AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

10-31-85
Vol. 50 No. 211
Pages 45387-45590

federal register

Thursday
October 31, 1985

Briefings on How To Use the Federal Register
For information on briefings in Atlanta, GA, and Philadelphia, PA, see announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure
Federal Grain Inspection Service

Animal Drugs
Food And Drug Administration

Aviation Safety
Transportation Department

Crop Insurance
Federal Crop Insurance Corporation

Endangered and Threatened Species
Fish and Wildlife Service

Government Employees
Personnel Management Office

Income Taxes
Internal Revenue Service

Medicare and Medicaid
Health Care Financing Administration

Military Personnel
Defense Department

Radio Broadcasting
Federal Communications Commission

Savings and Loan Associations
Federal Home Loan Bank Board

Securities
Federal Reserve System

CONTINUED INSIDE

Selected Subjects

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Surface Mining
Surface Mining Reclamation and Enforcement Office

Television Broadcasting
Federal Communications Commission

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: Nov. 21; at 1 pm.
Nov. 22; at 9 am. (identical session)

WHERE: Room LP-7,
Richard B. Russell Federal Building,
75 Spring Street, SW., Atlanta, GA.

RESERVATIONS: Deborah Hogan,
Atlanta Federal Information Center.
Before Nov. 12: 404-221-2170
On or after Nov. 12: 404-331-2170

PHILADELPHIA, PA

WHEN: Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)

WHERE: Room 3306/10
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.

RESERVATIONS:
Laura Lewis,
Philadelphia Federal Information Center,
215-597-1709

Contents

Federal Register
Vol. 50, No. 211
Thursday, October 31, 1985

The President
ADMINISTRATIVE ORDERS
45385 Jordan, relations with Israel (Presidential Certification No. 86-01 of October 21, 1985)

Executive Agencies

Agriculture Department
See Federal Crop Insurance Corporation; Federal Grain Inspection Service; Forest Service; Soil Conservation Service.

Arts and Humanities, National Foundation
See National Foundation on Arts and Humanities.

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
45446 Maine
45446 Montana

Coast Guard
RULES
Ports and waterways safety:
45403 Safety and security zones, etc.; list of temporary rules
PROPOSED RULES
Drawbridge operations:
45436 New Jersey; correction
Ports and waterways safety:
45436 Port access routes; Boston, MA; study results

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration.

Commodity Futures Trading Commission
NOTICES
45525 Meetings; Sunshine Act (5 documents)

Conservation and Renewable Energy Office
NOTICES
45469 Affordable housing through energy conservation; modified draft guide availability

Consumer Product Safety Commission
NOTICES
45525 Meetings; Sunshine Act (2 documents)

Defense Department
See also Navy Department.
PROPOSED RULES
Federal Acquisition Regulation (FAR):
45442 Rights in data and copyrights; restrictive markings on technical data; validation; extension of time
45432 Personal commercial solicitation on DOD installations

Education Department
NOTICES
Grants, availability, etc.:
45462 Discretionary grant programs

Energy Department
See also Conservation and Renewable Energy Office; Federal Energy Regulatory Commission.
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
45464 Strategic Petroleum Reserve Texoma Complex, TX and LA

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
45438 Ohio; extension of time
NOTICES
Toxic and hazardous substances control:
45483 Confidential information and data transfer to contractors
Water pollution control; sole source aquifer designations:
45484 Virginia

Equal Employment Opportunity Commission
NOTICES
45526 Meetings; Sunshine Act

Federal Aviation Administration
RULES
45401, 45402 Transition areas (3 documents)
PROPOSED RULES
45423 Restricted areas; correction
NOTICES
45521 Exemption petitions; summary and disposition

Federal Communications Commission
RULES
Common carrier services:
45405 Jurisdictional separations manual; interpretations
Radio services, special:
45407 Table Mountain Radio Receiving Zone; protection provisions; correction
PROPOSED RULES
Radio broadcasting:
45439 FM licenses; modification to higher class co-channel or adjacent channel
Television stations; table of assignments:
45441 Wisconsin
NOTICES
Radio and television broadcasting:
45485 Broadcast licensees; fairness doctrine obligations; correction
45485 Rulemaking proceedings; petitions filed, granted, denied, etc. (2 documents)

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance; various commodities:
45410 Soybean

Federal Deposit Insurance Corporation
NOTICES
45526 Meetings; Sunshine Act (2 documents)

Federal Election Commission
NOTICES
45527 Meetings; Sunshine Act

Federal Emergency Management Agency
RULES
Flood elevation determinations:
45405 Oregon; correction
Flood insurance; communities eligible for sale:
45405 Massachusetts; correction

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act and natural gas companies (Natural Gas Act):
45590 Pipelines; interstate transportation of gas for others; effects of partial wellhead decontrol; reporting and recordkeeping requirements
NOTICES
Electric rate and corporate regulation filings:
45471 Green Mountain Power Corp. et al.
45472, 45473, 45478 Hydroelectric applications (3 documents)
Natural gas certificate filings:
45473 ANR Pipeline Co. et al.

Federal Grain Inspection Service
RULES
Administration:
45387 Official services, original services, review of weighting services, etc.; revision and clarification

Federal Highway Administration
PROPOSED RULES
45423 Audit requirements for State and local governments; correction

Federal Home Loan Bank Board
PROPOSED RULES
Federal Savings and Loan Insurance Corporation:
45414 Conversion from mutual to stock form; voluntary supervisory and modified conversions
NOTICES
Applications, etc.:
45485 Downey Savings & Loan Association

Federal Maritime Commission
NOTICES
45486 Agreements filed, etc.
45487 Agreements filed, etc.; correction

Federal Railroad Administration
RULES
Railroad operating rules:
45406 Alcohol and drug use control; technical amendments and reconsideration petition granted

Federal Reserve System
RULES
45398 Securities credit transactions; OTC margin stocks list (Regulations, G,T,U, and X)
NOTICES
45527 Meetings; Sunshine Act

Fiscal Service
NOTICES
45524 Federal debt collection and discount evaluation; Treasury current value of funds rate

Fish and Wildlife Service
RULES
Endangered and threatened species:
45407 American alligator
PROPOSED RULES
Endangered and threatened species:
45443 Bruneau hot spring snail; hearing and comment period reopened
45443 Steamboat buckwheat and Santa Cruz express; extension of time
NOTICES
45495 Endangered and threatened species permit applications

Food and Drug Administration
RULES
Human drugs:
45403 Antibiotic drugs; sterile ticarcillin disodium and clavulanate potassium; correction
PROPOSED RULES
Animal drugs, feeds, and related products:
45530 Sponsored compounds in food-producing animals; criteria and procedures for evaluating the safety of carcinogenic residues
NOTICES
Animal drugs, feeds, and related products:
45556 Compounds in food-producing animals; guidelines availability
Human drugs:
45492 Regulatory review period determination; coactin sterile
Meetings:
45491 Advisory committees, panels, etc.; correction

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
45446 Illinois
45446 Massachusetts

Forest Service
NOTICES
Environmental statements; availability, etc.:
45445 Intermountain region noxious weed and poisonous plant control program

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
45442 Rights in data and copyrights; restrictive markings on technical data; validation; extension of time
NOTICES
Procurement:
45487 Metal office furniture; contract requirements

Health and Human Services Department
See also Food and Drug Administration; Health Care Financing Administration; National Institutes of Health; Social Security Administration

NOTICES
Organization, functions, and authority delegations:
45488 Facilities and Management Services Office
45488 Inspector General Office
Social security benefits:
45558 Cost of living increase, contribution and benefit base, average of total wages, and tables of benefits, etc.

