performance of $.92, $.96 and 4.2 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 20, 40 and 10 on these performance indicators. The State would be found to meet the audit criteria because the total score is 70.

(d) Beginning in fiscal year 1988, the Office shall evaluate State performance according to the indicators in

paragraphs (a) and (b) of this section on the basis of a scoring system that will be described and updated in regulation once every two years beginning in fiscal year 1987.

13. Section 305.99 is added to read as follows:

§ 305.99 Notice and corrective action period.

(a) If a State is found by the Secretary on the basis of the results of the audit described in this part not to comply substantially with the requirements of title IV–D of the Act, as implemented by Chapter III of this title, the Office will notify the State in writing of such finding.

(b) The notice will:

(1) Cite the State for noncompliance, list the unmet audit criteria, apply a penalty and give the reasons for the Secretary's finding;

(2) Identify any audit criteria listed in § 305.20(a)(2), (b)(2) or (c)(2) of this part that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed);

(3) Specify that the penalty may be suspended if the State meets the conditions specified in paragraph (c) of this section; and

(4) Specify the conditions that result in terminating the suspension of the penalty as specified in paragraph (d) of this section.

(c) The penalty will be suspended for a period not to exceed one year from the date of the notice and, beginning with the fiscal year 1986 audit period, when a State fails to meet audit criteria relating to the performance indicators prescribed in § 305.58 of this part the penalty will be suspended until the end of the fiscal year following the fiscal year in which a State failed to meet those criteria if the following conditions are met:

(1) Within 60 days of the date of the notice, the State submits a corrective action plan to the appropriate Regional Office which contains a corrective action period not to exceed one year from the date of the notice and which contains steps necessary to achieve substantial compliance with the requirements of title IV-D of the Act;

(2) The corrective action plan and any amendment are:

(i) Approved by the Secretary within 30 days of receipt of the corrective action plan; or

(ii) Approved automatically because the Secretary took no action within the period specified in paragraph (c)(2)(i) of this section; and

(3) The Secretary finds that the corrective action plan (or any amendment to it approved by the Secretary) is being fully implemented by the State and that the State is progressing to achieve substantial compliance with the unmet criteria cited in the notice.

(d) The suspension of the penalty will continue until such time as the Secretary determines that:

(1) The State has achieved substantial compliance with the unmet criteria cited in the notice and maintain substantial compliance with any marginally-met criteria cited in the notice;

(2) The State is not implementing its corrective action plan; or

(3) The State has implemented its corrective action plan but has failed to achieve substantial compliance with the unmet criteria cited in the notice and maintain substantial compliance with any marginally-met criteria cited in the notice. For State plan-related criteria, this determination will be made as of the first full quarter after the corrective action period. For performance-related criteria, this determination will be made as of the fiscal year following the fiscal year in which a determination was made that performance was not in substantial compliance.

(e) A corrective action plan disapproved under paragraph (c) of this section is not subject to appeal.

(f) Only one corrective action period is provided to a State in relation to a given criterion when consecutive findings of noncompliance are made on that criterion.

14. Section 305.50 is redesignated as § 305.100 and revised to read as follows:

§ 305.100 Penalty for failure to have an effective support enforcement program.

(a) If the Secretary finds, on the basis of the results of the audit described in this part, that a State's program does not substantially meet the requirements in title IV–D of the Act, as implemented by Chapter III of this title, and the State does not achieve substantial compliance with those requirements identified in the notice within the corrective action period approved by the Secretary under § 305.99(c) of this part and maintain compliance in areas cited in the notice as marginally acceptable under § 305.99(b)(2) of this part, total payments to the State under title IV–A of the Act will be reduced for the period prescribed in paragraph (c) or (d) of this section by:

(1) Not less than one nor more than two percent of such payments for a period beginning in accordance with paragraph (c) or (d) of this section not to exceed the one-year period following the end of the suspension period;

(2) Not less than two nor more than three percent of such payments if the finding is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period not to exceed one year; or

(3) Not less than three nor more than five percent of such payments if the finding is the third or subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period.

(b) In the case of a State that has achieved substantial compliance with the unmet criteria identified in the notice and maintained substantial compliance with any marginally-met criteria identified in the notice within the corrective action period approved by the Secretary under § 305.99 of this part, the penalty will not be applied.

(c) In the case of a State whose penalty suspension ends because the State is not implementing its corretive action plan, the penalty will be applied as if the suspension had not occured.

(d) In the case of a State whose penalty suspension ends because the State is implementing its corrective action plan but has failed to achieve substantial compliance with the unmet criteria identified in the notice and maintain substantial compliance with any marginally-met criteria identified in the notice within the corrective action period approved by the Secretary under § 305.99 of this part, the penalty will be effective for any quarter that ends after the expiration of the suspension period until the first quarter throughout which the State IV–D program is in substantial compliance with the requirements of title IV–D of the Act.

(e) A consecutive finding under paragraph (a)(2) or (3) of this section occurs only when the State does not achieve substantial compliance with the same criterion or criteria.

(f) Any reduction required to be made under this section shall be made pursuant to § 205.146(d) of this title.

(g) The reconsideration of penalty imposition provided for by § 205.146(e)

of this title shall be applicable to any reduction made pursuant to this section.

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program.)

Dated: May 31, 1985.

R. Stephen Ritchie,

Director, Office of Child Support Enforcement.

Dated: June 7, 1985.

Martha A. McSteen,

Acting Commissioner, Social Security Administration.

Approved: August 21, 1985.

Margaret M. Heckler,

Secretary.

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Part IV

Department of Health and Human Services

Office of Human Development Services

Program Announcement; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Program Announcement 13612-862

AGENCY: Office of Human Development Services, DHHS.

ACTION: Announcement of Availability of Fiscal Year 1986 Financial Assistance for Alaskan Native Social and Economic Development Projects.

SUMMARY: The Administration for Native Americans (ANA) announces that applications are being accepted for competitive financial assistance for Alaskan Native social and economic development projects under Section 803 of the Native American Programs Act of 1974, Pub. L. 93-644, as amended, 42 U.S.C. 2991 *et seq.* ("the Act"). Regulations governing this program are published in the *Code of Federal Regulations* at 45 CFR Part 1336.

DATE: The closing date for receipt of applications is December 12, 1985.

FOR FURTHER INFORMATION CONTACT: Applicants that want additional information regarding this program announcement should contact Ted George (206) 442-0992, or Robert Kreidler (206) 442-8113, Administration for Native Americans, Office of Human Development Services, DHHS, 2901 3rd Avenue, Seattle, WA 98121.

Program Purpose

As authorized by the Native American Programs Act, the purpose of the funding administered by the Administration for Native Americans (ANA) is to promote social and economic self-sufficiency for American Indians, Alaskan Natives and Native Hawaiians.

The Administration for Native Americans believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and Alaskan Native villages and in the leadership of Native American groups. The development of self-sufficiency requires strengthening governance, economic progress, and improvement of social systems which protect and enhance the health and well-being of individuals, families and communities. Achievenemt of self-sufficiency is based on the community's ability to plan, organize and direct resources in a comprehensive manner to achieve long-range community goals.

The Administration for Native Americans bases its program and policy initiatives on the following three program goals:

(1) Governance: To develop or strengthen tribal and village governments and Native American institutions and local leadership to assure local decision-making and control over all resources.

(2) Economic Development: To foster the development of stable, diversified local economies and economic activities which provide jobs, promote economic well-being, and reduce dependency on social services.

(3) Social Development: To support local access to, and coordination of, services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

The overall approach followed by ANA in the accomplishment of these goals is to support tribal and village governments and other Native American organizations in the development and implementation of community-based, long-term governance and social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This approach is based on two fundamental principles:

(1) That the local community and its leadership are responsible for determining their own goals, setting priorities, and planning and implementing programs aimed at achieving those goals; that the unique mix of socio-economic, political and cultural factors involved in each community makes such self-determination necessary; that only the local community is in a position to apply its own cultural values and weigh the trade-offs in deciding on various strategies and programs which invariably have socio-cultural as well as economic consequences.

(2) That economic and social development are interrelated, and that development in one area should be balanced with development in the other in order to enhance self-sufficiency. Without a careful balance of the two, serious dislocations may result that can jeopardize all of the community's development efforts. It is now an accepted premise that an expansion of social services, without a strengthening of incentives for employment and economic development, may lead to greater dependency; conversely, inadequate social services can seriously impede efforts aimed at increased productivity and economic development.

The fundamental task which Native American communities face is that of developing enduring social and economic strategies in keeping with local goals, resources and cultural values. ANA expects its applicants to undertake a long-term planning process that addresses the community's development and encourages social and economic growth for the community. ANA encourages the leadership of the communities to develop a long-range, coherent, and comprehensive approach to reach social and economic self-sufficiency. This approach must include the maximum use of whatever resources are available, directing those resources at opportunities and overcoming problems that stand in the way.

As a first step toward self-sufficiency, ANA places the highest emphasis on increasing the effectiveness of the governance and administrative capabilities of India Tribes, Alaskan villages and Native American groups. Efforts toward enhancing local governance are a necessary foundation for social and economic development and such efforts include: (1) Strengthening the effectiveness of Tribal and village governments; (2) increasing the ability of Tribes, villages and Native Americans groups and organizations to plan, develop, and administer a comprehensive program supportive of community social and economic self-sufficiency; and (3) increasing awareness of the legal rights and benefits to which Native Americans are entitled either by virtue of the Federal trust relationship, legislative authority, or as citizens of the United States. Basic to ANA's program thrust is assistance to Native American groups to establish or improve their governing institutions and enhance the management of governmental functions.

Governance—Under the governance goal, ANA strongly encourages Tribal councils, village government and other governing bodies to strengthen and streamline their institutional management in order to develop and implement social and economic development strategies and to improve the day-to-day management of programs. By improving such capabilities, Tribes, villages and Native American groups can better define and achieve the goals of their peoples and promote greater efficiency and effectiveness in the use of available resources.

Building on the foundation of strong local governance, ANA expects Tribal and village governments and other Native American organizations to move toward the coordinated and balanced development and implementation of social and economic development strategies. These inter-related strategies should coordinate and direct all resources (Federal and non-Federal) toward locally determined priorities and

impact the community and its members in ways that promote greater economic and social self-sufficiency.

Economic development is the long-term mobilization and management of economic resources to achieve a diversified economy characterized by: widespread distribution of economic resources, services, and benefits; participation of community members in the productive activities and economic investments of the community; and pursuit of economic interests in ways that balance economic gain with social development.

Social development is the mobilization and management of resources for the social benefit of community members, and involves the establishment of institutions, systems and practices that contribute to the social environment desired by the community. This includes the development of and access to the institutions that protect the health and welfare of individuals and families, and preserve the values, language and culture of the community.

Purpose of this Program Announcement

The purpose of this program announcement is to announce the availability of financial assistance to promote self-sufficiency for Alaskan Natives through support of local governance, social and economic development projects.

Please Note: This program announcement represents ANA's program policy and funding priorities for Alaska in Fiscal Year 1986. Current ANA Alaska grantees who wish to be considered for any Fiscal Year 1986 funding must apply under this program announcement.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

In Fiscal Year 1984, ANA implemented a three year special Alaska social and economic development initiative. The purpose of this special effort is to provide financial assistance at the village level or for village specific projects for social and economic development. During Fiscal Years 1984 and 1985, ANA funded 33 projects, of which 20 grants were made directly to villages.

Under this program announcement, 13612-862, ANA will complete the third year of the Alaska initiative. ANA continues to place major emphasis on village level development efforts. The non-profit corporations in Alaska are seen as being able to play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which take advantage of the opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), Pub. L. 92-202.

Examples of the types of projects that ANA is seeking to fund include, but are not limited to, projects that will:

Governance

- Initiate a demonstration or pilot program at a regional level to allow Native people to become involved in and actually develop strategies to maintain and develop their subsistence base.
- Assist in developing land use capabilities and develop skills in the areas of land and natural resource management including resource assessment and development, as well as potential impacts upon the environment and the subsistence ecology.
- Assist village consortia involved in the development of tribal constitutions, codes, and court that could be replicated.
- Develop state/tribal agreements that transfer programs, jurisdictions, and/or control to Native entities.
- Strengthen tribal government control of land/management, including land protection.
- Develop Tribal courts, adoption codes, and/or related comprehensive children's codes.
- Strengthen tribal government control of land/management, including land protection.
- Assist in status clarification for Traditional councils.
- Initiate village level mergers between Village Council and Village Corporations.
- Develop Regional IRAs (Indian Reorganization Act of 1934) and village consortia, in order to maximize Tribal government resources, i.e., to develop model codes, or Tribal court systems.

Economic Development

- Assist villages to develop businesses and industries which (1) use local materials, (2) create jobs for Alaska Natives, and (3) are capable of high productivity at a small scale of operations, and be counter seasonal when needed to complement traditional and necessary seasonal activities.
- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system.
- Assist villages or consortia of villages in developing subsistence compatible industries that will retain local dollars in villages, reducing dependency on state and federal subsidies.
- Assist in new or expanded Native businesses.
- Assist villages in labor export, i.e., people leaving the local communities for seasonal work and returning to their communities.

Social Development

- Assist villages in developing the service sector.
- Assist in developing training and education programs for those jobs in education, government and health usually found in local communities and also to work with the various agencies to encourage job replacement of non-Natives by Natives.
- Coordinate land use planning with village corporations and city government.
- Develop local control of planning and delivery of social services.
- Develop new service programs established with ANA funds and funded for continued operation by local communities or the private sector.
- Develop or coordinate activities with state funded projects, in decreasing the incidences of child abuse and neglect, or fetal alcohol syndrome, and/or Native suicides.
- Assist in obtaining licenses to provide housing or related services for State and/or local governments.
- Assist in increasing the number of Native adoptions, or Native children returning home from foster care.

Program Priority

The ANA program priority is to fund projects that will make the greatest impact in promoting improved governance and increased social and economic self-sufficiency for Native Alaskans. The project proposal must clearly identify in measurable terms the expected results of the project and its positive and continuing impact on the community. ANA encourages applicants to consider innovative approaches to achieve the specific governance and social and economic goals of the community, and to use non-ANA resources including human, natural, and financial ones to strengthen and broaden the proposed project's impact in the community.

The applicant must clearly identify the expected impact of achievement of the proposed objectives in the local community in terms that are objective and measurable.

Non-profit regional corporations and profit regional corporations established under ANCSA are sources from which

village applicants could obtain technical assistance and participate in joint-venture social and economic development projects. ANA encourages the for-profit corporations to cooperate in assisting the villages in developing applications and may participate in the project(s) as sub-contractors. However, for-profit organizations are not eligible to be the applicant organization.

Community Coordination

ANA supports the concept that the key to balanced socioeconomic development is the local village itself. ANA encourages and expects Native village governments to coordinate their local plans with other village entities, if any, and especially the city government and the village corporation. In addition, villages are expected to make maximum use of regional non-profit resources, including village-to-regional corporation sub-contracts.

In the application, evidence of community coordination should include the following:

- Approval of the governing tribal entity, with any supporting information, e.g. minutes of meeting or other information on the amount of participation in project development.
- A letter of understanding, indicating level of commitment/coordination from other village entities, i.e., village city council and/or the village corporation.

Eligible Applicants

The following are eligible to apply for a grant award under this program announcement:

- Alaskan Native villages as defined in the Alaska Native Claims Settlement Act.
- The non-profit Native Alaskan Regional Corporations in Alaska with village specific projects.
- Non-profit organizations in Alaska with village specific projects.
- Current ANA grantees in Alaska funded under Section 803 of the Native American Programs Act with a project period ending in fiscal year 1986, with the exception of Metlakatla. Metlakatla will have the opportunity to apply for fiscal year 1986 funds under ANA Program Announcement 13612–861.
- Alaska Native Indian communities as recognized by the Bureau of Indian Affairs.

Although for-profit corporations are not eligible applicants, individual villages and Indian communities are encouraged to utilize the for-profit corporations as sub-contractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency.

Note.—Grantee accounting systems should meet generally accepted accounting standards. Village governments without established accounting systems, must arrange for qualified, acceptable accounting services prior to release of grant funds. (45 CFR Part 74 Subpart H)

Available Funds

ANA expects to award approximately $1.5 million in grant awards under this program announcement.

Funding Guidance: ANA plans to award approximately 15–18 grants. For individual village projects, the funding level will be up to $100,000; for regional non-profit and village consortia, the funding level is up to $150,000, commensurate with approved multi-village objectives. For multi-year projects, the funding range for Fiscal Years 1987 and 1988 will be the same.

Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project affords applicants the opportunity to undertake long-range planning, unlike what can be achieved readily in a single annual plan or project.

Applicants proposing projects for more than 12 months ("multi-year projects") must fully describe project objectives and activities, as well as an itemized budget, for the entire project period, and must fully justify the entire time-frame of the project. The budget period for each multi-year project will be up to 12 months. Funding after the first twelve months of a multi-year project will be non-competitive and will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, and compliance with the Native American Programs Act and all relevant regulations.

For projects approved for more than twelve months, copies of the budget and Part IV of the original application as initially approved, or a revised budget and Part IV as negotiated with ANA, are required for the subsequent months. Specific guidance will be provided to multi-year project grantees to whom these requirements apply in Fiscal Year 1987.

Multi-year projects, as well as single year projects, must be complete, self-sustaining or supported with other than ANA funds at the end of the project period. ANA's funding of multi-year projects is not for a program in the applicant community which operates indefinitely and has need for support funding on an annual basis.

Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind. The total approved cost of the project is the sum of the Federal share and the non-Federal share. An itemized budget detailing the applicant's non-Federal share and its source must be included in the application. A request for a waiver of the Non-Federal share requirement may be submitted in accordance with the Native American Program Regulations, 45 CFR 1336.50(b)(3).

Executive Order 12372 Coverage

This program is not covered by Executive Order 12372, "Intergovernmental Review of Federal Programs".

The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms may be obtained from:

Administration for Native Americans, Office of Human Development Services, DHHS, 2901 3rd Avenue, Seattle, WA 98121, Attention: No. 13612–862, (206) 442–0992.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be submitted to the address specified in the application kit. Four additional copies are requested, since a total of six copies ensures a more timely review. The application shall be signed by an individual authorized to act for the applicant tribe or organization.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement. The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process by an independent review panel

against the published criteria. The results of this review will assist the Commissioner in making final funding decisions.

• The Commissioner's decision also takes into account the comments of the ANA and other interested parties.

• The Commissioner makes grant awards consistent with: the purpose of the Native American Program Act; all relevant statutory requirements and regulations; this Program Announcement; and the limits of available funds.

• After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing. Successful applicants are notified through an official Notice of Financial Assistance Awarded (NFAA). The NFAA will state the amount of and budget for Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

Review Process

I. Eligibility Review: The independent review panel will first review an application to determine:

(1) That the application proposes project objectives which are responsive to the Program Announcement;

(2) That the applicant is an eligible applicant in accordance with the Eligible Applicant Section of the announcement; and

(3) That the application is complete, with all required forms and material included.

An application that does not meet these three requirements will not be considered for funding.

II. Evaluation Review and Review Criteria: Applications that satisfy the three requirements in the Eligibility Review will be evaluated and rated by a review panel on the basis of the following criteria:

(1) The application describes long-range community *goals*, within the context of a long range plan, *project objectives*, and *project activities* which:

• Relate to each other in a logical way;

• Are realistic;

• Are based on a described locally determined, balanced social and economic development strategy;

• Clearly addresses a major problem within the community; and

• Describe a reasonable and sound strategy for achieving project self-sufficiency. (30 points)

(2) The proposed project will result in *measurable, concrete outcomes* which will clearly contribute to the overall development of the community and its members. Where possible, baselines are provided against which the outcomes can be evaluated at year end. (Example: unemployment will decrease by 2% on the reservation, *from 13% to 11%.)* (25 points)

(3) Specific evidence is contained in the application of the *commitment of the community*, of the support of the governing body, of community coordination, or resource commitments for the proposed project from the community and the applicant organization, and of cited reports or studies which support the feasibility of the proposed project, if applicable (15 points)

(4) The application presents a detailed *budget and work plan*, with the budget specifically related to the work plan. The budget and work plan contain complete explanations and justification of line items, including technical assistance. The budget is reasonable in terms of the outcome and benefits expected. The application demonstrates the coordinated use of specific non-Federal and Federal resources (other than from ANA) as part of its strategy. (15 points)

5. *Management and administrative capabilities* necessary to ensure accountability and to justify receipt of Federal funds are evident in the application. The application identifies by position or role all proposed key personnel, consultants and contractors; and demonstrates their qualifications by the inclusion of resumes, position descriptions, or consultant and contractor capability statements. (15 points)

Guidance to Applicants

The following policies, pointers, and instructions are provided to assist applicants in developing a fully competitive application.

I. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

ANA seeks to fund projects that reflect self-determination at the local level; that cause measurable impact in the community at the end of the project period; that have a discernible completion date and do not require on-going support; and that incorporate a developed strategy for achieving social and economic self-sufficiency, a strategy that utilizes all resources in the community. The following activities are inconsistent with the policies of ANA:

• Projects which support a grantee in providing training and/or technical assistance (T/TA) to other tribes and Native American organizations ("third party T/ TA"). However, the purchase of T/TA by a grantee for its own use or use for its members (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is encouraged;

• Plans, feasibility studies or manuals that are not essential to achieving the long-range goals of the local community;

• On-going social service delivery, or expansion or continuation of existing social service delivery programs;

• Core administrative functions or major activities that essentially support the applicant's administrative office;

• Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development);

• Projects plans or strategies clearly not determined or developed at the local level;

• Proposals from consortia of Tribes that are not specific in regard to support from and roles of member Tribes;

• Projects which should be supported by other Federal funding sources appropriate and available for the proposed activity;

• Lack of measurable, concrete outcomes or benefits to the community;

• Activities that will not be completed, self-sustaining or supported by other than ANA funds at end of the project period;

• Lack of demonstrated coordination with non-ANA resources;

• The purchase of real estate (see 45 CFR 1336.50(e)) or construction with ANA funds (see HDS Grants Administration Manual 3–e).

• No project will be approved unless it supports activities that are in addition to, and not in substitution for, comparable activities previously carried out without Federal assistance. (45 CFR 1336.50(c))

ANA will also review very carefully and critically applications in which major capital expenditures, franchise or management fees, or the acquisition of major capital equipment, especially computers or word processing equipment, are a major component of the budget. After negotiation, such expenditures may be deleted from the budget of an otherwise approved application.

II. Pointers on the Application Process Itself

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority for the applicant.

• ANA suggests that the pages of the application be numbered sequentially

from the first page (Project Abstract). This allows for easy reference during the review process. Simple tabbing of the sections of the application is also most helpful to the reviewers.

• Two copies plus the original are required. Four additional copies are requested, since a total of six copies ensures a more timely review.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria and actually score the application prior to its submittal. In this way, applicants will gain a better sense of their application's quality and potential competitiveness.

• ANA suggests that applications containing proposed business development include a business plan: ownership stipulations, market potential, financing aspects, cost of production (service or product) and projected profit. The more information given a review panel on a proposed business, the better able it is to evaluate the potential for success.

• A project abstract summarizing the proposed project must be included. Detailed instructions are included in the Application Kit.

• Applicants should describe the work already accomplished toward the completion of a proposed project. This information allows the panel to more fully evaluate the feasibility of the proposed project within the budget and time schedule provided.

• ANA does not fund on the basis of need. ANA funds those projects that have the greatest potential for positively affecting a community's local governance and social and economic development.

• For purposes of planning and developing an ANA application, the expected project start date for successful applicants will be 120 days after the closing date under which the application was submitted.

Due Dates for Receipt of Applications

The closing date for applications submitted in response to this program announcement is December 12, 1985.

Receipt of Applications

Applications must be hand delivered or mailed to: Department of Health and Human Services, Office of Human Development Services, Discretionary Grants Management Branch, 2901 3rd Avenue, Seattle, WA 98121, Attention: 13612–882.

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date at the above address, or

(2) Sent on or before the deadline date. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier of U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications. HDS shall notify each later applicant that its application will not be considered in the current competition.

Extension of deadlines. HDS may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mail. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Programs Number 13.612 Native American Progams)

Date: September 18, 1985.

William Lynn Engles,

Commissioner, Administration for Native Americans.

Approved: September 25, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 85–23370 Filed 9–30–85; 8:45 am]

BILLING CODE 4130–01–M

Federal Register

Tuesday
October 1, 1985

Part V

Environmental Protection Agency

Assessment of Hexachlorocyclopentadiene as a Potentially Toxic Air Pollutant; Notice

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-2672-2].

Assessment of Hexachlorocyclopentadiene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent Not to Regulate and Solicitation of Information.

SUMMARY: This notice announces the results of EPA's assessment of hexachlorocyclopentadiene (HCCPD) as a potentially toxic air pollutant. The EPA is announcing its intent not to regulate routine emissions of HCCPD under the Clean Air Act. Given that there are uncertainties in the health and exposure information incorporated in this notice and that there has been limited opportunity for public review, the Agency is soliciting comment on this notice. This determination has no effect on the regulation of HCCPD as a volatile organic compound in order to attain the national ambient air quality standards (NAAQS) for ozone. In addition, this determination does not preclude any State or local air pollution control agency from specifically regulating emission sources of HCCPD.

DATES: Written comments pertaining to this notice must be received on or before December 2, 1985.

ADDRESSES: Submit comments (duplicate copies are preferred) to: Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–84–26, 401 M Street SW., Washington, DC. Docket A–84–26, which contains information relevant to this decision, is located in the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Availability of Related Information: The Health Assessment Document (HAD) for HCCPD is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Information on the availability of the HAD is available from ORD Publications, CERI–FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (Telephone: 513–684–7562 commercial/684–7562 FTS).

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711 (Telephone: 919–541–5645 commercial/629–5645 FTS).

SUPPLEMENTARY INFORMATION: The EPA initiated this assessment because HCCPD is a highly reactive substance that is used in the production of some pesticides that are potential human carcinogens (e.g., Kepone). Information on the sources, emissions, environmental fate, and effects of HCCPD on man and the environment were summarized in a draft HAD which was released for public review period on February 21, 1984 (49 FR 3258, January 26, 1984), and finalized in November 1984. However, the Science Advisory Board, a group of independent scientists which advises EPA, has not reviewed the HAD.

HCCPD (CAS number 77–47–4) is rarely found in the ambient air because it is manufactured and used in very low volume, and it rapidly degrades when released. HCCPD has an atmospheric residence time (time required for its initial concentration to be reduced to about 37 percent) of only about five hours. Information is not available to identify the degradation products of HCCPD or their potential effects on public health and the environment.

HCCPD is used in the manufacture of chlorinated pesticides and flame retardants (Hunt and Brooks, 1984). The principal flame retardants are chlorendic acid, chlorendic anhydride, and Dechlorane Plus. The use of HCCPD in the manufacture of flame retardants is increasing. The effect of this trend on public health is unknown. The major chlorinated pesticides currently produced from HCCPD are chlordane (2600 megagrams per year, Mg/yr, or metric tons/yr), heptachlor (590 Mg/yr), and dienochlor (250 Mg/yr). The use of HCCPD in the production of chlorinated pesticides, however, has decreased because of restrictions placed on the manufacture or use of these and other HCCPD products such as aldrin, dieldrin, mirex, and kepone.

Emissions of HCCPD result from the production and use of HCCPD, and application of its products (EPA, 1984; Hunt and Brooks, 1984). One company manufactures all the HCCPD produced in the United States at two plants. All HCCPD produced at one plant is used within that facility to produce chlordane. The other facility that produces HCCPD uses about half of the HCCPD on site for production of a pesticide and a flame retardant and sells the remainder of the HCCPD to other users.

Table 1 shows the principal sources of HCCPD emissions, production volume in 1984, and estimates of HCCPD emissions. Some residual HCCPD is present in chlordane. (The Federal Insecticide, Fungicide and Rodenticide Act regulations limit this concentration to 1 percent). The processes used in the production of other pesticides and flame retardants, however, should result in little or no residual HCCPD. Although emissions of HCCPD have not been examined in great detail, the preliminary sources assessment (Hunt and Brooks, 1984) indicates that emissions from industrial sources are relatively well controlled. Commercial chemical products containing HCCPD are, when discarded or stored for disposal, classified as hazardous wastes within the meaning of the Resource Conservation and Recovery Act (RCRA). Additionally, waste streams from production of HCCPD and some products derived from HCCPD are hazardous wastes. Such wastes must be managed in accordance with requirements adopted by EPA or States in accordance with the RCRA (see 40 CFR 260–271).

TABLE 1.—SUMMARY OF HCCPD PRODUCTION AMD EMISSIONS[1]

Source category	Production (Mg/yr)	Air emissions (Mg/yr)
HCCPD production	8,300	4.3
Pesticide production	5,300	1.7
Flame retardant production	4,200	2.0
Solid waste disposal	NA	[2] 1.0
Use of products containing HCCPD	NA	2.9
Total		11.9

[1] Hunt and Brooks (1984).
[2] Air emissions from incinerators and landfills.

Available health effects information for HCCPD is reviewed in the HAD. The HAD indicates that studies are underway, but available information is not sufficient from either animal or human data to determine the carcinogenic potential of HCCPD.

The HAD also reports on several non-cancer health effects associated with HCCPD exposure. The odor recognition threshold concentration for HCCPD, which is not well established, is exceptionally low. As noted in the Agency report on odors that was submitted to Congress on February 19, 1980, Federal regulatory involvement in odor control does not appear to be warranted since local and State odor control procedures appear to be generally adequate. This report, *Regulatory Options for the Control of Odors* (EPA 450/5–80–003), was prepared pursuant to section 403(b) of the Clean Air Act.