Health Care Financing Administration
PROPOSED RULES
45584 Medicare and medicaid:
Health care facilities; long-term care survey

Housing and Urban Development Department
RULES
Low income housing, etc.:
45403 Housing assistance payments (Section 8); income adjustments; deduction for handicapped assistance expenses; effective date

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

Internal Revenue Service
PROPOSED RULES
Excise taxes:
45429 Gasohol and other alcohol mixture fuels and tires, tread rubber, and inner tubes; hearing
Income taxes:
45423 Residential energy credit

International Trade Administration
NOTICES
Antidumping:
45447 Cellular mobile telephones and subassemblies from Japan

International Trade Commission
NOTICES
Import investigations:
45502 Oil country tubular goods from Austria

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
45503 Dakota Southern Railway Co.
45503 Holton Inter-Urban Railway Co. et al.
Railroad services abandonment:
45503 Bessemer & Lake Erie Railroad Co.
45504 Burlington Northern Railroad Co.

Justice Department
NOTICES
45504 Agency information collection activities under OMB review
Pollution control; consent judgments:
45505 Colorado Organic Chemical Co., Inc., et al.
45504 Denver, CO, et al.
45505 SCM Corp.

Labor Department
See Labor Statistics Bureau; Occupational Safety and Health Administration.

Labor Statistics Bureau
NOTICES
45505 Local area unemployment statistics procedures; proposed changes; inquiry

Land Management Bureau
NOTICES
Closure of public lands:
45498 Montana
Environmental statements; availability, etc.:
45496 Fable Valley Trail, UT
45501 Floy Canyon wilderness study area, UT
45500 San Rafael reef study area, UT
Exchange of lands:
45499 Arizona
45496 Oregon
Meetings:
45498 Craig District Advisory Council
45498 Roseburg District Advisory Council
45498 Susanville District Advisory Council
Oil and gas leases:
45498 Alaska
Opening of public lands
45496 Montana
Sale of public lands:
45500 Arizona
45497 Utah
45501 Wyoming
Survey plat filings:
45497 New Mexico
Wilderness areas; characteristics, inventories, etc.:
45499 Arizona
45497 California
Withdrawal and reservation of lands:
45496 Montana

Legal Services Corporation
NOTICES
45527, 45528 Meetings; Sunshine Act (4 documents)

Minerals Management Service
NOTICES
Meetings:
45501, 45502 Outer Continental Shelf Advisory Board (2 documents)
Outer Continental Shelf; development operations coordination:
45501 Forest Oil Corp.
Outer Continental Shelf operations:
45574 Gulf of Alaska; lease sale; request for interest

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
45442 Rights in data and copyrights; restrictive markings on technical data; validation extension of time

National Foundation on Arts and Humanities
NOTICES
Meetings:
45506 Media Arts Advisory Panel
45506 Visual Arts Advisory Panel

National Institutes of Health
NOTICES
Meetings:
45493 General Clinical Research Centers Committee

45493 General Research Support Review Committee
45492, 45493 National Cancer Institute (2 documents)
45494 National Eye Institute (2 documents)
45494 National Heart, Lung, and Blood Institute
45495 National Institute of Child Health and Human Development
45495 National Institute of Environmental Health Sciences
45492 National Institute on Aging

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
45460 Marine Fisheries Advisory Committee

Navy Department
NOTICES
Meetings:
45461 Chief of Naval Operations Executive Panel Advisory Committee
45461 Naval Research Advisory Committee

Nuclear Regulatory Commission
RULES
Practice rules:
45398 Hybrid hearings procedures for expansions of onsite spent fuel storage capacity; correction
NOTICES
Applications, etc.:
45506 Florida Power & Light Co.
45508 General Public Utilities Nuclear Corp.

Occupational Safety and Health Administration
NOTICES
Meetings:
45506 Occupational Safety and Health National Advisory Committee

Occupational Safety and Health Review Commission
NOTICES
45528 Meetings; Sunshine Act

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
45528 Meetings; Sunshine Act (2 documents)

Personnel Management Office
RULES
Pay administration:
45387 Within-grade increases and termination of grade or pay retention; appeal rights for denial

Reclamation Bureau
PROPOSED RULES
45438 Projects governed by Federal reclamation law; acreage limitation for irrigation water users; "hammer clause" provisions; advance notice
NOTICES
Contract negotiations:
45502 Grand Valley Water Users Association, Grand Valley Project, CO

Securities and Exchange Commission
NOTICES
Applications, etc.:
45509 Double Exempt Flex Fund, Inc., et al.
45510 FPA Paramount Fund, Inc., et al.
45511 Fidelity Standard Life Insurance Co. et al.
45512 Louisiana Power & Light Co.
45515 Narragansett Electric Co.
45515 New England Electric System
45516 Consolidated Quotation Plan; amendment
Self-regulatory organizations:
45513 Regulatory responsibilities plan; Midwest Stock Exchange, Inc., and Cincinnati Stock Exchange, Inc.
Self-regulatory organizations; proposed rule changes:
45516 Chicago Board Options Exchange, Inc.
45518 Midwest Securities Trust Co.
45519 Municipal Securities Rulemaking Board
Self-regulatory organizations; unlisted trading privileges:
45520 Philadelphia Stock Exchange, Inc.

Small Business Administration
NOTICES
Disaster loan areas:
45520 New York
Meetings; regional advisory councils:
45521 Louisiana
45521 Missouri
45520 Nevada
45521 Vermont

Social Security Administration
NOTICES
Social security benefits:
Cost of living increase, contribution and benefit base, average of total wages, and tables of benefits, etc. (Editorial Note: For a document on this subject *see* Health and Human Services Department)

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
45445 South Harrison Park, IN

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission:
45430 Colorado
45431 Kentucky

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
45461 Thailand; correction
Export visa requirements; certification, etc.:
45461 Pakistan

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration.
NOTICES
Meetings:
45521 Commercial Space Transportation Advisory Committee

Treasury Department
See also Fiscal Service; Internal Revenue Service.
NOTICES
45523 Agency information collection activities under OMB review

Veterans Administration
RULES
Adjudication; pensions, compensation, dependency, etc.:
45580 Pension rates and income limitations; cost of living adjustments
NOTICES
Meetings:
45524 Rehabilitation Advisory Committee

Separate Parts in This Issue

Part II
45530 Department of Health and Human Services, Food and Drug Administration

Part III
45558 Department of Health and Human Services, Office of the Secretary

Part IV
45574 Department of the Interior, Minerals Management Service

Part V
45580 Veterans Administration

Part VI
45584 Department of Health and Human Services, Health Care Financing Administration.