There is evidence in the literature indicating an association between HCCPD exposure and several non-cancer health effects. Four-hour inhalation exposures to 1.6 and 3.5 ppm in male and female rats, respectively, have resulted in a death rate of 50%. Long-term exposures in rats at levels of 0.5 ppm have resulted in damage to the liver, kidneys and lungs. Less severe intoxication (e.g., ocular and respiratory irritation and headaches) has been reported in workers exposed to HCCPD at high levels. Although the actual level of exposure associated with the onset of these health effects in humans is unknown, both the animal and human evidence has prompted the American Conference of Governmental Industrial Hygienists (ACGIH) to recommend occupational exposure limits of 0.01 ppm (8-hour time weighted average) and 0.03 ppm (15-minute, short-term exposure limit) to protect workers from all non-cancer health effects.

A modeling analysis was conducted to examine the potential for short-term concentrations of HCCPD in the ambient air surrounding industrial facilities to exceed the exposure limits suggested by ACGIH. This analysis, which used plant specific data from the largest emission source, indicated that HCCPD concentrations near the modeled emission source were 0.0078 ppm (8-hour average) and 0.029 ppm (15-minute average). Although this analysis does account for the fact that the modeled facility operates only 80 percent of the year, the modeled HCCPD concentrations may be underestimated because the analysis assumes that emissions are constant throughout the operating period of each year. This analysis indicates that in the vicinity of the largest facility emitting HCCPD, ambient concentrations effectively equal the ACGIH recommended level for 15-minute exposures and are close to 8-hour exposure levels. Occupational exposure limits, however, are not designed to protect the more sensitive subgroups in the general population.

The only health effects known to occur as a result of exposure to HCCPD at these levels are irritation to the eyes, nose and throat, as well as headaches. In addition, the EPA is aware of only a limited number of sources which could emit HCCPD. Thus, given the very limited potential for human exposure to HCCPD, and the absence of information suggesting serious health effects of HCCPD at ambient concentrations, the development of regulations for HCCPD under any section of the Clean Air Act is not warranted at this time. Additional regulatory controls or other actions may, of course, be appropriate in the future under other EPA authorities to control exposures to HCCPD resulting from releases into the environment other than air emissions from the sources identified in this notice. In order to improve upon the health effects information base for HCCPD, the National Toxicology Program is testing HCCPD in animal bioassays; however, results are not expected before 1987.

The EPA is soliciting comments and additional information pertaining to this notice because: the HAD has not been reviewed by the SAB; the results of the preliminary short-term modeling effort indicate a potential for non-cancer health effects; and the uncertainties inherent in assessing the risk of non-cancer health effects in the general population. A further notice will be published, however, only if pubic comments indicate a need to revise these conclusions. In addition, if significant new information becomes available, the Agency will reconsider the need to regulate HCCPD.

This notice has no effect on the regulation of HCCPD as a volatile organic compound in order to attain the NAAQS for ozone. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of HCCPD.

Dated: September 17, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-23382 Filed 9-30-85; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Tuesday
October 1, 1985

Part VI

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Onshore Natural Gas Processing; SO_2 Emissions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2865-6]

Standards of Performance for New Stationary Sources; Onshore Natural Gas Processing So_2 Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action promulgates standards of performance for atmospheric emissions of sulfur dioxide (SO_2) from new, modified, and reconstructed sweetening and sulfur recovery units in onshore natural gas processing plants. The standards were proposed in the **Federal Register** on January 20, 1984 (49 FR 2656). The standards do not regulate sulfur content in natural gas; instead, they apply only to SO_2 emissions from gas processing (sweetening and sulfur recovery) facilities.

EFFECTIVE DATE: October 1, 1985. These standards become effective upon promulgation and apply to affected facilities for which construction, reconstruction, or modification commenced after January 20, 1984.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Documents.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, NC 27711, telephone number (919) 541-2777. Please refer to "SO_2 Emissions in Natural Gas Processing Industry—Background Information for Promulgated Standards" (EPA-450/3-82-023b). This BID contains (1) a summary of public comments made on the proposed standards and EPA's responses to the comments and (2) a summary of the changes made to the standards since proposal. The BID for the proposed standards includes discussions of SO_2 emission control technologies; model plants and regulatory alternatives; and the results of the economic impact analyses of the regulatory alternatives. This document may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Please refer to "SO_2 Emissions in Natural Gas Production Industry—Background Information for Proposed Standards," (EPA-450/3-82-023a).

Docket. Docket number A-80-20A, containing information considered by EPA in the development of the standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For technical information contact Mr. David Markwordt or Mr. Robert E. Rosensteel, Chemicals and Petroleum Branch, Emission Standards and Engineering Division (MD-13), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-5671. For information on the regulatory decisions and the promulgated standards, contact Ms. Dianne Byrne or Mr. Gilbert H. Wood, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-5578. For information concerning enforcement and reporting aspects, contact Mr. Richard Biondi, Stationary Source Compliance Division (EN-341), U.S. EPA, 401 M Street S.W., Washington, D.C. 20460; or, contact the appropriate Regional Office contact as listed in 40 CFR 60.4.

SUPPLEMENTARY INFORMATION:

Summary of Standards

The standards require affected facilities to reduce SO_2 emissions by recovering sulfur. The emission reduction efficiency required varies according to the sulfur feed rate and concentration of hydrogen sulfide (H_2S) in the gas entering the sulfur recovery unit. The standards apply to facilities with sulfur feed rates $\geq$2.0 long tons per day (LT/D).

The standards include two emission reduction efficiency requirements for each facility to take into account control system catalyst degradation over time. One requirement must be met during the initial performance test, and a less stringent requirement must be met on a continuing basis after the initial performance test. The standards include equations for determining emission reduction efficiencies. The standards also contain specific numerical limits for facilities with lean streams (i.e., low H_2S content in the acid gas relative to the size of the facility). These limits require less stringent emission reduction efficiencies based on technology capabilities and cost-effectiveness considerations.

For facilities with design capacities $\geq$150 LT/D, the standards require continuous monitoring of SO_2 emissions or total reduced sulfur (TRS) emissions, depending on whether the sulfur compounds are combusted prior to emission to the atmosphere. Instead of continuously measuring SO_2 emission, plants with design capacities $<$150 LT/D may measure inlet sulfur and recovered sulfur once every 24 hours. The standards require facilities with continous SO_2 emission monitors to either maintain a site-specific incinerator temperature or to monitor both SO_2 and TRS emissions. Reports of excess emissions are required to be submitted semiannually.

Summary of Impacts of the Standards

The impacts of the promulgated standards are not significantly different from those of the proposed standards. A change in the plant size cutoff resulted in minor difference in the impacts.

Emission Reductions. Based on a projected growth of 39 new affected facilities with sulfur feed rates of at least 2.0 LT/D, the standards would reduce SO_2 emissions by about 62,500 megagrams per year (68,750 tons per year) in the fifth year of implementation. This represents a reduction in SO_2 emissions of 76 percent from State implementation plan (SIP) levels.

Cost and Economic Impacts. To comply with the standards, the increase in fixed-capital costs over the first 5 years would be $92.4 million. The increase in annualized costs would be about $27.5 million in the fifth year. This increase in annualized costs represents about 2 percent of the revenue generated by the sale of the processed sour natural gas in the fifth year. The proposed regulations are not expected to have a significant effect on incentives to develop new sour gas fields and should not result in an increase in the price of natural gas.

Other Impacts. These standards will increase total nationwide energy usage by about 7.8×10^{14} Joules per year (25.9 megawatts) in the fifth year of implementation. The standards would not result in any adverse water pollution impacts. There would be no significant impact on solid waste disposal.

The promulgated standards, changes since proposal, EPA's responses to

comments received in writing or presented at the March 7, 1984, public hearing, and the economic impacts are discussed in greater detail in the BID for the promulgated standards.

Significant Comments and Changes to the Proposed Standards

The EPA received comments from the natural gas processing industry, trade associations, State regulatory agencies, and a process engineering design firm. These comments and EPA's responses serve as the basis for the revisions that have been made to the standards between proposal and promulgation. A detailed discussion of these comments and responses can be found in the BID for the promulgated standards. Major changes made in the standards since proposal are the following:

(1) The proposed 1.0 LT/D cutoff has been changed to 2.0 LT/D. The proposed cutoff was based on an analysis of the incremental cost effectiveness of the technology included in the regulatory alternative on which the standards were based compared to the no-control baseline alternative. This analysis assumed an average capacity utilization of the affected facilities of 100 percent. Based on information received from commenters, the Agency has determined that average capacity utilization is typically closer to 75 percent. Incorporation of the 75 percent capacity utilization assumption into a revised cost-effectiveness analysis resulted in the 2.0 LT/D cutoff that is being promulgated.

(2) The costs per ton of emission reduction are higher for plants with low H_2S concentrations in the acid gas (relative to the facility's sulfur feed rate) than they are for plants with higher, more typical H_2S concentrations. To ensure that the cost effectiveness of controls at these facilities does not exceed a reasonable range, the standards have been revised to require less stringent emission reduction efficiencies for these plants.

(3) Requirements for continuous monitoring of SO_2 emissions have been revised for smaller plants. Based on the results of an analysis of the potential emission reductions and costs for a range of plant types (see Docket Entry IV–B–31), plants with sulfur feed rates <150 LT/D are no longer required to monitor emissions on a continuous basis. These plants may, instead, calculate emission reduction efficiency daily by comparing the amount of sulfur recovered to the amount of sulfur entering the sulfur recovery unit.

(4) The requirement for maintaining the incinerator combustion zone temperature at 1000± F has been deleted. Instead, a site-specific temperature requirement, determined during the performance test, will be required for those facilities with continuous emission monitors. This temperature must be sufficient to ensure that at least 98 percent of the sulfur in the stack gas will be in the form of SO_2. The standard also now allows plants the flexibility of monitoring both SO_2 and TRS in lieu of meeting the minimum temperature requirement.

(5) The proposed standards required affected facilities to determine the required emission reduction efficiency (Z) once every quarter. This required efficiency was then compared to twice-daily determinations of the actual efficiency being achieved (R) to ascertain if the sulfur recovery unit was being operated and maintained properly. Several commenters, citing potential variability in sulfur feed rate over time, indicated that a requirement to meet an efficiency level that was based on measurements made up to 3 months in the past may not remain achievable. To address this concern, the standards have been changed to require daily determinations of required efficiency (Z). These daily determinations will then be compared to the actual efficiency being achieved, which is also now measured on a daily basis. The change from twice-daily measurements to only daily measurements was made for small plants that may be unattended for up to 12 hours each day.

In response to comments on the proposed standards pertaining to the economic impact analysis, a revised analysis was conducted using a different methodology and incorporating several updated assumptions. The new analysis used a discounted cash flow model (calculating the net present value of each model plant case over the time period of the analysis). Updated assumptions included: a variable price for gas ranging from $3.88 per thousand cubic feet (MCF) in 1985 to $5.82/MCF in 1994 (instead of the constant $4.80/MCF used in the original analysis); a 12-year plant life for facilities with sulfur feed rates <20 LT/D instead of a 20-year life; and a $77/LT value for sulfur credits for plants with sulfur feed rates >5 LT/D rather than the $100/LT value assumed in the previous analysis. Baseline sweetening costs were included in the new analysis. Of approximately 1,000 cases (different combinations of sulfur feed rate, H_2S-to-CO_2 ratios in the acid gas, and H_2S content in the sour gas) analyzed, 27 could, if built, experience adverse economic impacts due to the NSPS. However, there is less than a 1 percent chance of facilities with characteristics similar to any of these cases being built in the future. Because control of these facilities would be cost effective, EPA believes that this economic impact is reasonable. The standards are not expected to adversely affect incentives to develop new sour gas fields, and they are not expected to result in an increase in the price of natural gas.

Miscellaneous

In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared and is included in the BID. Cost was carefully considered in determining the selection of the regulatory alternative that served as the basis for these standards.

Information collection requirements associated with this regulation (those included in 40 CFR Part 60, Subpart A and Subpart LLL) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 350 et seq. and have been assigned OMB control number 2060–0120.

The resources needed by the industry to maintain records and to collect, prepare, and use the reports for the first 3 years would be about 8.4 person-years annually. The resources required by EPA and State and local agencies to process the reports and maintain records for the first 3 years would average about 0.374 person-years annually.

"Major Rule" Determination

Under Executive Order 12291, the Administrator is required to judge whether a regulation is a "major rule" and, therefore, subject to certain requirements of the Order. The Administrator has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." Fifth-year annualized costs of the standards would be about $27.5 million for the projected 39 newly constructed, modified, and reconstructed natural gas processing facilities that could be

affected by the standards during the first 5 years. The standards result in no adverse impact on the profitability of these projected facilities and would have no adverse impact on capital availability for construction of sour natural gas processing plants. The Administrator has concluded that this rule is not "major" under any of the criteria established in the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required in Executive Order 12291. Any written comments from OMB to EPA and any EPA responses to those comments are available for public inspection in Docket No. A-80-20A, Central Docket Section.

Regulatory Flexibility Analysis Certification

The Regulatory Flexibility Act (RFA) of 1980 requires that adverse effects of all Federal regulations upon small businesses be identified. According to current Small Business Administration (SBA) guidelines, a small business in the SIC category 1311, "Crude Petroleum and Natural Gas" is one that has 500 employees or less. This is the criterion to qualify for SBA loans or for the purpose of Government procurement. The average employment in onshore natural gas sulfur recovery companies is approximately 26,000. Therefore, it is estimated that employment in a typical company operating sulfur recovery unit will average well over 500. Thus, it is unlikely that any such company would be considered a small entity. The Agency was not able to obtain sufficient information on natural gas processing companies that operate only sweetening facilities to determine if there is a substantial number of small entities in this segment of the industry. However, the Agency evaluated the economic impacts of the standards on all entities covered by the standards. The results of the Agency's impact analysis indicate that there will be no adverse economic impacts on any plants expected to be built in the near future. Because these standards would not have a significant adverse economic impact on a substantial number of small entities, a Regulatory Flexibility Analysis was not necessary.

Pursuant to the provisions of 5 U.S.C. § 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60.

Air pollution control, Incorporation by reference, Onshore natural gas processing, Reporting and recordkeeping requirements, Intergovernmental relations.

Dated: September 11, 1985.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

For reasons set out in the preamble, 40 CFR Part 60 is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. By adding a new Subpart LLL as follows:

Subpart LLL—Standards of Performance for Onshore Natural Gas Processing; SO_2 Emissions

Sec.

Subpart LLL—Standards of Performance for Onshore Natural Gas Processing: SO_2 Emissions

§ 60.640 Applicability and designation of affected facilities.

(a) The provisions of this subpart are applicable to the following affected facilities that process natural gas: each sweetening unit, and each sweetening unit followed by a sulfur recovery unit.

(b) Facilities that have a design capacity less than 2 long tons per day (LT/D) of hydrogen sulfide (H_2S) in the acid gas (expressed as sulfur) are required to comply with § 60.647(c) but are not required to comply with § 60.642 through § 60.646.

(c) The provisions of this subpart are applicable to facilities located on land and include facilities located onshore which process natural gas produced from either onshore or offshore wells.

(d) The provisions of this subpart apply to each affected facility identified in paragraph (a) of this section which commences construction or modification after January 20, 1984.

(e) The provisions of this subpart do not apply to sweetening facilities producing acid gas that is completely reinjected into oil-or-gas-bearing geologic strata or that is otherwise not released to the atmosphere.

§ 60.641 Definitions.

All terms used in this subpart not defined below are given the meaning in the Act and in Subpart A of this part.

"Acid gas" means a gas stream of hydrogen sulfide (H_2S) and carbon dioxide (CO_2) that has been separated from sour natural gas by a sweetening unit.

"Natural gas" means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface. The principal hydrocarbon constituent is methane.

"Onshore" means all facilities except those that are located in the territorial seas or on the outercontinental shelf.

"Reduced sulfur compounds" means H_2S, carbonyl sulfide (COS), and carbon disulfide (CS_2).

"Sulfur production rate" means the rate of liquid sulfur accumulation from the sulfur recovery unit.

"Sulfur recovery unit" means a process device that recovers element sulfur from acid gas.

"Sweetening unit" means a process device that separates the H_2S and CO_2 contents from the sour natural gas stream.

"Total SO_2 equivalents" means the sum of volumetric or mass concentrations of the sulfur compounds obtained by adding the quantity existing as SO_2 to the quantity of SO_2 that would be obtained if all reduced sulfur compounds were converted to SO_2 (ppmv or kg/DSCM).

"E" = the sulfur emission rate expressed as elemental sulfur, kilograms per hour (kg/hr) rounded to one decimal place.

"R" = the sulfur emission reduction efficiency achieved in percent, carried to one decimal place.

"S" = the sulfur production rate in kilograms per hour (kg/hr) rounded to one decimal place.

"X" = the sulfur feed rate, i.e., the H_2S in the acid gas (expressed as sulfur) from the sweetening unit, expressed in long tons per day (LT/D) of sulfur rounded to one decimal place.

"Y" = the sulfur content of the acid gas from the sweetening unit, expressed as mole percent H_2S (dry basis) rounded to one decimal place.

"Z" = the minimum required sulfur dioxide (SO_2) emission reduction efficiency, expressed as percent carried to one decimal place. Z_i refers to the reduction efficiency required at the initial performance test. Z_c refers to the reduction efficiency required on a continuous basis after compliance with Z_i has been demonstrated.

§ 60.642 Standards for sulfur dioxide.

(a) During the initial performance test required by § 60.8(b), each owner or operator shall achieve at a minimum, an SO_2 emission reduction efficiency (Z_i) to be determined from Table 1 based on the sulfur feed rate (X) and the sulfur content of the acid gas (Y) of the affected facility.

(b) After demonstrating compliance with the provisions of paragraph (a) of this section, the owner or operator shall achieve at a minimum, an SO_2 emission reduction efficiency (Z_c) to be determined from Table 2 based on the sulfur feed rate (X) and the sulfur content of the acid gas (Y) of the affected facility.

§ 60.643 Compliance provisions.

(a)(1) To determine compliance with the standards for sulfur dioxide specified in § 60.642(a), during the initial performance test as required by § 60.8, the minimum required sulfur dioxide emission reduction efficiency (Z) is compared to the emission reduction efficiency (R) achieved by the sulfur recovery technology.

(i) If $R \geqq Z_i$, the affected facility is in compliance.

(ii) If $R < Z_i$, the affected facility is not in compliance.

(2) Following the initial determination of compliance as required by § 60.8, any subsequent compliance determinations that may be required by the Administrator would compare R to Z_c.

(b) The emission reduction efficiency (R) achieved by the sulfur recovery technology is calculated by using the equation:

$$R = \frac{S}{S+E} \times 100$$

"S" and "E" are determined using the procedures and test methods specified in § 60.644 and § 60.645.

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Table 1. REQUIRED MINIMUM INITIAL SO_2 EMISSION REDUCTION EFFICIENCY (Z_i)

H_2S content of acid gas (Y), %	Sulfur feed rate (X), LT/D			
	2.0≤X≤5.0	5.0<X≤15.0	15.0<X≤300.0	X>300.0
Y≥50	79.0	. . . . . $88.51X^{0.0101}Y^{0.0125}$ . . . . . or 99.8, whichever is smaller		
20≤Y<50	79.0	. . . . $88.51X^{0.0101}Y^{0.0125}$ . . . or 97.9, whichever is smaller		97.9
10≤Y<20	79.0	$88.51X^{0.0101}Y^{0.0125}$ or 93.5, whichever is smaller	93.5	93.5
Y<10	79.0	79.0	79.0	79.0

Table 2. REQUIRED MINIMUM SO_2 EMISSION REDUCTION EFFICIENCY (Z_c)

H_2S content of acid gas (Y), %	Sulfur feed rate (X), LT/D			
	2.0≤X≤5.0	5.0<X≤15.0	15.0<X≤300.0	X>300.0
Y≥50	74.0	. . . . . $85.35X^{0.0144}Y^{0.0128}$ . . . . . or 99.8, whichever is smaller		
20≤Y<50	74.0	. . . . $85.35X^{0.0144}Y^{0.0128}$ . . . or 97.5, whichever is smaller		97.5
10≤Y<20	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 90.8, whichever is smaller	90.8	90.8
Y<10	74.0	74.0	74.0	74.0

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§ 60.644 Performance test procedures.

(a) During a performance test required by § 60.8, the minimum required sulfur dioxide emission reduction efficiency (Z_i) required by § 60.642(a) and the minimum required SO_2 emission reduction efficiency (Z_c) required by § 60.642(b) are determined as follows:

(1) Collect and analyze at least one sample per hour (at equally spaced intervals during the performance test) of the acid gas from the sweetening unit using the method specified in § 60.645(a)(8). The units of the result from the Tutwiler procedure can be converted to volume percent using the following equation:

$Y = (1.62 \times 10^{-3}) \times$ (grains/100 scf)

where:

Y = H_2S concentration, volume percent;

1.62×10^{-3} = volume percent per grains/100 scf; and grains/100 scf = Tutwiler result basis.

(2) Calculate the arithmetic mean of all samples to determine the average H_2S concentration (Y) in mole percent (dry basis) in the acid gas.

(3) Determine the average volumetric flow rate of the acid gas from the sweetening unit by continuous measurements made with the process flow meter. Express the results as dry standard cubic feet per day (dscf/day).

(4) Calculate the average sulfur feed rate (X) in long tons per day of elemental sulfur from the average volumetric flow rate and the average H_2S content (from § 60.644(a)) by the equation:

$$X = \frac{\text{(average volumetric acid gas flow, dscf/day) (Y/100) (32 lb/lb mole)}}{\text{(385.36 standard cubic feet/lb mole) (2,240 lbs/long ton)}}$$

(5) Determine the minimum required SO_2 removal efficiency (Z_i or Z_c) in accordance with the provisions of the standards in § 60.642 (a) or (b) as appropriate.

(b) The actual sulfur emission reduction efficiency (R) achieved by the control technology during the performance test is determined as follows:

(1) Measure the liquid sulfur accumulation rate in the product storage tanks using level indicators or manual soundings. Record the level reading at the beginning and end of each test run. Convert the level readings to mass (kilograms) of sulfur in the storage tanks, using the tank geometry and the sulfur density at the temperature of storage. Divide the change in mass by the test duration (hours and fractions of hours) to determine the sulfur production rate in kilograms per hour for each run.

(2) Calculate the arithmetic mean of the rate for each run to determine the average sulfur production rate (S) to use in § 60.643(b).

(3) Measure the concentrations of sulfur dioxide and total reduced sulfur compounds in the incinerator (or other final processing unit) exhaust gas using the methods specified in § 60.645(a) (5) through (7). The minimum sampling time for each run shall be 4 hours. For each run the SO_2 and TRS concentrations shall be combined to calculate the total SO_2 equivalent concentration as follows:

Total SO_2 equivalent, (kg/dscm)
= 0.001 (SO_2 concentration mg/dscm from Method 6)
$- 2.704 \times 10^{-6}$ (SO_2 equivalents in ppmv, dry from Method 15 or from Method 16A)

(4) Measure the incinerator (or other final processing unit) exhaust gas velocity, molecular weight, and moisture content using the methods specified in § 60.645(a) (1) through (4). Calculate the volumetric flow rate of the exhaust gas at dry standard conditions using equation 2-10 in Method 2.

(5) Calculate the equivalent sulfur emission rate as elemental sulfur for each run as follows:

Sulfur emission rate
= (total SO_2 equivalent kg/dscm) gas flow rate, dscm/hr) (0.50)

Calculate the arithmetic mean of the sulfur emission rate for each run to determine the average sulfur emission rate (E) to use in § 60.643(b).

§ 60.645 Performance test methods.

(a) For the purpose of determining compliance with § 60.642 (a) or (b), the following reference methods shall be used:

(1) Method 1 for velocity traverse points selection.

(2) Method 2 for determination of stack gas velocity and calculation of the volumetric flow rate.

(3) Method 3 for determination of stack gas molecular weight.

(4) Method 4 for determination of the stack gas moisture content.

(5) Method 6 for determination of SO_2 concentration.

(6) Method 15 for determination of the TRS concentration from reduction-type devices or where the oxygen content of the stack gas is less than 1.0 percent by volume.

(7) Method 16A for determination of the TRS concentration from oxidation-type devices or where the oxygen content of the stack gas is greater than 1.0 percent by volume.

(8) The Tutwiler procedure in § 60.648 or a chromatographic procedure following ASTM E-260, which is incorporated by reference (see § 60.17), for determination of the H_2S concentration in the acid gas feed from the sweetening unit.

(b) The sampling location for Methods 3, 4, 6, 15, and 16A shall be the same as that used for velocity measurement by Method 2. The sampling point in the duct shall be at the centroid of the cross-section if the area is less than 5 m^2 (54 ft^2) or at a point no closer to the walls than 1 m (39 inches) if the cross-sectional area is 5 m^2 or more, and the centroid is more than one meter from the wall. For Methods 3, 4, 6 and 16A, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point. For Method 15, the minimum sampling rate shall be 3 liters/minute (0.1 ft^3/minute) to insure minimum residence time in the sample line.

(c) For Methods 6 and 16A the minimum sampling time for each run shall be 4 hours. Either one sample or a number of separate samples may be collected for each run so long as the total sample time is 4 hours. Where more than one sample is collected per run, the average result for the run is calculated by:

$$C_s = \sum_{i=1}^{n} (C_{si}) \left(\frac{t_{si}}{T}\right)$$

Where:

C_s = time-weighted average SO_2 or TRS concentration for the run, (mg/dscm or ppmv, dry)

n = number of samples collected during the run

C_{si} = SO_2 or TRS concentration for sample i, (mg/dscm or ppmv, dry)

t_{si} = sampling time for sample i, (minutes)

T = total sampling time for all samples in the run (minutes)

(d) For Method 15, each run shall consist of 16 samples taken over a minimum of 4 hours. The equivalent SO_2 concentration for each run shall be calculated as the arithmetic average of the SO_2 equivalent concentration for each sample.

(e) For Method 2, a velocity traverse shall be conducted at the beginning and end of each run. The arithmetic average of the two measurements shall be used to calculate the volumetric flow rate for each run.

(f) For Method 3, a single sample may be integrated over the 4-hour run interval and analysis, or grab samples at 1-hour intervals may be collected, analyzed, and averaged to determine the stack gas composition.

(g) For Method 4, each run shall consist of 2 samples; one collected at the beginning of the 4-hour test period, and one near the end of the period. For each sample the minimum sample volume shall be 0.1 dscm (0.35 dscf) and the minimum sample time shall be 10 minutes.

§ 60.646 Monitoring of emissions and operations.

(a) The owner or operator subject to the provisions of § 60.642(a) or (b) shall install, calibrate, maintain, and operate monitoring devices or perform measurements to determine the following operations information on a daily basis:

(1) The accumulation of sulfur product over each 24-hour period: The monitoring method may incorporate the use of an instrument to measure and record the liquid sulfur production rate, or may be a procedure for measuring and recording the sulfur liquid levels in the storage tanks with a level indicator or by manual soundings, with subsequent calculation of the sulfur production rate based on the tank geometry, stored sulfur density, and elapsed time between readings. The method shall be designed to be accurate within ±2 percent of the 24-hour sulfur accumulation.

(2) The H_2S concentration in the acid gas from the sweetening unit for each 24-hour period: At least one sample per 24-hour period shall be collected and analyzed using the method specified in § 60.645(a)(8). The Administrator may require the owner or operator to demonstrate that the H_2S concentration obtained from one or more samples over a 24-hour period is within ±20 percent of the average of 12 samples collected at equally spaced intervals during the 24-hour period. In instances where the H_2S concentration of a single sample is not within ±20 percent of the average of the 12 equally spaced samples, the Administrator may require a more frequent sampling schedule.

(3) The average acid gas flow rate from the sweetening unit: The owner or operator shall install and operate a monitoring device to continuously measure the flow rate of acid gas. The monitoring device reading shall be recorded at least once per hour during each 24-hour period. The average acid gas flow rate shall be computed from the individual readings.

(4) The sulfur feed rate (X): For each 24-hour period, X shall be computed using the equation in § 60.644(a)(4).

(5) The required sulfur dioxide emission reduction efficiency for the 24-hour period: The sulfur feed rate and the H_2S concentration in the acid gas for the 24-hour period as applicable, shall be used to determine the required reduction efficiency in accordance with the provisions of § 60.642(b).

(b) Where compliance is achieved through the use of an oxidation control system or a reduction control system followed by a continually operated incineration device, the owner or operator shall install, calibrate, maintain, and operate monitoring devices and continuous emission monitors as follows:

(1) A continuous monitoring system to measure the total sulfur emission rate (E) of SO_2 in the gases discharged to the atmosphere. The SO_2 emission rate shall be expressed in terms of equivalent sulfur mass flow rates (kg/hr). The span of this monitoring system shall be set so that the equivalent emission limit of § 60.642(b) will be between 30 percent and 70 percent of the measurement range of the instrument system.

(2) Except as provided in subparagraph (3) of this paragraph: A monitoring device to measure the temperature of the gas leaving the combustion zone of the incinerator, if compliance with § 60.642(a) is achieved through the use of an oxidation control system or a reduction control system followed by a continually operated incineration device. The monitoring device shall be certified by the manufacturer to be accurate to within ±1 percent of the temperature being measured.

When performance tests are conducted under the provision of § 60.8 to demonstrate compliance with the standards under § 60.642, the temperature of the gas leaving the incinerator combustion zone shall be determined using the monitoring device. If the volumetric ratio of sulfur dioxide to sulfur dioxide plus total reduced sulfur (expressed as SO_2) in the gas leaving the incinerator is ≥ 0.98, then temperature monitoring may be used to demonstrate that sulfur dioxide emission monitoring is sufficient to determine total sulfur emissions. At all times during the operation of the facility, the owner or operator shall maintain the average temperature of the gas leaving the combustion zone of the incinerator at or above the appropriate level determined during the most recent performance test to ensure the sulfur compound oxidation criteria are met. Operation at lower average temperatures may be considered by the Administrator to be unacceptable operation and maintenance of the affected facility. The owner or operator may request that the minimum incinerator temperature be reestablished by conducting new performance tests under § 60.8.