Part VII
45590 Department of Energy, Federal Energy Regulatory Commission

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Administrative Orders:
Presidential Certifications:
No. 86-01 of October 21, 1985 45387

5 CFR
531 45389
536 45389

7 CFR
800 45389
Proposed Rules:
431 45410

10 CFR
2 45398
72 45398

12 CFR
207 45398
220 45398
221 45398
224 45398
Proposed Rules:
563b 45414

14 CFR
71 (3 documents) 45401, 45402
Proposed Rules:
71 45423
73 45423

18 CFR
2 45590
157 45590
250 45590
284 45590
375 45590
381 45590
389 45590

21 CFR
440 45403
Proposed Rules:
70 45530
500 45530
514 45530
571 45530

23 CFR
Proposed Rules:
12 45423

24 CFR
813 45403
913 45403

26 CFR
Proposed Rules:
1 45423
48 45429
601 45423

30 CFR
Proposed Rules:
906 45430
917 45431

32 CFR
Proposed Rules:
43 45432
276 45432

33 CFR
100 45403
165 45403
Proposed Rules:
117 45436
167 45436

38 CFR
3 45580

40 CFR
Proposed Rules:
52 45438

42 CFR
Proposed Rules:
405 45584
442 45584

43 CFR
Proposed Rules:
426 45438

44 CFR
64 45405
67 45405

47 CFR
67 45405
78 45406
Proposed Rules:
73 (2 documents) 45439, 45441

48 CFR
Proposed Rules:
27 45442
52 45442

49 CFR
219 45406

50 CFR
13 45407
17 45407
Proposed Rules:
17 (2 documents) 45443

Federal Register
Vol. 50, No. 211
Thursday, October 31, 1985

Presidential Documents

Title 3—

The President

Presidential Certification No. 86–01 of October 21, 1985

Certification on Jordan

Memorandum for the Secretary of State

Pursuant to section 130(c) of the International Security and Development Cooperation Act of 1985 (P.L. 99–83), I hereby certify that Jordan is publicly committed to the recognition of Israel and to negotiate promptly and directly with Israel under the basic tenets of United Nations Security Council Resolutions 242 and 338.

You are authorized and directed to report this certification, together with the justification therefor, to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee.

This certification, together with the justification therefor, shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, October 21, 1985.

Justification for Certification

Section 130(c) of the International Security and Development Cooperation Act of 1985 (P.L. 99–83) provides:

> CERTIFICATION.—Any notification made pursuant to section 36(b) of the Arms Export Control Act with respect to a proposed sale to Jordan of United States advanced aircraft, new air defense systems, or other new advanced military weapons, shall be accompanied by a Presidential certification of Jordan's public commitment to the recognition of Israel and to negotiate promptly and directly with Israel under the basic tenets of United Nations Security Council Resolutions 242 and 338.

As demonstrated below, Jordan clearly meets the condition set forth in section 130(c). Moreover, the sale of a limited quantity of defensive arms to Jordan will greatly contribute to Jordan's ability to implement these commitments.

When this certification requirement was first adopted, I placed on record my belief that the requirement was unnecessary and inappropriate in light of King Hussein's public statements and courageous actions. In my letter of September 27 informing the Congress that an informal notification of an arms sale to Jordan would be transmitted, I restated my firm conviction that Jordan's commitment to the recognition of Israel and to negotiate promptly and directly with Israel under the basic tenets of UNSC Resolutions 242 and 338 were clearly evidenced by King Hussein's public statements and bold steps toward peace. The King's statements and actions since that time have continued to manifest Jordan's commitment to the principles set forth in section 130(c).

Jordan's commitment to the recognition of Israel and to negotiate promptly and directly with Israel based on 242 and 338 is a matter of public record. In

1982, for example, following the emergence of my September peace initiative, the King stated, "I have recognized Israel since I helped in formulating Security Council Resolution 242 and accepted it." This year, King Hussein reaffirmed his acceptance of 242 and 338, as well as his acknowledgment of Israel's right to exist. During his May visit to the United States, he also expressed his desire to move toward direct negotiations with Israel before the end of 1985. Before the September session of the United Nations General Assembly, King Hussein clearly and publicly reiterated his position that "we are prepared to negotiate under the appropriate auspices with the Government of Israel promptly and directly under the basic tenets of Resolutions 242 and 338." The King repeated this position in his subsequent statements in Washington, as well as his conviction that negotiations with Israel would take place in an environment free of belligerent or hostile acts.

King Hussein has not, however, merely expressed in words his commitment to a peaceful settlement. Last year, Jordan restored diplomatic relations with Egypt, asserting that no state should be isolated for making peace with Israel. In November, in defiance of Syrian opposition, Jordan hosted the Palestine National Council and challenged the Palestinian community to join with him in seeking a negotiated settlement with Israel on the basis of Resolution 242. Most recently, Jordanian officials forthrightly attended a meeting with the British Foreign Minister, even though PLO representatives proved unable to abide by previously agreed ground rules. Finally, Jordan has given ample, and recent, evidence that it eschews violence as the answer to the Arab-Israeli conflict. It has done its part for many years to maintain quiet along its frontier with Israel, and it was quick to condemn publicly the murder of the three Israelis in Larnaca.

I am fully aware of the conviction of the Congress that U.S. arms transfers in the Middle East should facilitate our efforts to bring about a just and lasting peace in the region. I share that conviction without reservation, and I am convinced that this sale promotes our shared objective. Progress towards peace in the Middle East requires another Arab state willing to negotiate with Israel. Jordan has indicated its willingness to do so.

Jordan, however, is a small and vulnerable state with legitimate security concerns; these concerns are heightened because of its interest in peace with Israel. King Hussein's bold moves toward the negotiating table have provoked repeated overt threats to his regime and associates from those who are determined to prevent a settlement with Israel. Because the sale to Jordan of a limited quantity of defensive arms will enhance Jordan's confidence and self-defense capabilities against such threats, it will enable Jordan more effectively to implement its commitment to peace. Moreover, the sale will convey to King Hussein a clear signal of our political support for his peace initiatives and our refusal to allow acts of terrorism to deter us from pursuit of the peace process. It is, therefore, in the context of our desire to move forward in the peace process that the Administration has notified Congress of our intent to sell to Jordan a limited quantity of defensive arms.

[FR Doc. 85-28168
Filed 10-29-85; 4:18 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 50, No. 211
Thursday, October 31, 1985

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 536

Appeal Rights for Denial of Within-Grade Increases and Termination of Grade and Pay Retention

AGENCY: Office of Personnel Management.

ACTION: Revocation of final rule.

SUMMARY: On January 4, 1985, the Office of Personnel Management promulgated a final rule amending §§ 531.410(d) and 536.302(e) of Title 5, Code of Federal Regulations (50 FR 427).

By order of July 15, 1985, Judge Harold H. Greene of the United States District Court for the District of Columbia ordered OPM to withdraw these regulations (*National Treasury Employees Union* v. *Cornelius*, Civil Action No. 85-0129 (D.DC July 15, 1985)). Accordingly, pursuant to the order of the Court, the changes in 5 CFR 531.410(d) and 5 CFR 536.302(e) published in the Federal Register on January 4, 1985, are hereby revoked.

Since the January 4, 1985, revision consisted of the removal of two regulatory provisions, the regulations must again be amended to reintroduce these two provisions.

EFFECTIVE DATE: January 4, 1985.

FOR FURTHER INFORMATION CONTACT: Jan B. Karicher, (202) 632-4634.

SUPPLEMENTARY INFORMATION:

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities because they concern administrative practices that will affect only the Federal Government and its employees.

List of Subjects in 5 CFR Parts 531 and 536

Administrative practice and procedures, Government employees, Wages.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM amends 5 CFR Parts 531 and 536 as follows:

PART 531—PERFORMANCE BASED INCENTIVE SYSTEM FOR THE GENERAL SCHEDULE

Subpart D—Within-Grade Increases

1. The authority citation for Subpart D continues to read as follows:

Authority: 5 U.S.C. 5301, 5335, and 5338 and E.O. 11721 as amended, section 402, unless otherwise noted.

2. In § 531.410, paragraph (d) is revised to read as follows:

§ 531.410 Reconsideration of a negative determination.

* * * * *

(d) When a negative determination is sustained after reconsideration, an employee shall be informed in writing of the reasons for the decision and of his or her right to appeal the decision to the Merit Systems Protection Board. However, for an employee covered by a collective bargaining agreement a reconsideration decision that sustains a negative determination is only reviewable in accordance with the terms of the agreement.