(3) Upon promulgation of a performance specification of continuous monitoring systems for total reduced sulfur compounds at sulfur recovery plants, the owner or operator may, as an alternative to subparagraph (2) of this paragraph, install, calibrate, maintain, and operate a continuous emission monitoring system for total reduced sulfur compounds as required in paragraph (d) of this section in addition to a sulfur dioxide emission monitoring system. The sum of the equivalent sulfur mass emission rates from the two monitoring systems shall be used to compute the total sulfur emission rate (E).

(c) Where compliance is achieved through the use of a reduction control system not followed by a continually operated incineration device, the owner or operator shall install, calibrate, maintain, and operate a continuous monitoring system to measure the emission rate of reduced sulfur compounds as SO_2 equivalent in the gases discharged to the atmosphere. The SO_2 equivalent compound emission rate shall be expressed in terms of equivalent sulfur mass flow rates (kg/hr). The span of this monitoring system shall be set so that the equivalent emission limit of § 60.642(b) will be between 30 and 70 percent of the measurement range of the system. This requirement becomes effective upon promulgation of a performance specification for continuous monitoring systems for total reduced sulfur compounds at sulfur recovery plants.

(d) For those sources required to comply with paragraph (b) or (c) of this section, the average sulfur emission reduction efficiency achieved (R) shall be calculated for each 24-hour clock internal. The 24-hour interval may begin and end at any selected clock time, but must be consistent. The 24-hour average reduction efficiency (R) shall be computed based on the 24-hour average sulfur production rate (S) and sulfur emission rate (E), using the equation in § 60.643(b).

(1) Data obtained from the sulfur production rate monitoring device specified in paragraph (a) of this section shall be used to determine S.

(2) Data obtained from the sulfur emission rate monitoring systems specified in paragraphs (b) or (c) of this section shall be used to calculate a 24-hour average for the sulfur emission rate (E). The monitoring system must provide at least one data point in each successive 15-minute interval. At least two data points must be used to

calculate each 1-hour average. A minimum of 18 1-hour averages must be used to compute each 24-hour average.

(e) In lieu of complying with (b) or (c) of this section, those sources with a design capacity of less than 150 LT/D of H_2S expressed as sulfur may calculate the sulfur emission reduction efficiency achieved for each 24-hour period by:

$$R = \frac{0.0236\ S}{X} \text{ (100 percent)}$$

where:

R = the sulfur dioxide removal efficiency achieved during the 24-hour period, percent;

S = the sulfur production rate during the 24-hour period, kg/hr;

X = the sulfur feed rate in the acid gas, LT/D; and 0.0236 = conversion factor, LT/D per kg/hr.

(f) The monitoring devices required in § 60.646(b)(1), (b)(3) and (c) shall be calibrated at least annually according to the manufacturer's specifications, as required by § 60.13(b).

(g) The continuous emission monitoring systems required in § 60.646(b)(1), (b)(3), and (c) shall be subject to the emission monitoring requirements of § 60.13 of the General Provisions. For conducting the continuous emission monitoring system performance evaluation required by § 60.13(c), Performance Specification 2 shall apply, and Method 6 shall be used for systems required by § 60.646(b).

§ 60.647 Recordkeeping and reporting requirements.

(a) Records of the calculations and measurements required in § 60.642 (a) and (b) and § 60.646 (a) through (g) must be retained for at least 2 years following the date of the measurements by owners and operators subject to this subpart. This requirement is included under § 60.7(d) of the General Provisions.

(b) Each owner or operator shall submit a written report of excess emissions to the Administrator semiannually. For the purpose of these reports, excess emissions are defined as:

(1) Any 24-hour period (at consistent intervals) during which the average sulfur emission reduction efficiency (R) is less than the minimum required efficiency (Z).

(2) For any affected facility electing to comply with the provisions of § 60.646(b)(2), any 24-hour period during which the average temperature of the gases leaving the combustion zone of an incinerator is less than the appropriate operating temperature as determined during the most recent performance test in accordance with the provisions of § 60.646(b)(2). Each 24-hour period must consist of at least 96 temperature measurements equally spaced over the 24 hours.

(c) To certify that a facility is exempt from the control requirements of these standards, each owner or operator of a facility with a design capacity less that 2 LT/D of H_2S in the acid gas (expresssed as sulfur) shall keep, for the life of the facility, an analysis demonstrating that the facility's design capacity is less than 2 LT/D of H_2S expressed as sulfur.

(d) Each owner or operator who elects to comply with § 60.646(e) shall keep, for the life of the facility, a record demonstrating that the facility's design capacity is less than 150 LT/D of H_2S expressed as sulfur.

(e) The requirements of paragraph (b) of this section remain in force until and unless EPA, in delegating enforcement authority to a State under Section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected sources within the State will be relieved of obligation to comply with paragraph (b) of this section, provided that they comply with the requirements established by the State.

[Approved by the office of Management and Budget under control number 2060–0120]

§ 60.648 Optional procedure for measuring hydrogen sulfide in acid gas—Tutwiler Procedure.[1]

(a) When an instantaneous sample is desired and H_2S concentration is ten grains per 1000 cubic foot or more, a 100 ml Tutwiler burette is used. For concentrations less than ten grains, a 500 ml Tutwiler burette and more dilute solutions are used. In principle, this method consists of titrating hydrogen sulfide in a gas sample directly with a standard solution of iodine.

(b) *Apparatus.* (See Figure 1.) A 100 or 500 ml capacity Tutwiler burette, with two-way glass stopcock at bottom and three-way stopcock at top which connect either with inlet tubulature or glass-stoppered cylinder, 10 ml capacity, graduated in 0.1 ml subdivision; rubber tubing connecting burette with leveling bottle.

(c) *Reagents.* (1) Iodine Stock Solution, 0.1N. Weight 12.7 g iodine, and 20 to 25 g cp potassium iodide for each liter of solution. Dissolve KI in as little water as necessary; dissolve iodine in concentrated KI solution, make up to proper volume, and store in glass-stoppered brown glass bottle.

(2) Standard Iodine Solution, 1 ml = 0.001771 g I. Transfer 33.7 ml of above 0.1N stock solution into a 250 ml volumetric flask; add water to mark and mix well. Then, for 100 ml sample of gas, 1 ml of standard iodine solution is equivalent to 100 grains H_2S per cubic feet of gas.

(3) Starch Solution. Rub into a thin paste about one teaspoonful of wheat starch with a little water; pour into about a pint of boiling water; stir; let cool and decant off clear solution. Make fresh solution every few days.

(d) *Procedure.* Fill leveling bulb with starch solution. Raise (L), open cock (G), open (F) to (A), and close (F) when solutions starts to run out of gas inlet. Close (G). Purge gas sampling line and connect with (A). Lower (L) and open (F) and (G). When liquid level is several ml past the 100 ml mark, close (G) and (F), and disconnect sampling tube. Open (G) and bring starch solution to 100 ml mark by raising (L); then close (G). Open (F) momentarily, to bring gas in burette to atmospheric pressure, and close (F). Open (G), bring liquid level down to 10 ml mark by lowering (L). Close (G), clamp rubber tubing near (E) and disconnect it from burette. Rinse graduated cylinder with a standard iodine solution (0.00171 g I per ml); fill cylinder and record reading. Introduce successive small amounts of iodine thru (F); shake well after each addition; continue until a faint permanent blue color is obtained. Record reading; subtract from previous reading, and call difference D.

(e) With every fresh stock of starch solution perform a blank test as follows: introduce fresh starch solution into burette up to 100 ml mark. Close (F) and (G). Lower (L) and open (G). When liquid level reaches the 10 ml mark, close (G). With air in burette, titrate as during a test and up to same end point. Call ml of iodine used C. Then,

Grains H_2S per 100 cubic foot of gas = 100 (D—C)

(f) Greater sensitivity can be attained if a 500 ml capacity Tutwiler burette is used with a more dilute (0.001N) iodine solution. Concentrations less than 1.0 grains per 100 cubic foot can be determined in this way. Usually, the starch-iodine end point is much less distinct, and a blank determination of end point, with H_2S-free gas or air, is required.

[1] Gas Engineers Handbook, Fuel Gas Engineering Practices, The Industrial Press, 93 Worth Street, New York, New York, 1960. First Edition, Second Printing, page 6/25 (Docket A–80–20–A, Entry II–I–67).

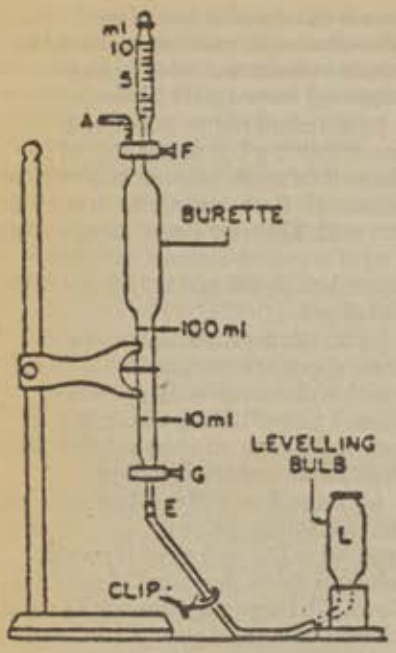

Figure 1. Tutwiler burette (lettered items mentioned in text).

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Part VII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Limitations on Reimbursement of Nonphysician Medical Services; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC -337-F]

Medicare Program; Limitations on Reimbursement of Nonphysician Medical Services

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

ACTION: Final rule.

SUMMARY: We are amending the regulations that govern the determination of reasonable charges for certain nonphysician medical services under the Medicare Supplementary Medical Insurance Program (Part B).

- An additional charge factor is added to those currently taken into consideration by carriers in determining reasonable charges for nonphysician services, supplies and equipment that are reimbursed on a reasonable charge basis. This new factor, the "inflation-indexed charge," represents the lowest of the fee screens from the preceding fee screen year as updated by an inflation adjustment factor.
- For fee screen years beginning on or after October 1, 1986, the inflation adjustment factor to be used in determining the inflation-indexed charge is the annual change in the level of the consumer price index for urban consumers for the 12-month period ending on March 31 of each year. For services, supplies, and equipment furnished during Federal fiscal year (FY) 1986 only, the inflation adjustment factor is zero, which results in the lowest of the FY 1986 fee screens for nonphysician medical services and items being effectively capped at FY 1985 levels.

EFFECTIVE DATE: October 1, 1985. These final regulations are applicable for nonphysician medical services, supplies, or equipment furnished on or after October 1, 1985. The changes to the updating cycle for lowest charge level items or services are applicable October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Stan Weintraub (301) 597–5345.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1842(b)(3) of the Social Security Act (the Act) provides that payment under the Medicare Supplementary Medical Insurance Program (Part B) for physician and other medical services must be based on reasonable charges. Under section 1842(b)(3)(B) of the Act and implementing regulations at 42 CFR 405.502, reasonable charges for a service may not exceed the lowest of—

- Actual charges;
- Physician's or supplier's customary charges; or
- Prevailing charges of physicians or suppliers in the locality.

In addition, the paragraph following section 1842(b)(3)(F) of the Act provides that Medicare Part B payments for medical services, supplies, and equipment that generally do not vary significantly in quality from one supplier to another must be based on a reasonable charge that does not exceed the lowest charge level at which the items or services are widely and consistently available in a locality, except to the extent and under the circumstances specified by the Secretary.

Moreover, as required by the paragraph following section 1842(b)(3)(F) of the Act, customary and prevailing charge levels for non-physician services, other than clinical diagnostic laboratory services, are updated annually on October 1st of each year based on charges in the 12-month period ending March 31st preceding the update.

On August 16, 1985, we published a notice of proposed rulemaking (NPRM) (50 FR 33324) to limit the increases in Part B nonphysician medical services, supplies and equipment by establishing an inflation-indexed charge to be used in determining reasonable charges for those items or services.

II. Summary of Proposed Rule

The reasonable charge methodology used to determine reimbursement for Part B services has been criticized as an inherently inflationary system because actual charges, which have continued to increase steadily over time and are not necessarily related to actual costs, affect each subsequent year's reasonable charges. As a control on the rate of increase in Medicare payments for physicians' services, increases in prevailing charges (recognized for reimbursement by Medicare) are limited (as required in the paragraph following section 1842(b)(3)(F) of the Act) to amounts that are justified by appropriate economic index data. On the other hand, year-to-year increases in charges for other Part B services, supplies, and equipment are not currently controlled.

To help control outlays for Part B services, Congress enacted section 2306 of the Deficit Reduction Act of 1984 (Pub. L. 98–369), which amended section 1842(b) of the Act by imposing a limitation on physician fees for a 15-month period beginning on July 1, 1984. Furthermore, section 2303 of Pub. L. 98–369 amended section 1833 of the Act to establish fee schedules to control payments for clinical diagnostic laboratory tests in lieu of the reasonable charge determination.

While this recent legislation established fiscal constraints for physician and clinical diagnostic laboratory services, reimbursement for all other Part B services paid for on a reasonable charge basis has been virtually unconstrained. Therefore, as we proposed in the NPRM (50 FR 33324), we are establishing an additional criterion for determining the reasonable charge for purposes of Medicare payment for these items and services. A new § 405.509 provides the following:

- An additional charge factor is added to those currently taken into consideration by carriers in determining reasonable charges for nonphysician services, supplies, and equipment that are reimbursed on a reasonable charge basis. This new factor, the "inflation-indexed charge," represents the lowest of the fee screens from the preceding fee screen year as updated by an inflation adjustment factor.
- For fee screen years beginning on or after October 1, 1986, the inflation adjustment factor to be used in determining the inflation-indexed charge is the annual change in the level of the consumer price index (CPI) for urban consumers (U.S. city average), as compiled by the Bureau of Labor Statistics (BLS), for the 12-month period ending on March 31 of each year. (For purposes of this preamble, we refer to this index as the "CPI-Urban.") For services, supplies, and equipment furnished during FY 1986, the inflation adjustment factor is zero. The result is that the lowest of the FY 1986 reasonable charge screens will not increase from the FY 1985 levels.

We are also making conforming changes in §§ 405.502 and 405.511.

In the NPRM we stated that the inflation-indexed charge would represent the reasonable charge from the preceding fee screen year plus an inflation adjustment factor. However, if we were to proceed on that basis, the inflation-indexed charge would be based on the actual charge when the actual charge was lower than the charge screens. It is not our intention that the inflation-indexed charge be based on actual charges, but only on the lowest of the fee screens used in determining reasonable charges. Moveover, in the NPRM we indicated that the inflation-

indexed charge would apply to the use of a carrier's private comparable charge screen (§ 405.502(b)), and to any inherent reasonable limits (§ 405.502(a)(7)) imposed by the carrier. We do not believe that it would be appropriate to apply the inflation-indexed charge to these services because the charges for these services, like actual charges, are not reflected in fee screens. Therefore, in this final rule, we make clear that the inflation-indexed charge represents the lowest of the customary, prevailing, or lowest charge level screens from the preceding fee screen year as updated by the inflation adjustment factor (CPI-Urban).

We note that customary and prevailing charges, and lowest charge levels, will continue to be calculated and updated as required by section 1842(b)(3) of the Act and these calculations are not affected by the changes made by these regulations. The amount determined as the lowest of the fee screens (that is, currently the lowest of either the customary charge, prevailing charge, or lowest charge level) is thus also limited by the inflation-indexed charge applied to FY 1985 reasonable charges in determining FY 1986 reasonable charges. In subsequent years, the reasonable charge inflation adjustment factor is tied to the annual change in the CPI-Urban.

The effect of this final rule is to apply reimbursement limitations on Part B payments for nonphysician services, supplies, and equipment reimbursed on a reasonable charge basis. These limitations are similar to those imposed on physician services. Affected items and services include the following:

- Durable medical equipment (DME), such as oxygen, oxygen equipment, wheelchairs, and hospital beds.
- Ambulance services.
- Prosthetic devices, braces, and artificial limbs and eyes.
- Outpatient physical therapy furnished in an independent practice.
- Portable X-ray services.
- Certain medical supplies used in connection with home dialysis delivery systems.

In addition, the limitations in this final rule affect reimbursement for services and supplies furnished to nonenrolled Medicare beneficiaries who are furnished services on a fee-for-service basis under pre-payment plans such as—

- Health Maintenance Organizations (HMOs);
- Competitive medical plans (CMPs); and
- Health care pre-payment plans (HCPPs).

For the remainder of calendar year 1985 (that is, from October 1, 1985 through December 31, 1985), the limitations apply to HMOs and CMPs, with contracts under section 1876 of the Act that begin before January 1, 1986, for supplies and services paid for on a fee-for-service basis as described in 42 CFR 417.546(b). Note that for contracts beginning after December 31, 1985, HMOs and CMPs paid on a cost basis are not directly affected by the limitations (42 CFR 417.546(a)).

Reimbursement for services provided by HCPPs on a fee-for-service basis under section 1833(a)(1)(A) of the Act is also affected by the limitations in this final rule (see 42 CFR 417.802(b)(3)).

This final rule *does not apply* to rural health clinic services, home health agency services, ambulatory surgical center services covered by the facility payment rate, clinical diagnostic laboratory tests, outpatient physical therapy or speech pathology services furnished by a participating provider because these services are reimbursed on other than a reasonable charge basis.

There are two listed items of DME (standard hospital beds and wheelchairs) that are subject to the lowest charge level provisions under section 1842(b)(3)(F) of the Act. Section 405.511 provides that the lowest charge level for these items must be updated semiannually—on July 1, based on charge data derived from claims processed during the preceding January through March period; and on January 1, based on charge data derived from claims processed during the preceding July through September period.

The updating of the lowest charge levels for hospital beds and wheelchairs on July 1 and January 1 is inconsistent with changes to the update periods for reasonable charges for physicians' and other medical services that were made to section 1842(b) of the Act by section 2306(b) of Pub. L. 98-369. Section 1842(b) of the Act now requires that the updating of the customary and prevailing charge levels occur on October 1 instead of July 1 of each year, beginning on October 1, 1985. Therefore, we are currently developing a final rule to revise the regulations on the updating changes for customary and prevailing charges (§§ 405.501, 405.504, 405.511 and 405.551) to conform them to section 1842(b) of the Act.

In the meantime, in order to make the update changes for items subject to the lowest charge levels consistent with the update change (October 1) for physicians' and other medical services, in § 405.511 we are establishing the scheduled updates for lowest charge levels on an annual basis (that is, October 1), beginning on October 1, 1986. The annual update is to be based on charge data incurred or submitted on claims processed by carriers during the 3-month period of April 1 through June 30 preceding October 1st of each year. If we conclude in the future that further changes in these procedures are necessary to ensure evenhanded treatment between the lowest charge levels and charges for other nonphysician items, we will develop precise methodology and publish it in another proposed rule.

III. Comments and Responses

A total of 32 items of correspondence on the proposed regulations were received during the comment period. The following subjects received the majority of comments:

- Statutory authority to establish the inflation-indexed charge.
- Use of CPI-Urban.
- Updating the inflation-indexed charge in FY 1986 by zero percent.
- The data used in determining that reasonable charges have been increasing in excess of increases in costs.

A summary of the public comments, and our responses to the comments, are presented in this section of the preamble or in the impact analysis below, as appropriate.

Comment: Several commenters stated that we do not have the authority to change the reasonable charge criteria established under section 1842(b)(3) of the Act. They noted, as well, that Congress passed specific legislation (section 2306 of Pub. L. 98-369) to implement a physician fee cap, and that Congress is currently considering several proposals to control increases for Part B nonphysician medical services, supplies, and equipment.

Response: We agree that the physician fee cap required legislation because the cap altered the use of the statutory methodology (section 1842(b) of the Act) for calculating customary and prevailing charges. Section 2306 of Pub. L. 98-369 limits customary and prevailing charges for all physicians' services, for a 15-month period beginning July 1, 1984, to the level in effect for the 12-month period beginning July 1, 1983. Thus, the revised section 1842(b) of the Act negates the effect of the previous requirement that customary and prevailing charges be updated periodically in calculating the reasonable charge.

The inflation-indexed charge, as described in § 405.509 of this final rule, does not affect the calculation of customary and prevailing charges for

nonphysician services and items as that calculation is determined under section 1842(b)(3)(B) of the Act. Rather, we are using our authority to consider additional factors beyond customary and prevailing charges, that is, an inflation-indexed charge, in arriving at a reasonable charge. In this situation, we are defining the inflation-indexed charge to be the lowest of the fee screens from the preceding fee screen year as adjusted by an inflation adjustment factor.

The consideration of additional factors in determining reasonable charges has been and continues to be available to carriers on an individual basis. In this final rule we define the content of one additional factor for uniform application nationally; that is, the inflation-indexed charge.

As noted by the commenters, Congress is considering several proposals to affect changes in this area. If such legislation is passed, we will revise our regulations as appropriate. The fact that Congress is considering changes in how reasonable charges are determined does not mean that only Congress may do so. Congress may amend the statute to *require* the Secretary to do what previously the Secretary had *discretion* to do. In the absence of specific amendments to the statute, the Secretary may interpret and implement section 1842(b)(3) of the Act in any reasonable manner that is not in excess of statutory authority.

Comment: Several commenters stated that the CPI–Urban does not appropriately reflect cost increases in the medical equipment industry. The commenters in the medical equipment industry. The commenters noted that the following costs and factors encountered by the medical equipment industry are inadequately accounted for in the increases reflected under the CPI–Urban:

- Substantial increases in liability insurance rates.
- Higher interest rates.
- Delayed Medicare payments of up to 90–100 days.
- Expansion of services and new technology requiring constant updating of equipment.

Response: The commenters have provided no data on cost increases in the medical equipment industry to show that their costs have exceeded the CPI–Urban over time. We considered establishing specific price-index values for each type of Part B nonphysician item and service but rejected this approach because of the absence of alternative indices for all supplier items and services. Furthermore, we believe that the CPI–Urban is considered a suitable generalized index for increasing charges in the prices paid for a representative market basket of goods and services, and is appropriate as the inflation adjustment factor implemented in § 405.508. In addition, use of the CPI–Urban is consistent with the update provisions mandated by Congress for clinical diagnostic laboratory tests.

Health care charges for nonphysician services, supplies, and equipment continue to increase at a rate beyond the general rate of inflation. We believe that this rate of increase is unreasonable. Restrains have been placed on payments for physician services and clinical diagnostic laboratory services, but reimbursement for all other Part B services and items paid for on a reasonable charge basis continues to go up.

Comment: Several commenters stated that the first year (FY 1986) limitation (effectively, the lowest of the prior year's fee screens) would be inappropriate. Commenters outside of the DME industry noted that the data we used to justify the limitations were representative only of the DME industry, and not representative of services, supplies, and equipment from their industries. In particular, various commenters questioned the appropriateness of the limitations in the case of ambulance services, outpatient physical therapy services, portable X-ray services, orthotics and prosthetics, and parenteral and enteral nutrition supplies.

Response: Although we agree that it would be desirable to limit reimbursement only to those items that have had rapidly increasing charges, it would be administratively infeasible to identify and select items for special consideration. We would expect that some items may have had recent excessive increases whereas other items may have undergone excessive increases in prior years, thereby making an item-by-item determination all the more impractical.

Based on our review of various indications of trends in Medicare payments for Part B nonphysician services, we determined that, generally, from year to year, Medicare payments have exceeded the increase in the CPI-Urban. In one analysis, we reviewed the proportion of Medicare payments for services that would be affected by the limitations in the NPRM, and determined the increases in the charges for those services to be excessive. In another study, we determined that, on an individual item-by-item basis, increases in charges for those items we studied were generally in excess of the increases in the CPI-Urban over a similar period.

Because of the limited amount of data available on individual items, as noted by various commenters, we were able to review the charges of items furnished in large volumes only. It is possible that charges for some items did not increase at the same rate as the CPI-Urban and that others may have in fact decreased. In those cases, other than for FY 1986, the effect of the limitations on reasonable charges, as described in this final rule, should be minimal because the limitation is linked to the increases in the CPI-Urban.

Comment: One commenter was concerned that there would be a six-month lag between the charge data accumulated and the update for lowest charge level items. This would be different than the current three-month lag. The commenter suggested that the annual update be based on the most current charge data from the preceding period ending June 30.

Response: We reviewed the dates proposed for the update and the period used to accumulate data. We agree with the concern of the commenter and are revising the methodology described in § 405.511(c)(2) to be consistent with the previous practice for updating lowest charge level data. Therefore, the October 1 update will be based on the charge data accumulated for the prior three month period ending June 30.

Comment: Several commenters objected that the 30-day comment period afforded them in the proposed rule was too short. They believe that the amount of time was inadequate to allow the industry (nonphysician medical services, supplies, and equipment) to evaluate thoroughly the complex issues included in the proposed rule.

Response: When we issued the proposed rule, we recognized the importance of affording the public the fullest opportunity to analyze the issues raised in the document and to express their views. However, it would have been contrary to the public interest to extend the comment period, and thereby delay implementation of the final rule. Such a delay would have resulted in the Medicare program inappropriately paying for increases in the cost of nonphysician medical services until the final rule was issued. In addition, carriers would have had to implement two sets of reasonable charge fee screens, one set on October 1, 1985, and another set upon issuance of the final rule. In this light, we concluded that an extension of the comment period was unnecessary.

Comment: One commenter noted that in the preamble to the NPRM we stated that the changes do not apply to clinical diagnostic laboratory services, but in the proposed changes to § 405.511 we included those services.

Response: The inflation-indexed charge, described in this final rule, does not apply to clinical diagnostic laboratory services. Those services are paid for through fee schedules as required by section 2303 of Pub. L. 98–369.

We are in the process of developing a proposed rule to describe in the regulations the changes reflected in section 2303 of Pub. L. 98–369. The change in § 405.511 referred to by the commenter is merely a technical change in designation.

Comment: Several commenters questioned how the limitations discussed in the NPRM will affect services provided by rehabilitation facilities; in particular, the outpatient physical therapy and speech pathology services that are provided in those facilities. They noted that outpatient physical therapy services furnished in an independent practice are currently subject to an annual $500 limitation.

Response: In the NPRM we stated erroneously that the limitations (inflation-indexed charge) apply to all outpatient physical therapy and speech pathology services. The limitations apply only to outpatient physical therapy services furnished in an independent practice. They *do not* apply to outpatient physical therapy or speech pathology services furnished by participating providers because those services are not reimbursed on a reasonable charge basis.

The $500 limitation on outpatient physical therapy services furnished in an independent practice is strictly a limitation on the extent of the benefit under the Medicare program and is unrelated to the reasonable charge calculation.

Comment: Several commenters questioned how the limitations discussed in § 405.509 of the NPRM will affect—

- Services provided by a psychologist in an independent practice;
- Audiological testing;
- Technical component-only services billed by a physician, clinic, or supplier; and
- Medical supplies other than those furnished in connection with home dialysis delivery systems.

Response: The limitations in § 405.509 apply to all Part B services, supplies, and equipment reimbursed on a reasonable charge basis with the exception of physicians' services that are subject to the Medicare economic index as described in § 405.504(a)(3). Therefore, included in the services subject to the limitations in this final rule are the following items and services:

- Diagnostic psychological services performed by a psychologist in an independent practice.
- Diagnostic testing performed by an audiologist.
- Services, supplies, and equipment reimbursed on a reasonable charge basis in which the physician, clinic, or supplier bills and is reimbursed by the carrier separately only for the technical component of the services from the professional component. If the physician, clinic, or supplier bills only for the professional (physician) component, or for the total component (both professional and technical), it is considered to be a physician service that is subject to the Medicare economic index.
- Services, supplies, and equipment that are reimbursed on a reasonable charge basis that are not billed as physicians' services.

Comment: Some commenters stated that the limitations would have an adverse and permanent effect on suppliers that have been efficient and have been charging at lower rates than other less efficient suppliers. They argue that if any control is to be applied, it should be placed only on the prevailing charge.

Response: We are unable to directly limit increases in prevailing charges, as section 1842(b) of the Act requires that they be updated on October 1 of each year, based on a statutory formula employing charges actually made through March 31. While we considered utilizing prevailing charge screens in calculating the inflation-indexed charge, we believe that this could encourage suppliers to increase their customary charges until they reached the prevailing charge level. The current approach ensures that increases from current reasonable charges, whatever they may be, will be limited to the CPI-Urban. We note that suppliers charging lower rates have thus far done so voluntarily, and have reaped the benefits of offering lower prices. These regulations would not affect existing incentives to lower prices.

Comment: One commenter noted that participating suppliers should be allowed an increase in FY 1986 in line with the increase that Congress is considering for participating physicians.

Response: The provisions in this final rule are unrelated to the physician fee cap and the participating provider program under section 2306 of Pub. L. 98–369. We are establishing in this rule a new factor for determining reasonable charges, and, therefore, it applies to all nonphysician services, supplies, and equipment subject to the reasonable charge limitations. Updates of customary and prevailing charges will continue to occur, and participating suppliers will continue to benefit from the provisions in section 2306 of Pub. L. 98–369.

IV. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis on any major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in 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.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all suppliers of Part B items and services are considered small entities.

We estimate that implementation of this rule will result in Medicare savings of approximately $750 million during the next five years, distributed as follows:

Fiscal year	Savings (in millions)
1986	$50
1987	100
1988	150
1989	200
1990	250
Total	$750

Thus, under the provisions of Executive Order 12291, this final rule is a major rule because the $100 million threshold is exceeded in FY 1987 and thereafter. Since all nonphysician suppliers that currently bill under Part B on a reasonable charge basis will be affected by this rule, it is clear that a substantial number of small entities could be affected. In accordance with Departmental guidelines for implementing the RFA, if the annual impact of a rule on small entities is three

to five percent or more, then it should be considered significant.

While we have some data regarding overall payments to nonphysician suppliers, we are unable to project the impact on particular types of items or services that will be affected. To illustrate this point, some items are purchased from large supply companies that also produce a wide range of products unaffected by this rule. In these instances, the impact of restraining payment increases for affected items under Medicare Part B may be minimal. In other instances, affected items may include the sole product of an entire business enterprise, in which case the impact may be more significant.