PART 536—GRADE AND PAY RETENTION

Subpart C—Miscellaneous Provisions

3. The authority citation for Part 536 continues to read as follows:

Authority: 5 U.S.C. 5361-5366.

4. In § 536.302, paragraph (e) is redesignated as paragraph (f), and a new paragraph (e) is added to read as follows:

§ 536.302 Appeal of termination of benefits because of reasonable offer.

* * * * *

(e) Termination of benefits based on a declination of a reasonable offer by an employee in an exclusively recognized bargaining unit may be reviewed under the negotiated grievance and arbitration procedures in accordance with chapter 71 of title 5, United States Code, and the terms of any applicable collective bargaining agreement. An employee in an exclusively recognized bargaining unit may not appeal a termination of benefits to the Office of Personnel Management if the grievance procedure of the agreement by which he or she is covered provides for this review.

[FR Doc. 85-25986 Filed 10-30-85; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Kinds of Official Services, Original Services, Official Reinspection Services and Review of Weighing Services, Appeal Inspection Services, and Official Certificates

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is finalizing its proposed rule concerning Kinds of Official Services, Original Services, Official Reinspection Services and Review of Weighing Services, Appeal Inspection Services, and Official Certificates published in the Federal Register April 19, 1985. This final rule deletes the requirements for showing certain information on application-for-service forms; for dismissing requests for service which appear elsewhere in the regulations; for not permitting the issuance of divided-lot certificates on shiplot grain commingled with grain of a different kind or quality; and for issuing certificates on shiplot grain when a portion is returned to the elevator or a portion is determined to be uniform on the basis of a reinspection or appeal inspection are deleted. This final rule establishes provisions for certain present scale testing services as official services listed in the regulations; for certificating reinspections, appeal inspections, and reviews of weighing services; and for obtaining reinspections and appeal inspections on carriers that have left the point of original inspection.

In addition, miscellaneous revisions reorganize, condense, simplify certain language, and make corresponding changes to references in other sections. These changes clarify and simplify the regulations, conform certain provisions to present trading practices, and facilitate the use of the regulations.

EFFECTIVE DATE: December 2, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch (RM), FGIS, USDA, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities, and this action poses no new or additional duties or obligations to business entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504(b) of that Act, the information collection and recordkeeping requirements contained in the final rule have been approved by OMB.

Final Action

The review of the regulations concerning Kinds of Official Services (7 CFR 800.75–800.78), Original Services (7 CFR 800.115–800.119), Official Reinspection Services and Review of Weighing Services (7 CFR 800.125–800.131), Appeal Inspection Services (7 CFR 800.135–800.140), and Official Certificates (7 CFR 800.160–800.166) included a determination of continued need for and consequences of the regulations. The objective of the review was to ensure that the regulations are serving their intended purpose, the language is clear, and the regulations are consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. In the April 19, 1985, **Federal Register** (50 FR 15569), FGIS proposed that §§ 800.75–800.78, 800.115–800.119, 800.125–800.131, 800.135–800.140, and 800.160–800.166 be revised. Except as discussed below, these proposed changes appear in this final rule which revises these sections by:

1. Clarifying, condensing, and deleting unnecessary language. These changes are in addition to the changes specified below. They are nonsubstantive changes which facilitate the use of the regulations. Some of the language that is condensed or deleted appears generally in §§ 800.160.–166 which relates to official certificates, their issuance and distribution, content requirements, their correction and the like. The substance of these sections remains unchanged. For example, in § 800.161 certain official certificate requirements are specified while others are summarized. The reference to specific color requirements is deleted, but continues to appear in the instructions as do all format requirements. Similarly, certain statements on official certificates, such as captions, which presently appear in the regulations, are described, but not specified. The actual statements will appear in the instructions. Further in § 800.162(b), the required official factor information which appears on certificates of grade and which are specified for each kind of grain are described as a certificate requirement only without stating the specified factors. The specified factors appear in each official grade standard and the present duplication is eliminated. Since the provisions of the present § 800.131, *Reporting results of review of weighing services*, is combined with § 800.130, *Reporting results of official reinspection services*, § 800.131 is deleted.

2. Reorganizing §§ 800.75–800.78, *Kinds of Official Services*, to combine and consolidate compatible sections. The reorganization combined the general text in § 800.75, the *Kinds of official inspection services* in § 800.76, the *Kinds of weighing services* in § 800.77 into a revised § 800.75 entitled *Kinds of official inspection and weighing services;* and § 800.78, *Prohibited services: restricted services*, is renumbered as § 800.76. Accordingly, §§ 800.77–800.78 is deleted. The revised § 800.75 contains the same regulatory requirements currently in §§ 800.75–.77. However, it was proposed that the mandatory prior-to-loading stowage examination requirements in the proposed § 800.75(f) (2) and (3) for intracompany shipments of outbound domestic grain sampled during loading be deleted. Stowage examinations are performed to inform the buyer that the grain was loaded into fit carriers. Since an intracompany shipment is a one party transaction, it was thought that prior-to-loading stowage examinations may be unnecessary and should only be performed upon request. The proposal to delete the requirement for mandatory prior-to-loading stowage examinations on intracompany shipments in the current § 800.76(f)(2)(ii) would have allowed applicants to request prior-to-loading stowage examinations on intracompany shipments. As discussed below, based upon comments received, this portion of the proposal is not being adopted. The mandatory stowage examination requirements are being retained for all shipments of outbound grain sampled during loading. Section 800.75 includes *Testing weight reverification services, Railroad track scale testing services*, and *Hopper and truck scale testing services* in the list of official services. The Service has tested or supervised the testing of all test weights and scales used for official purposes since 1976 under the authority of section 7B of the Act. This action merely incorporates presently available test weight and scale testing services offered by the Service into the list of services which appear in this section of the regulations.

3. Revising §§ 800.46(c)(1) and 800.48(a)(1) to make conforming changes to the reference cited in these sections. Currently, §§ 800.46(c)(1), *Special requirements for official Class X and Class Y weighing services—General*, and 800.48(a)(1), *Conditions for dismissal—General*, reference § 800.115(b) and 800.78. The reference in § 800.46(c)(1) is changed to § 800.115, and the reference in § 800.48(a)(1) to § 800.76.

4. Deleting the provisions for requiring certain specified information on application forms for official services in § 800.116(b), § 800.126(b), and § 800.136(b). Also, by deleting the provisions for dismissal of requests for official services, official reinspection and review of weighing services, and appeal inspection services in §§ 800.117, 800.127, and 800.137. A final rule (49 FR 30911) was published on August 2, 1984, incorporating the regulatory requirements currently in these sections into §§ 800.46 and 800.48 as applicable. This final rule deletes §§ 800.117,

800.127 and 800.137 to avoid duplication of the language. Other sections are renumbered accordingly.

5. Deleting the requirement in § 800.160(b) for issuing separate original inspection and weighing certificates before performing a reinspection, appeal inspection, or review of weighing service when the original services were shown together on a combination certificate. Currently, when original inspection or Class X weighing results are shown on a combination certificate and a reinspection, appeal inspection, or review of weighing service is requested, the combination certificate shall be surrendered to official personnel and voided. Separate original inspection and Class X weighing certificates shall then be prepared. These certificates contain the same information as the original combination certificate and supersede the combination certificate. After the requested service is performed, an appropriate certificate (reinspection, appeal inspection, or review of weighing) is issued. Under the revised procedures, when a reinspection (or appeal inspection or review of weighing) is requested, the results of the service will be reported on a new combination certificate with the original results of the other service.