Recognizing that the provisions of this rule will affect some suppliers more than others, we believe that a significant number may be impacted by more than the three to five percent threshold. Therefore, we conclude that this final rule will have a significant economic impact on a substantial number of small entities.

Since both a regulatory impact analysis under E.O. 12291 and a regulatory flexibility analysis under the RFA are appropriate, we have developed the following discussion to meet the analytic requirements of both E.O. 12291 and the RFA.

B. Medicare Program Expenditures

Medicare spending for DME, prosthetic devices, ambulance transportation, and other nonphysician medical services during FY 1984 was nearly $1.4 billion and is estimated that without the constraints applied by these regulations, this spending would increase to more than $1.9 billion in FY 1986. Payments for these services represent about nine percent of total Medicare Part B reasonable charge payments.

Estimated program savings for FY 1986 are equal to the expected increase in reasonable charges from FY 1985 to FY 1986. Estimated savings during FY 1987 through FY 1990 ($700 million) are a combination of: (1) Savings from the effects of the FY 1986 limit on reasonable charges carried forward through FY 1990, and (2) the difference between the changes in the CPI throughout the period and the estimated changes that would occur in the reasonable charge levels without restraints. Historically, reasonable charges have increased at a higher rate than the general CPI as described in the table below.

YEAR-TO-YEAR PERCENTAGE INCREASES IN PAYMENTS ON A REASONABLE CHARGE BASIS

[In percent]

Calendar year	Medical services other than certain nonphysician services [1]	Certain nonphysician services [1] [2]	Percentage of total [3]	CPI-urban [4]	CPI-all medical [5]	CPI-certain medical [6]
1979	15.4	17.2	6.8	11.3	9.3	6.7
1980	18.7	27.6	7.3	13.5	10.9	9.4
1981	15.3	27.1	8.0	10.4	10.8	10.5
1982	16.8	28.0	8.7	6.1	11.6	9.1
1983	16.4	22.5	9.1	3.2	8.7	6.4

[1] Percentage increases per enrollee for incurred Medicare Part B reasonable charges.
[2] Purchased and rented DME, ambulance services, prosthetic devices and applicances, and supplies.
[3] Percentage of certain nonphysician services to all Medicare Part B reasonable charge payments.
[4] CPI for all urban consumers.
[5] CPI for all medical care.
[6] CPI for nonprescription medical equipment and supplies.

The table above shows that the percentage increases in Medicare Part B reasonable charges per enrollee have far exceeded the increases in the CPI for medical care for the period of 1979 through 1983. In particular, the nonphysician reasonable charge payment (that is, those services that we are limiting) appear to be increasing in a virtually unconstrained manner. From 1979 to 1983, these services, as a percentage of total Medicare Part B reasonable charge payment, have increased from 6.8 percent to 9.1 percent. We believe that this increase results, in part, from a lack of control or limitations on charges for Medicare Part B nonphysician services, supplies, and equipment.

The year-to-year percentage increase may be affected by increased utilization. We have taken the effects of increased enrollment into account by analyzing per capita expenditures. We believe that this demonstrates that a substantial portion of the increase is due to excessive charges. The increase in charges for nonphysician services exceeds the increase for Medicare services to which fiscal constraints are applied. In addition, the CPI for medical services was lower than the CPI for all urban consumers for 1979 and 1980, whereas the percentage of certain nonphysician services has continued to increase dramatically throughout the 1979 to 1983 period.

We reviewed a sample of the prevailing charge data available to us for certain nonphysician services from 1980 through 1984. These data are not collected and reported systematically for all nonphysician services, and we cannot determine whether our available data are representative for all such services. Nonetheless, our analysis showed that, although the CPI-Urban increase for that period was 26.1 percent, the majority of the prevailing charges for nonphysician services that were reviewed exceeded the CPI rate of increase.

C. Impact on Suppliers

In the NPRM, we stated that we believed that DME expenditures accounted for approximately two-thirds of the spending that would be limited. We have continued to review the data available, and have since concluded that payments to DME suppliers and suppliers of prostheses and orthotic devices would comprise about 55 percent of the total expenditures, payments for ambulance services about 20 percent, and payments for all other nonphysician medical services, supplies and equipment about 25 percent. Nonetheless, available data strongly suggest that the bulk of the estimated savings will be related to limitations on charge increases for DME.

There are significant differences in the rates of increase of reasonable charges for different items and services. Payments for ambulance services and portable x-ray services, for example, have increased much less rapidly than those for DME. Although the one-year zero-percent-increase limit would affect all suppliers, it would most strongly affect those who, in its absence, would have had the greatest increase. Thus, the portion of the savings attributable to restraints on DME expenditures is likely to be greater than the DME portions of total expenditures.

In later years, items or services that experience substantial market contraint on their charges would likely be relatively less affected by limiting the rate of charge increases by the CPI-Urban. Representatives of some types of suppliers have asserted, in commenting on the NPRM, that historically their charge increases have not exceeded such levels. To the extent that this remains the case, such suppliers would continue, after FY 1986, to increase charges at or near their historical rate.

Comment: One commenter criticized the initial regulatory impact analysis included in the proposed rule as incomplete because it did not discuss the impact of the rule on specific kinds of manufacturers or suppliers.

Response: We have no data available on potential impacts on specific kinds of suppliers and manufacturers that would allow us to break down our analysis further than we have done here and in the NPRM. There are many thousands of suppliers and manufacturers providing a wide range of items and services of varying complexity.

An analysis of specific types of suppliers, to be accurate and useful, would necessarily include a discussion of the many differences between similar products or services. For example, prosthetic devices may be manufactured by several dozen different suppliers using different manufacturing technologies and producing models that are constantly being updated and modified.

The task of analyzing these differences would be extremely expensive and time-consuming. On the other hand, a discussion of price increases in prosthetic devices, as a whole, would be misleading because of the wide variance in products.

D. Impact on Beneficiaries

Savings will accrue to beneficiaries obtaining items and services from suppliers accepting assignment because increases in coinsurance amounts (20 percent of reasonable charges) will be restrained as a result of the new factor for determining reasonable charges. On the other hand, suppliers not accepting assignment may charge beneficiaries the difference between their actual charge and our reasonable charge, in addition to the 20 percent coinsurance amount.

Many suppliers accept assignment only for some of the items and services they furnish and make their assignment decisions on a case-by-case basis. Further, those suppliers that routinely accept assignment for all Medicare covered items and services are not compelled to continue to do so. To the extent that suppliers increase their charges and change their assignment behavior in response to this change, beneficiaries' liability will be affected in a corresponding manner.

Comment: Just as with the NPRM discussion of impact on suppliers, one commenter criticized the initial regulatory impact analysis for having an insufficent discussion of the impact on beneficiaries.

Response: We believe that we have adequately explained the potential impact of this rule on beneficiaries as a result of possible changes in acceptance of assignment and restraints on increases in coinsurance payment requirements. A quantitative estimate of such an impact would be impossible because it depends on the future behavior of suppliers; that is, whether they will be motivated to change their billing practices. We believe that few suppliers will impose charges detrimental to beneficiaries. The restraints on price increases will be economically beneficial to patients.

E. Administrative Costs

We estimate that implementation of the revised payment methodology will cost approximately $3.4 million for initial file conversions, claims processing changes, and the first run of base-year charges. The annual cost of updating the charge screens will equal approximately $200,000.

The change providing for annual lowest-charge-level updates at the same time as other updates is not likely to result in significantly different payment amounts. We expect some savings in Medicare program administrative costs. However, as a percentage of total administrative expenses, and as compared to the overall impact of this rule, it will be negligible.

F. Alternatives Considered

1. *Take no action.* We considered taking no action regarding increases in charges for nonphysician Part B services. However, to do so would result in unreasonably high payments by the Medicare program, and, in the form of additional coinsurance liability, by Medicare beneficiaries. It could also be perceived as unfairly discriminatory against other providers and suppliers who are subjected to payment limits of various kinds. Additionally, we hope to create long-term incentives to restrain the rapidly rising charges for Part B items and services. To take no action would result in disincentives and undercut that goal.

2. *Service-specific limits.* As noted in the NPRM, an alternative method of restraint on increases, which would establish specific price index values for each type of Part B item, was considered but rejected.

Several commenters expressed a preference for such a system. However, the same data problems that have prevented us from determining the impact on specific services and types of suppliers make this alternative impossible.

3. *Use of CPI-Medical instead of CPI-Urban.* As discussed in section III of this preamble, a number of commenters recommended use of CPI-Medical, rather than CPI-Urban, to limit reasonable charge increases. We have rejected this option for the reasons discussed above.

4. *Limit DME charges only.* Also, as discussed in section III of this preamble, several commenters suggested that the limitations apply only to DME charges rather than all nonphysician services, supplies, and equipment. We have rejected this option for the reasons discussed above.

G. Conclusion

A benefit that will result from this final rule is increased control over the rate of increase of Part B expenditures. By limiting the lowest of the reasonable charge screens to a zero percent increase for one year and limiting increases in the lowest fee screen in the future, we will pay some suppliers substantially less than they would expect to receive in Medicare revenues in the absence of this rule. Although we are not reducing payment for any particular item or service, the program savings we will achieve will be experienced as more limited increases in revenues by the suppliers. Suppliers will be motivated to limit charge increases in the future to no more than the rate of increase in the CPI. They also could have some increased incentive to refuse to accept assignment, which could result in increased costs to some beneficiaries. Nonetheless, we believe that the benefits are sufficient to outweigh the potential adverse effects.

In conclusion, we believe that this is a moderate restraint on suppliers and consistent with similar restraints on all other program participants.

VI. Other Required Information

A. Effective Date

These rules are effective for medical services, supplies, or equipment (excluding physicians' services) that are furnished on or after October 1, 1985. In addition, the changes to the updating cycle of the lowest charge levels are effective for items or services furnished on or after October 1, 1986.

B. Waiver of 30-day Delay of Effective Date

We customarily publish our regulations 30 days before their effective dates. However, in the case of this final rule, we believe there is good cause for us to waive the delay in the effective date in order that certain changes be effective on October 1, 1985. (As noted above, the changes to the updating cycle for lowest charge level items or services are effective October 1, 1986.)

Through our NPRM of August 16, 1985 (50 FR 33324), we notified all suppliers of our intention to set controls (with an effective date of October 1, 1985) on nonphysician medical services, supplies, and equipment by establishing the "inflation-indexed charge" to be considered in determining reasonable charges. In this final rule, we are adopting the amendments, subject to specified changes, that were proposed in the NPRM.

We believe that it is contrary to the public interest to allow reimbursement for Part B items or services covered under this rule to continue to increase without limitations. As we indicated in the NPRM and as discussed throughout this final rule, we have concluded that these increases in the level of reimbursement for nonphysician medical services, supplies, and equipment are not reasonable. Therefore, waiving the delay in the effective date protects the public interest with respect to savings in the Medicare program. Without this waiver, the Medicare program would continue to pay for inappropriate increases during Federal FY 1986 in reasonable charges until such time that the regulations become effective.

In addition, as a result of the lack of constraints on the increases in the charges for nonphysician items and services, Medicare beneficiaries have incurred higher coinsurance charges than would otherwise be expected. That is, as reasonable charges have risen, the portion of the total charge for which the beneficiary is responsible has also risen. By setting the inflation adjustment factor at zero percent for FY 1986 (resulting in a zero percent increase in the inflation-indexed charge), the coinsurance liability experience by a beneficiary in FY 1986 will be no greater than it would have been for similar services in FY 1985.

The updating cycle for determining reasonable charges is October 1, 1985. To avoid a situation in which carriers would implement one set of reasonable charge fee screens on October 1, 1985, and another set of reasonable charge fee screens one month later, the effective date must be October 1, 1985. Otherwise, carriers would need to install two major changes in their computer systems in one month in order to—

- Install the October 1 updated prices;
- Process claims with those prices from October 1, 1985 through October 31, 1985;
- Post and pay those claims;
- Completely recompute the updated prices to incorporate the inflation-indexed charges;
- Modify all the supplier profiles; and
- Apply the new pricing effective November 1, 1985.

It is clear that it would be confusing and disruptive to both suppliers and Medicare beneficiaries for carriers to implement two sets of fee screens so close together in time.

For these reasons, we believe a delay in the effective date of this final rule is unnecessary and contrary to the public interest, and we find good cause to waive the delay.

C. Paperwork Reduction Act

These changes do not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMOs), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

We are amending 42 CFR Part 405, Subpart E as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for Subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861(b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886 and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww and 1395xx).

2. The Table of Contents of Subpart E is amended by adding the title of a new § 405.509 to read as follows:

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

Sec.

* * * * *

405.509 Determining the inflation-indexed charge.

* * * * *

3. Section 405.502 is amended by adding a new paragraph (a)(4) (previously reserved) to read as follows (the introductory language of paragraph (a) is being reprinted without change for the convenience of the reader):

§ 405.502 Criteria for determining reasonable charges.

(a) *Criteria.* The law allows for flexibility in the determination of reasonable charges to accommodate reimbursement to the various ways in which health services are furnished and charged for. The criteria for determining what charges are reasonable include:

* * * * *

(4) In the case of medical services, supplies, and equipment that are reimbursed on a reasonable charge basis (excluding physicians' services), the inflation-indexed charge as determined under § 405.509.

* * * * *

4. A new § 405.509 is added to read as follows:

§ 405.509 Determining the inflation-indexed charge.

(a) *Definition.* For purposes of this section, "inflation-indexed charge" means the lowest of the fee screens used to determine reasonable charges (as determined in § 405.503 for customary charges, § 405.504 for prevailing charges, and § 405.511 for lowest charge levels) for services, supplies, and equipment reimbursed on a reasonable charge basis (excluding physicians' services), that is in effect on September 30 of the previous fee screen year, updated by the inflation adjustment factor, as described in paragraph (b) of this section.

(b) *Application of inflation adjustment factor to determine inflation-indexed charge.* (1) For fee screen years beginning on or after October 1, 1986, the inflation-indexed charge is determined by updating the reasonable charges in effect on September 30 of the previous fee screen year by application of an inflation adjustment factor, that is the annual change in the level of the consumer price index for all urban consumers, as compiled by the Bureau of Labor Statistics, for the 12-month period ending on March 31 of each year.

(2) For services, supplies, and equipment furnished during FY 1986, the inflation adjustment factor is zero.

5. Section 405.511 is amended by redesignating and revising the introductory language in paragraph (a) as paragraph (a)(1); revising and redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a)(1)(i) through (a)(1)(iv) respectively; adding a new paragraph (a)(1)(v); designating the first paragraph that follows the current paragraph (a)(4) as paragraph (a)(2); and revising paragraph (c), to read as follows:

§ 405.511 Reasonable charges for medical services, supplies, and equipment.

(a) *General rule.* (1) A charge for any medical service, supply, or equipment (including equipment servicing) that in the judgment of HCFA generally does not vary significantly in quality from one supplier to another (and that is identified by a notice published in the **Federal Register**) may not be considered reasonable if it exceeds:

(i) The customary charge of the supplier (see § 405.503);

(ii) The prevailing charge in the locality (see § 405.504);

(iii) The charge applicable for a comparable service and under comparable circumstances to the policyholders or subscribers of the carrier (see § 405.508);

(iv) The lowest charge level at which the item or service is widely and consistently available in the locality (see paragraph (c) of this section); or

(v) The inflation-indexed charge, as determined under § 405.509, in the case of medical services, supplies and equipment that are reimbursed on a reasonable charge basis (excluding physicians' services).

(2) In the case of laboratory services, paragraph (a)(1) of this section is applicable to services furnished by physicians in their offices, by independent laboratories (see § 405.1310(a)) and to services furnished by a hospital laboratory for individuals who are neither inpatients nor outpatients of a hospital. Allowance of additional charges exceeding the lowest charge level can be approved by the carrier on the basis of unusual circumstances or medical complications in accordance with § 405.506.

* * * * *

(c) *Calculating the lowest charge level.* The lowest charge level at which an item or service is widely and consistently available in a locality is calculated by the carrier in accordance with instructions from HCFA as follows:

(1) *For items or services furnished on or before September 30, 1986.*

(i) A lowest charge level is calculated for each identified item or service in January and July of each year.

(ii) The lowest charge level for each identified item or service is set at the 25th percentile of the charges (incurred or submitted on claims processed by the carrier) for that item or service, in the locality designated by the carrier for this purpose, during the second calendar quarter preceding the determination date. Accordingly, the January calculations will be based on charges for the July through September quarter of the previous calendar year, and the July calculations will be based on charges for the January through March quarter of the same calendar year.

(2) *For items or services furnished on or after October 1, 1986.*

(i) A lowest charge level is calculated for each identified item or service in October of each year.

(ii) The lowest charge level for each identified item or service is set at the 25th percentile of the charges (incurred or submitted on claims processed by the carrier) for that item or service, in the locality designated by the carrier for this purpose, during the 3-month period of April 1 through June 30 preceding the fee screen year (October 1 through September 30) for which the item or service was furnished.

(3) *Lowest charge levels for laboratory services.* In setting lowest charge levels for laboratory services, the carrier will consider only charges made for laboratory services performed by physicians in their offices, by independent laboratories which meet coverage requirements, and for services furnished by a hospital laboratory for individuals who are neither inpatients nor outpatients of a hospital.

* * * * *

(Catalog of Federal Domestic Assistance Programs: No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 26, 1985.

Margaret M. Heckler,

Secretary

[FR Doc. 85-23471 Filed 9-30-85; 8:45 am]

BILLING CODE 4120-01-M

Federal Register

Tuesday
October 1, 1985

Part VIII

Office of Personnel Management

5 CFR Parts 530, 531, 536, and 540
Performance Management and Recognition System; Correction

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 530, 531, 536, and 540

Performance Management and Recognition System; Correction

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final Performance Management and Recognition System (PMRS) regulations that were published at 50 FR 35488 on August 30, 1985. This action is necessary to resolve a structural conflict between the provisions in Part 530 of the PRMS regulations and regulations on Special Salary Rate Schedules for Recruitment and Retention published on August 15, 1985 (50 FR 32839). Other editorial and non-policy changes are also made by this document for clarity and conformance with related regulations.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Pokoyk, (202) 632-5653.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is correcting its PMRS regulations, which appeared in FR Doc. 85-20541 on August 30, 1985, as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. On page 35498, items 9 and 10 are corrected by revising §§ 530.305 and 530.306 to read as follows:

§ 530.305 Revising or discontinuing special salary rate schedules.

OPM and agencies shall initiate action to discontinue or revise special salary rate schedules when it is determined that these schedules are no longer needed, or no longer needed at existing levels, to ensure satisfactory recruitment and retention. No employee's pay shall be reduced because of such discontinuation or revision. Notice of decreased or discontinued schedules will be published in the **Federal Register** and comments will be invited on these proposed adjustments.

§ 530.306 Determining employee rates.

(a) *Initial establishment and increases.* (1) Except as otherwise provided in this section, when an employee is in a position to which a special rate schedule becomes initially applicable or for which the special salary rate schedule is increased, the agency shall fix the empoloyee's rate of basic pay at the step in the new or increased special salary rate schedule that corresponds to the employee's existing numerical step or rate of the grade or level.

(2) When a special salary rate schedule becomes initially applicable to, or increased for, a position occupied by an employee who is receiving basic pay at a rate in excess of the maximum rate of the applicable rate schedule, the agency shall increase the employee's rate of basic pay as follows:

(i) If the employee is retaining a rate under Part 536 of this chapter or section 3594 of title 5, United States Code, the agency shall increase the employee's rate of basic pay by an amount equal to 50 percent of the increase in the maximum rate of the applicable rate range, except as provided in § 536.205(d).

(ii) If the employee is retaining a rate under an authority other than Part 536 of this chapter (including a retained special rate resulting from the reduction or termination of a special salary rate schedule before the first day of the first pay period beginning on or after January 11, 1979), or section 3594 of title 5, United States Code, the agency shall increase the employee's rate of basic pay by the amount of the increase in the maximum rate of the applicable rate range.

(3) When a special salary rate schedule becomes initially applicable to, or increased for, a position occupied by an employee covered by the Performance Management and Recognition System, the employee's rate of basic pay shall be determined under § 540.106.

(b) *Decreased and discontinued rates.* (1) Except as provided in paragraph (b)(2) of this section, when the special salary rate schedule for a position is discontinued or decreased, the agency shall determine the rate of basic pay for an employee in the position as follows:

(i) If the employee is receiving a rate of basic pay equal to one of the rates in the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at that rate.

(ii) If the employee is receiving a rate of basic pay at a rate between two rates in the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at the higher of the rate.

(iii) If the employee is receiving a rate of basic pay at a rate in excess of the maximum rate for the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at his or her existing rate, and the employee shall be entitled to this rate as provided in § 536.104(a)(3).

(2) If the employee is receiving a rate of basic pay established under Part 540 of this chapter, the employee shall receive his or her existing rate. This rate may be lower than the minimum rate of the regular schedule as provided in § 540.106(c)(3). If the employee's existing rate exceeds the maximum rate for the regular or decreased special salary rate schedule for the employee's grade or level, the employee shall be entitled to the existing rate, as provided in § 536.104(a)(3).

(c) *Initial appointments.* (1) The agency shall determine the rate of basic pay for an individual receiving an initial appointment (including an appointment after a break in service of at least 1 workday) to a position to which a special salary rate schedule applies under the regulations governing the pay system under which the employee is appointed without regard to the special salary rate schedule, and shall use the step or rate thus determined to fix the employee's rate at the corresponding step or rate in the special salary rate schedule.

(2) A special salary rate may not be considered an employee's highest previous rate, except as provided in § 531.203(d)(3).

(d) *General exception.* Except as provided in paragraphs (e), (f), and (g) of this section, all other actions of promotion, reduction in grade, transfer, or reassignment are governed by the pay-fixing rules established for the appropriate pay system to which, or in which, the personnel action is taken.

(e) *Reassignments and transfers.* When an employee is reassigned or transferred at the same pay system to a position to which a special salary rate schedule applies, the agency shall fix the employee's rate in the special salary rate schedule at the step or rate in the special salary rate schedule for the employee's grade or level which corresponds to the employee's existing numerical step or rate in the salary rate schedule for the employee's grade or level.

(f) *Promotions.* When an employee in a position to which a special salary rate schedule does not apply is promoted to a position to which a special salary rate schedule applies, the agency shall first determine the employee's step or rate in the higher grade or level without regard to the special salary rate schedule, and then shall fix the employee's rate at the corresponding numerical step or rate in the special salary rate schedule for the grade to which promoted.

(g) *Reductions in grade.* When an employee not entitled to a retained grade or rate under appropriate authority is reduced in grade to a position to which a special salary rate schedule applies, the agency shall first determine the employee's step or rate in the lower grade without regard to the special salary rate schedule, and then shall fix the employee's rate at the corresponding numerical step or rate in the special salary rate schedule for the grade to which reduced.

PART 531—PERFORMANCE BASED INCENTIVE SYSTEM FOR THE GENERAL SCHEDULE

2. In the third column of page 35498, the heading for Part 531 is corrected to read as set forth above:

3. In item 11 on page 35498, the authority for Part 531 is corrected to read:

Authority: 5 U.S.C. 5115, 5338, and Chapter 54, unless otherwise noted.

§ 531.204 [Corrected]

4. In item 14 on page 35499, in § 531.204(e), the phrase "and (d) of this section'" is corrected to read "and (d) (1) through (4) of this section".

PART 536—[CORRECTED]

5. In item 18 on page 35499, the authority for Part 536 is corrected to read:

Authority: 5 U.S.C. 5361–5366.

PART 540—[CORRECTED]

§ 540.102 [Corrected]

6. On page 35500 in the definition of "reference amount" in § 540.102, "means ** the sum" is corrected to read "means the sum"; and "grade, in the case of a special" is corrected to read, "grade, or in the case of a special"

8. Section 540.107, on page 35502 is corrected by revising the introductory text of paragraph (e) to read as follows:

§ 540.107 Merit increases.

* * * * *

(e) An employee who moves into the PMRS within 90 days of the effective date of the merit increase and who receives an increase to base pay (promotion, within-grade increase, quality step increase) within 90 days of the effective date of the merit increase, will not receive a merit increase for that fiscal year. Movements into the PMRS and increases occurring on the effective date of the merit increase are considered to be within this 90-day period. Actions covered by this rule include:

* * * * *

[FR Doc. 85–23567 Filed 9–30–85; 9:57 am]
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Federal Register

Vol. 50, No. 190

Tuesday, October 1, 1985

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Code of Federal Regulations

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Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

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United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
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FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

List of Public Laws

Last list September 30, 1985

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S. 818 / Pub. L. 99-97

To authorize appropriations for activities under the Federal Fire Prevention and Control Act of 1974. (Sept. 26, 1985; 99 Stat. 465) Price: $1.00

S.J. Res. 141 / Pub. L. 99-98

To designate the week beginning on May 18, 1986, as "National Tourism Week". (Sept. 26, 1985; 99 Stat. 466) Price: $1.00

S.J. Res. 173 / Pub. L. 99-99

To designate the month of September 1985 as "National Sewing Month". (Sept. 26, 1985; 99 Stat. 467) Price: $1.00

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1985

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
October 1	October 16	October 31	November 15	December 2	December 30
October 2	October 17	November 1	November 18	December 2	December 31
October 3	October 18	November 4	November 18	December 2	January 2
October 4	October 21	November 4	November 18	December 3	January 2
October 7	October 22	November 6	November 21	December 6	January 6
October 8	October 23	November 7	November 22	December 9	January 6
October 9	October 24	November 8	November 25	December 9	January 7
October 10	October 25	November 12	November 25	December 9	January 8
October 11	October 28	November 12	November 25	December 10	January 9
October 15	October 30	November 14	November 29	December 16	January 13
October 16	October 31	November 15	December 2	December 16	January 14
October 17	November 1	November 18	December 2	December 16	January 15
October 18	November 4	November 18	December 2	December 17	January 16
October 21	November 5	November 20	December 5	December 20	January 21
October 22	November 6	November 21	December 6	December 23	January 21
October 23	November 7	November 22	December 9	December 23	January 21
October 24	November 8	November 25	December 9	December 23	January 22
October 25	November 12	November 25	December 9	December 24	January 23
October 28	November 12	November 27	December 12	December 27	January 27
October 29	November 13	November 29	December 13	December 30	January 27
October 30	November 14	November 29	December 16	December 30	January 28
October 31	November 15	December 2	December 16	December 30	January 29

CFR ISSUANCES 1985
January—July 1985 Editions and Projected October, 1985 Editions

This list sets out the CFR issuances for the **January—July 1985** editions and projects the publication plans for the **October, 1985** quarter. A projected schedule that will include the **January, 1986** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1984-1985 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1-16—January 1
Titles 17-27—April 1
Titles 28-41—July 1
Titles 42-50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1985:

Title	
CFR Index	1-199
	200-End
1-2 (Revised as of Apr. 1, 1985)	
	10 Parts:
3 (Compilation)	0-199
	200-399
4	400-499
	500-End
5 Parts:	
1-1199 (To be announced)	**11**
1200-End	**12 Parts:**
	1-199
6 [Reserved]	200-299
	300-499
7 Parts:	500-End
0-45	
46-51	**13**
52	
53-209	**14 Parts:**
210-299	1-59
300-399	60-139
400-699	140-199
700-899	200-1199 (Revised as of Feb. 1, 1985)
900-999	1200-End
1000-1059	
1060-1119	
1120-1199	**15 Parts:**
1200-1499	0-299
1500-1899	300-399
1900-1944	400-End
1945-End	
	16 Parts:
8	0-149
	150-999
9 Parts:	1000-End

Titles revised as of April 1, 1985:

Title	
17 Parts:	
1-239	240-End

18 Parts:	0-199
1-149	200-499
150-399	500-699
400-End	700-1699
	1700-End
19	
	25
20 Parts:	
1-399	**26 Parts:**
400-499	1 (§§ 1.0-1-1.169)
500-End	1 (§§ 1.170-1.300)
	1 (§§ 1.301-1.400)
21 Parts:	1 (§§ 1.401-1.500)
1-99	1 (§§ 1.501-1.640) (Cover only)
100-169	1 (§§ 1.641-1.850)
170-199	1 (§§ 1.851-1.1200)
200-299	1 (§§ 1.1201-End)
300-499	2-29
500-599	30-39
600-799	40-299
800-1299	300-499
1300-End	500-599 (Cover only)
	600-End
22	
	27 Parts:
23	1-199
	200-End
24 Parts:	

Titles revised as of July 1, 1985:

Title	
28	300-399
	400-End
29 Parts:	
0-99	**35**
100-499	
500-899	**36 Parts:**
900-1899	1-199
1900-1910	200-End
1911-1919 (Cover only)	
1920-End	**37**
30 Parts:	**38 Parts:**
0-199	0-17
200-699	18-End
700-End	
	39
31 Parts:	
0-199	**40 Parts:**
200-End	1-51*
	52
32 Parts:	53-80*
1-189	81-99*
190-399	100-149
400-629	150-189
630-699 (Cover only)	190-399
700-799	400-424
800-999	425-699
1000-End	700-End
33 Parts:	**41 Parts:**
1-199	1-100
200-End	Chap. 101
	Chap. 102-200
34 Parts:	Chap. 201-End
1-299	

Projected October 1, 1985 editions:

Title	
42 Parts:	**43 Parts:**
1-60	1-999
61-399	1000-3999
400-429	4000-End
430-End	

44

45 Parts:
1–199
200–499
500–1199
1200–End

46 Parts:
1–40
41–69
70–89
90–139
140–155
156–165
166–199
200–499
500–End

47 Parts:
0–19
20–69
70–79
80–End

48 Parts:
Ch. 1 (1–51)
Ch. 1 (52–99)
Ch. 2
Chs. 3–6
Chs. 7–14
Chs. 15–End

49 Parts:
1–99
100–177 (Revised as of Nov. 1, 1985)
178–199 (Revised as of Nov. 1, 1985)
200–399
400–999
1000–1199
1200–1299
1300–End

50 Parts:
1–199
200–End