The new combination certificate will supersede the original combination certificate and identify the types of services performed (e.g., reinspection and original Class X weighing). This will permit the use of combination certificates when a reinspection, appeal, or review of weighing is requested and will streamline the certification process.

6. Adding provisions of §§ 800.126(b)(1) and 800.136(b) for obtaining reinspection and appeal inspection services upon written request by the applicant and interested persons on carriers that have left the specified service point. Currently, requests for reinspection and appeal inspection services must be filed before the carrier leaves the specified service point. On November 18, 1980, this requirement was first waived to provide more flexibility to both applicants and other interested persons. Since that time, the Administrator has granted such waivers on a case-by-case basis without impairing the objectives of the Act. This revision reflects that policy.

7. Deleting the restrictions in § 800.163(c) that prohibit divided-lot certificates from being issued when shiplot grain is commingled in a stowage area with other grain of a different kind or quality. Currently, divided-lot certificates may be issued on the first lot loaded on a vessel upon request. If a second lot loaded on top of the first lot is not the same kind of quality, divided-lot certificates cannot be issued for the second lot. This restriction is deleted for the second lot making divided-lot certificates available to all applicants upon request. In addition, a required statement indicating that the grain was loaded on board with grain of another kind or quality shall be shown on the divided-lot certificate. This statement informs all parties as to the kind, quality, and location of the lots.

8. Deleting the requirements in §§ 800.130(a), 800.140(a), and 800.160(a) for issuing official certificates on (1) a portion of a shiplot that is returned to the elevator or (2) a portion of a shiplot that was initially found to be nonuniform in quality and then found to be uniform based on the results of the reinspection or appeal inspection. Currently, when shiplot grain is offered for inspection as a single lot and a portion of the lot is returned, an official certificate is issued on the returned portion. In the past, these certificates were used for documenting inspections and for billing purposes. Presently, inspection results are documented on the ship loading log and improved methods are used for billing purposes. In the case of reinspections and appeal inspections, if the results of the reinspection or appeal inspection indicate that a nonuniform portion is uniform, these results replace the original results and are used in determining the final grade. Official certificates are being issued for the original and all subsequent inspections of the portion. These certificates are qualified to indicate they are invalid for trading purposes since the reinspection or appeal inspection results are averaged with the remaining original results to determine the final grade. With the elimination of this requirement, inspection results continue to be reported on official work records, but official certificates will be issued only when requested by the applicant or deemed necessary by official personnel. This action will not have an adverse impact on the buyer but will reduce paperwork and provide regulatory relief and greater program flexibility for the Service, agencies, and the trade.

Comments on the April 19, 1985, proposal were to be submitted by June 18, 1985. A total of nine comments were received on the proposed changes.

Four commenters agreed with all the proposed changes. Two commenters agreed with the proposed changes but offered several specific recommendations for consideration. Three commenters agreed with all of the proposed changes but one.

Five commenters supported the proposed changes to § 800.75(f) deleting the stowage examination requirements for intracompany shipments of outbound domestic grain sampled during loading. Three commenters strongly opposed this proposal and one requested it be expanded to include intercompany shipments when both buyer and seller mutually agree.

The opposing commenters generally recognized that the basis for the proposal was to reduce costs by eliminating unnecessary services. They questioned whether savings from eliminating this service would be significant and stated that it could be a potential source of trade and quality problems. They went on to say that shipments are being redirected while in transit even though the shipment was originally an intracompany shipment, and that sales under these circumstances could lead to disputes which could not be handled on a contract basis. Even though certificates will indicate whether a stowage examination was performed, this indication will not eliminate the need for shipments to be redirected and prevent misrepresentation. Also, the receiving company, in many instances, does not know whether a stowage examination was performed since they do not normally receive origin certificates. After reviewing these comments, FGIS has concluded that the mandatory stowage examination requirements be retained for all shipments of outbound grain sampled during loading including intracompany shipments.

One commenter pointed out several typographical and printing errors. These errors have been corrected.

One commenter requested the requirement for service performed outside normnal hours be received by 2:00 p.m. the preceding business day in § 800.116(b) be relaxed so that individual agencies may have latitude when applying this provision. Latitude for agencies in applying this provision presently exists in the definition of *Business day*, § 800.0(13). With respect to agencies, *Business day* is defined as the working hours and days established by an agency. If agencies use the latitude provided in § 800.0(13), applying the provisions contained in § 800.116(b) should not create any hardships. Accordingly, § 800.116(b) is being finalized as written.

One commenter requested the requirement that results for official services be reported on the date the service was completed and that certificates be issued as soon as possible but no later than the close of

business on the next business day in § 800.160(c) contain a waiver provision. The commenter indicated that, in some instances, it is impractical to issue certificates by the next business day. FGIS reviewed this comment and agrees that latitude should be provided. FGIS has included a provision in § 800.160(c) whereby the requirement to issue certificates no later than the close of business on the next business day may be waived when results have been reported.

One commenter requested the certificate hearing requirements in § 800.161(c) be clarified as it pertains to delegated States. FGIS concurs with this comment and has revised § 800.161(c) to state that the certificate heading requirement pertains to agencies issuing export certificates.

One commenter requested the requirement to always certificate moisture in § 800.162(a)(3) be revised to only certificate moisture in grains where moisture is not a grading factor when it exceeds storability levels or when requested by the applicant. The official standards for corn, soybeans, and sorghum have recently been amended eliminating moisture as a grade determining factor. This change places all grains on the same basis regarding moisture. In the individual rulemakings regarding deletion of moisture as a grade determining factor, it was noted that moisture content would continue to be shown on all certificates which show an official grade determination, as required in § 800.162(a)(3) of the regulations. The application of § 800.162(a)(3) was reviewed carefully by FGIS as part of the prior rulemakings and was considered an integral part of the revision made to the grain standards while addressing the concerns of the grain trade in this area. Therefore, FGIS is finalizing the proposed wording as written.

In addition, § 800.45 (a) and (b) are revised to reflect changes in references due to revisions made in this final rule. Miscellaneous nonsubstantative changes are being made in this final rule from that which was proposed. These changes are for clarity and would further facilitate usage of the regulations.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, and Grain.

Accordingly, 7 CFR Part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 97-582, 90 Stat., 2867, as amended (7 U.S.C. 71 *et seq.*)

1. Section 800.45 is amended by revising paragraphs (a) and (b) as follows:

§ 800.45 Availability of official services.

(a) *Original inspection and weighing services.* Original inspection and weighing services on grain are available according to this section and §§ 800.115 through 800.118 when requested by an interested person.

(b) *Reinspection, review of weighing, and appeal inspection services.* Reinspection, review of weighing, appeal inspection, and Board appeal inspection services are available when requested by an interested person, according to §§ 800.125 through 800.129 and §§ 800.135 through 800.139.

* * * * *

2. Section 800.46 is amended by revising paragraph (c)(1) as follows:

§ 800.46 Requirements for obtaining official services.

* * * * *

(c) *Special requirements for official Class X and Class Y weighing services.*—(1) *General.* Weighing services shall be provided only at weighing facilities which have met the conditions, duties, and responsibilities specified in section 7A(f) of the Act and this section of the regulations. Weighing services will be available only in accordance with the requirements of § 800.115. Facilities desiring weighing services should contact the Service in advance to allow the Service time to determine if the facility complies with the provisions of the Act and regulations.

* * * * *

3. Section 800.48 is amended by revising paragraph (a)(1) as follows:

§ 800.48 Dismissal of request for official services.

(a) *Conditions for dismissal.*—(1) *General.* An agency or the Service shall dismiss requests for official services when (i) § 800.76 prohibits the requested service; (ii) performing the requested service is not practicable; (iii) the agency or the Service lacks authority under the Act or regulations; or (iv) sufficient information is not available to make an accurate determination.

* * * * *

4. Section 800.75 is revised as follows:

Kinds of Official Services

§ 800.75 Kinds of official inspection and weighing services.

(a) *General.* Paragraphs (b) through (m) of this section describe the kinds of official service available. Each kind of service has several levels. Sections 800.115, 800.116, 800.117, and 800.118 explain Original Services, §§ 800.125, 800.126, 800.127, 800.128, and 800.129 explain Reinspection Services and Review of Weighing Services, and §§ 800.135, 800.136, 800.137, 800.138, and 800.139 explain Appeal Inspection Services. The results of each official service listed in paragraphs (b) through (j) will be certificated according to § 800.160.

(b) *Official sample-lot inspection service.* This service consists of official personnel (1) sampling an identified lot of grain and (2) analyzing the grain sample for grade, official factors, or official criteria, or any combination thereof, according to the regulations, Official U.S. Standards for Grain, instructions, and the request for inspection.

(c) *Warehouseman's sample-lot inspection service.* This service consists of (1) a licensed warehouseman sampler (i) sampling an identified lot of grain using an approved diverter-type mechanical sampler and (ii) sending the sample to official personnel and (2) official personnel analyzing the grain sample for grade, official factors, official criteria, or any combination thereof, according to the regulations, Official U.S. Standards for Grain, instructions, and the request for inspection.

(d) *Submitted sample inspection service.* This service consists of an applicant or an applicant's agent submitting a grain sample to official personnel, and official personnel analyzing the grain sample for grade, official factors, official criteria, or any combination thereof, according to the regulations, Official U.S. Standards for Grain, instructions, and the request for inspection.

(e) *Official sampling service.* This service consists of official personnel (1) sampling an identified lot of grain and (2) forwarding a representative portion(s) of the sample along with a copy of the certificate, as requested by the applicant.

(f) *Official stowage examination service.* (1) This service consists of official personnel visually determining if an identified carrier or container is clean; dry; free of infestation, rodents, toxic substances, and foreign odor; and is suitable to store or carry grain.

(2) A stowage examination may be obtained as a separate service or with one or more other services. Approval of the stowage space is required for official sample-lot inspection services on all export lots of grain and all official sample-lot inspection services performed on outbound domestic lots of

grain which are sampled and inspected at the time of loading. Also, approval of the stowage space is required for any weighing services performed on all outbound land carriers.

(g) *Class X weighing service.* This service consists of official personnel (1) completely supervising the loading or unloading of an identified lot of grain and (2) physically weighing or completely supervising approved weighers weighing the grain.

(h) *Class Y weighing service.* This service consists of (1) approved weighers physically weighing the grain and (2) official personnel partially or completely supervising the loading or unloading of an identified lot of grain.

(i) *Checkweighing service (sacked grain).* This service consists of official personnel or approved weighers under the supervision of official personnel (1) physically weighing a selected number of sacks from a grain lot and (2) determining the estimated total gross, tare, and new weights, or the estimated average gross or net weight per filled sack according to the regulations, instructions, and reqeust by the applicant.

(j) *Checkloading service.* This service consists of official personnel (1) performing a stowage examination; (2) computing the number of filled grain containers loaded aboard a carrier; and (3) if practicable, sealing the carrier for security.

(k) *Test weight reverification service.* This service consists of official personnel (1) comparing the weight of elevator test weights with known weights; (2) correcting the elevator test weights, when necessary; and (3) issuing a Report of Test.

(l) *Railroad track scale testing service.* This service consists of official personnel (1) testing railroad track scales with Service-controlled test cars and (2) issuing a Report of Test.

(m) *Hopper and truck scale testing service.* This service consists of official personnel (1) testing hopper and truck scales and (2) issuing a Report of Test.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

5. Section 800.76 is revised as follows:

§ 800.76 Prohibited services; restricted services.

(a) *Prohibited services.* No agency shall perform any function or provide any service on the basis of unofficial standards, procedures, factors, or criteria if the agency is designated or authorized to perform the service or provide the service on an official basis under the Act.

(b) *Restricted services*—(1) *Not standardized grain.* When an inspection or weighing service is requested on a sample or a lot of grain which does not meet the requirements for grain as set forth in the Official U.S. Standards for Grain, a certificate showing the words "Not Standardized Grain" shall be issued according to the instructions.

(2) *Grain screening.* The inspection or weighing of grain screenings may be obtained from an agency or field office according to the instructions.

6. Sections 800.77 and 800.78 are removed:

§ 800.77 [Removed]

§ 800.78 [Removed]

7. Section 800.115 is revised as follows:

§ 800.115 Who may request original services.

(a) *General.* Any interested person may request original inspection and weighing services. The kinds of inspection and weighing services are described in § 800.75.

(b) *Class Y weighing services.* A request for Class Y weighing services at an export elevator at an export port location shall cover all lots shipped or received in a specific type of carrier. At all other elevators, the request shall cover all lots shipped from or to a specific location in a specific type of carrier. Each request shall be for a contract period of at least 3 months, but a facility may, upon satisfactory notification, exempt specific unit trains from the request.

(c) *Contract services.* Any interested person may enter into a contract with an agency or the Service whereby the agency or Service will provide original services for a specified period and the applicant will pay a specified fee.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0012).

8. Section 800.116 is revised as follows:

§ 800.116 How to request original services.

(a) *General.* Requests shall be filed with the agency or field office responsible for the areas in which the original service is to be performed. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel, as specified in § 800.46. Copies of request forms may be obtained from the agency or field office upon request. If at the time the request is filed, the information specified by § 800.46 is not available official personnel may at their discretion, withhold service pending receipt of the required information. An official certificate shall not be issued unless (1) the information as required by § 800.46 has been submitted or (2) official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(b) *Request requirements.* Requests for original services, other than submitted sample inspections, must be made with the agency or field office responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any agency, or any field office that provides original inspection service. Requests for inspection or Class X weighing of grain during loading, unloading, or handling must be received in advance of loading so official personnel can be present. All requests will be considered filed when the request is received by official personnel. A record shall be maintained for all requests. All requests for service that is to be performed outside normal business hours must be received by 2 p.m. the preceding day.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0012)

9. Section 800.117 is removed. Section 800.118 is redesignated as § 800.117 and revised as follows:

§ 800.117 Who shall perform.

Original services shall be performed by the agency or field office assigned the area in which the service will be provided.

10. Section 800.119 is redesignated as § 800.118 and revised as follows:

§ 800.118 Certification.

Official certificates shall be issued according to § 800.160. Upon request, a combination inspection and Class X weighing certificate may be issued when both services are performed in a reasonably continuous operation at the same location by the same agency or field office.

11. Section 800.125 is revised as follows:

§ 800.125 Who may request reinspection services or review of weighing services.

(a) *General.* Any interested person may request a reinspection or review of weighing service. Only one reinspection

or review of weighing service may be performed on any original service. When more than one interested person requests a reinspection or review of weighing service, the first person to file is the applicant of record.

(b) *Kind and scope of request.* The kind and scope of a reinspection or review of weighing service will be limited to the kind and scope of the original service. If the request specifies a different kind or scope, the request will be dismissed. The request may be resubmitted as a request for original services. Official criteria are considered separately from official grade or official factors when determining the kind and scope. When requested, a reinspection for official grade or official factors and official criteria may be handled separately even though both sets of results are reported on the same certificate. Moreover, a reinspection or review of weighing may be requested on either the inspection or Class X weighing results when both results are reported on a combination inspection and Class X weight certificate. Reinspections for grade shall include a review of all official factors that (1) may determine the grade; or (2) are reported on the original certificate; and (3) are required to be shown.

12. Section 800.126 is revised as follows:

§ 800.126 How to request reinspection or review of weighing services.

(a) *General.* Requests shall be made with the agency or field office that performed the original service. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel. Copies of request forms may be obtained from the agency or field office. If at the time the request is filed the documentation required by § 800.46 is not available, official personnel may, at their discretion, withhold services pending the receipt of the required documentation. A reinspection certificate or the results of a review of weighing service shall not be issued unless (1) the documentation requested under § 800.46 has been submitted or (2) official personnel determine sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available shall be included in the record of the official service.

(b) *Request requirements.* Requests will be considered filed on the date they are received by official personnel. A record shall be maintained for all requests.

(1) *Reinspection services.* Requests shall be received (i) before the grain has left the specified service point where the grain was located when the original inspection was performed; (ii) no later than the close of business on the second business day following the date of the original inspection; and (iii) before the identity of the grain has been lost. If a representative file sample, as prescribed in § 800.82, is available, official personnel may waive the requirements pursuant to this subparagraph. The requirements of paragraph (b)(1)(i) of this section may be waived only upon written consent of the applicant and all interested persons. The requirements of paragraph (b)(1) (ii) and (iii) of this section may be waived at the request of the applicant or other interested persons. The requirement of paragraph (b)(1)(ii) of this section may also be waived upon satisfactory showing by an interested person of evidence of fraud or that because of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver shall be included in the record of the reinspection service.

(2) *Review of weighing services.* Requests shall be received no later than 90 calendar days after the date of the original Class X or Class Y weighing service.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580–0012)

13. Section 800.127 is removed. Section 800.128 is redesignated as § 800.127 and revised as follows:

§ 800.127 Who shall perform reinspection or review of weighing services.

Reinspection or review of weighing services shall be performed by the agency or field office that performed the original service.

14. Section 800.129 is redesignated as § 800.128 and revised as follows:

§ 800.128 Conflicts of interest.

Official personnel cannot perform or participate in performing or issue an official certificate for a reinspection or a review of weighing service if they participated in the original service unless there is only one qualified person available at the time and place of the reinspection or review of weighing.

15. Section 800.130 is redesignated as § 800.129 and revised as follows:

§ 800.129 Certificating reinspection and review of weighing results.

(a) *General.* Except as provided in subparagraph (1) of this paragraph, official certificates shall be issued according to § 800.160 and the instructions. Except as provided in paragraph (b)(2) of this section, only the result of the reinspection service shall be reported.

(1) *Results of sublots.* When results of a reinspection on a sublot involved in a material portion are within the tolerance of a specified inspection plan, they shall replace the original inspection results. Certificates for the original inspection and reinspection services shall not be issued unless requested by the applicant or deemed necessary by official personnel. The results, however, shall be recorded on the inspection log and used to determine the weighted/mathematical average of the lot.

(2) *Reporting review of weighing results.* When the review of weighing service results indicate that the original weighing results were correct, the applicant will be notified in writing. When the original weighing service results are incorrect, a corrected weight certificate or, if applicable, a corrected combination inspection and Class X weight certificate will be issued according to the provisions of § 800.165.

(b) *Required statements on reinspection certificates.* Each reinspection certificate shall show the statements required by this section, § 800.161, and applicable instructions.

(1) Each reinspection certificate must clearly show (i) the term "Reinspection" and (ii) a statement identifying the superseded certificate. The superseded certificate will be considered null and void as of the date of the reinspection certificate.

(2) When official grade or official factors, Class X weighing results, and official criteria are reported on the same certificate, the reinspection certificate shall show a statement indicating that the reinspection results are based on official grade, or official factors, or official criteria and that all other results are those of the original service.

(3) If the superseded certificate is in the custody of the agency or field office, the superseded certificate shall be marked "Void." If the superseded certificate is not in the custody of the agency or field office at the time the reinspection certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the reinspection certificate.

(4) As of the date of issuance of the official certificate, the superseded certificate for the original service will be void and shall not be used to represent the grain.

(5) When certificates are issued under paragraph (a)(1) of this section, the reinspection certificate shall show a

statement indicating that the results replaced the original results and that the reinspection certificate is not valid for trading purposes.

16. Section 800.131 is removed:

§ 800.131 [Removed]

17. Section 800.135 is revised as follows:

§ 800.135 Who may request appeal inspection services.

(a) *General.* Any interested person may request appeal inspection or Board appeal inspection services. When more than one interested person requests an appeal inspection or Board appeal inspection service, the first person to file is the applicant of record. Only one appeal inspection may be obtained from any original inspection or reinspection service. Only one Board appeal inspection may be obtained from an appeal inspection. Board appeal inspections will be performed on the basis of the official file sample. Board appeal inspections are not available on stowage examination services.

(b) *Kind and scope of request.* The kind and scope of an appeal inspection service will be limited to the kind and scope of the original inspection, or reinspection, or, in the case of a Board appeal inspection service, the appeal inspection service. If the request specifies a different kind or scope, the request shall be dismissed. It may, however, be resubmitted as a request for original services. Official criteria is considered separately from official grade or official factors when determining kind and scope. When requested, an appeal inspection for grade, or official factors, and official criteria may be handled separately even though both results are reported on the same certificate. Moreover, an appeal inspection may be requested on the inspection results when both inspection and Class X weighing results are reported on a combination inspection and Class X weight certificate. An appeal inspection for grade shall include a review of all official factors that (1) may determine the grade; or (2) are reported on the original, reinspection, or in the case of a Board appeal inspection, the appeal inspection certificate; and (3) are required to be shown on a certificate of grade.

[The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0012]

18. Section 800.136 is revised as follows:

§ 800.136 How to request appeal inspection services.

(a) *General.* Requests shall be filed with the field office responsible for the area in which the original service was performed. Requests for Board appeal inspections may be filed with the Board of Appeals and Review or the field office that performed the appeal inspection. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel as specified in § 800.46. Copies of request forms may be obtained from the field office upon request. If at the time the request is filed the documentation required by § 800.46 is not available, official personnel may, at their discretion, withhold service pending the receipt of the required documentation. An appeal inspection certificate will not be issued unless (1) documentation requested under § 800.46 has been submitted or (2) office personnel determine that sufficient information has been made available so as to perform the request. A record that sufficient information has been made available must be included in the record of the official service.

(b) *Filing requirements.* Requests will be considered filed on the date they are received by official personnel. A record shall be maintained for all requests. Requests must be filed (1) before the grain has left the specified service point where the grain was located when the original inspection was performed, (2) no later than the close of business on the second business day following the date of the last inspection, and (3) before the identity of the grain has been lost. If a representative file sample as prescribed in § 800.82 is available, official personnel may waive the requirements pursuant to this paragraph. The requirements of paragraph (b)(1) of this section may be waived only upon written consent of the applicant and all interested persons. The requirements of paragraphs (b)(2) and (3) of this section may be waived at the request of the applicant or other interested persons. The requirement of paragraph (b)(2) of this section may also be waived upon satisfactory showing by an interested person of evidence of fraud or that because of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver shall be included in the record of the appeal inspection service.

19. Section 800.137 is removed. Section 800.138 is redesignated as § 800.137 and revised as follows:

§ 800.137 Who shall perform appeal inspection services.

(a) *Appeal.* Appeal inspection services shall be performed by the field office responsible for the area in which the original inspection was performed.

(b) *Board appeal.* Board appeal inspection services shall be performed only by the Board of Appeals and Review. The field office that performed the appeal inspection service will act as a liaison between the Board of Appeals and Review and the applicant.

20. Section 800.139 is redesignated as § 800.138 and revised as follows:

§ 800.138 Conflict of interest.

Official personnel cannot perform or participate in performing or issue an official certificate for an appeal inspection if they participated in the original inspection, reinspection, or, in the case of a Board appeal inspection, the appeal inspection service unless there is only one qualified person available at the time and place of the appeal inspection.

21. Section 800.140 is redesignated as § 800.139 and revised as follows:

§ 800.139 Certificating Appeal Inspections.

(a) *General.* Except as provided in paragraphs (b) of this section, official certificate shall be issued according to § 800.160 and the instructions. Except as provided in paragraph (c)(2) of this section, only the results of the appeal inspection service shall be reported.

(b) *Result of sublots.* When the results of an appeal inspection on a sublot involved in a material portion are within the tolerance of a specified inspection plan, they will replace the original inspection, reinspection, or appeal inspection results. No certificate will be issued unless requested by the applicant or deemed necessary by inspection personnel. The results shall be recorded on the inspection log and used to determine the weighted/mathematical average of the lot.

(c) *Required statements.* Each appeal certificate shall show the statements required by this section, § 800.161, and applicable instructions.

(1) Each appeal inspection certificate shall clearly show (i) the term "Appeal" or "Board appeal" and (ii) a statement identifying the superseded certificate. The superseded certificate will be considered null and void as of the date of the appeal inspection certificate.

(2) When official grade or official factors, Class X weighing results, and official criteria are reported on the same certificate, the appeal inspection certificate shall show a statement indicating that appeal or Board appeal

inspection results are based on official grade, official factors, or official criteria and that all other results are those of the original, reinspection, or, in the case of a Board appeal, the appeal inspection results.

(3) Superseded certificates held by the Service shall be marked "Void." If the superseded certificate is not in the custody of the Service at the time the appeal certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the appeal certificate.

(4) As of the date of issuance of the appeal or Board appeal certificate, the superseded certificate for the original, reinspection, or appeal inspection service will be void and shall not be used to represent the grain.

(5) When certificates are issued under paragraph (b) of this section, the appeal inspection certificate shall show a statement indicating that the results replace the original inspection, reinspection, or, in the case of a Board appeal, the appeal inspection results and that the appeal inspection certificate is not valid for trading purposes.

(d) *Finality of Board appeal inspections.* A Board appeal inspection will be the final appeal inspection service.

22. Section 800.160 is revised as follows:

§ 800.160 Official certificates; issuance and distribution.

(a) *Required issuance.* An official certificate shall be issued for each inspection service and each weighing service except as provided by §§ 800.129 and 800.139 and paragraph (b) of this section.

(b) *Distribution.*—(1) *General.*—(i) *Export.* The original and at least three copies of each certificate will be distributed to the applicant or applicant's order. One copy of each certificate shall be retained by the agency, field office, or Board of Appeals and Review.

(ii) *Nonexport.* The original and at least one copy of each certificate will be distributed to the applicant or to the applicant's order. In the case of inbound trucklot grain, one copy shall be delivered by the applicant to the person who owned the grain at the time of delivery. One copy of each certificate shall be retained by the agency, field office, or Board of Appeals and Review.

(iii) *Local movements of shiplot grain.* When shiplot grain is offered for inspection as a single lot and a portion of the lot is returned to the elevator, certificates representing the inspection service shall not be issued unless (A) requested by the applicant or (B) deemed necessary by official personnel.

(2) *Reinspection and appeal inspection services.* In addition to the distribution requirements of paragraph (b) of this section, one copy of each reinspection or appeal inspection certificate shall be distributed to each interested person of record or the interested person's order and to the agency or field office that issued the superseded certificate.

(3) *Additional copies.* Additional copies of certificates will be furnished to the applicant or interested person upon request. Fees for extra copies may be assessed according to the fee schedules established by the agency or the Service.

(c) *Prompt issuance.* The results of the inspection or weighing service shall be reported to the applicant on the date the inspection or weighing service is completed. Certificates shall be issued as soon as possible, but no later than the close of business on the next business day. Upon request of an agency or a field office, the requirements of this paragraph may be waived by the Service when results have been reported before issuing the certificate.

(d) *Who may issue certificates.*—(1) *Authority.* Certificates for inspection or Class X weighing services may be issued only be official personnel who are specifically licensed or authorized to perform and certify the results reported on the certificate. Certificates for Class Y weighing services may be issued only by individuals who are licensed or authorized or are approved to perform and certify the results.

(2) *Exception.* The person in the best position to know whether the service was performed in an approved manner and that the determinations are accurate and true should issue the certificate. If the service is performed by one person, the certificate should be issued by that person. If the service is performed by two or more persons, the certificate should be issued by the person who made the majority of the determinations or the person who makes the final determination. Supervisory personnel may issue a certificate when the individual is licensed or authorized to perform the service being certificated.

(e) *Name requirement.* On export certificates, the typewritten name and signature of the individual issuing the certificate shall appear on the original and all copies. On all other certificates, the name or signature of the individual issuing the certificate shall appear on the original and all copies. Upon request by the applicant, the name and signature may be shown on all other certificates.

(f) *Authorization to affix names.*—(1) *Requirements.* The name or signature of official personnel may be affixed to official certificates which are prepared from work records signed or initialed by the person whose name will be shown. An agent affixing the name and signature shall (i) be employed by the agency or Service; (ii) have been designated to affix names and signatures; and (iii) hold a power of attorney from the person whose name and signature will be affixed. The power of attorney shall be on file with the agency or Service.

(2) *Initialing.* When a name or signature is affixed by an authorized agent, the initials of the agent shall appear directly below or following the signature of the person.

(g) *Advance information.* Upon request, the contents of an official certificate may be furnished in advance to the applicant and any other interested party, or to their order, and any additional expense shall be borne by the requesting party.

(h) *Certification after dismissal.* An official certificate cannot be issued for a service after the request has been withdrawn or dismissed.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

23. Section 800.161 is revised as follows:

§ 800.161 Official certificate requirements.

(a) *General.* Official certificates shall show the information and statements required by § 800.161 through § 800.165 and the instructions. The Administrator shall approve any other information and statements reported. Information shall be reported in a uniform, accurate, and concise manner, be in English, be typewritten or handwritten in ink, and be clearly legible.

(b) *Required format.* Official certificates shall be uniform in size, shape, color, and format and conform to requirements prescribed in the instructions. Upon request and for good cause, the Service may approve special design certificates. All information and statements shall be shown on the front of the certificate, except that on domestic grain certificates, (1) approved abbreviations for official factors and official criteria, with their meanings, may be shown on the back and (2) the identification of carriers or containers in a combined-lot inspection may be shown on the back if ample space is not available on the front. When information is recorded on the back of the certificate, the statement "See

reverse side" must be shown on the front.

(c) *Required information.* Each official certificate shall show the following information in accordance with the instructions: (1) For a agency issuing export certificates or the Federal Grain Inspection Service, "United States Department of Agriculture—Federal Grain Inspection Service;" (2) for a designated agency, the name of the agency, as applicable; (3) captions identifying the kind of service; (4) a preprinted serial number and lettered prefix; (5) "original" or "copy," as applicable; (6) "divided lot," "duplicate," or "corrected," as applicable; (7) the identification of the carrier or container; (8) the date the service was performed; (9) the date and method of sampling; (10) the kind of movement and the level of service performed; (11) the grade and kind or "Not Standardized Grain," as applicable; (12) the results of the service performed; (13) the location of the issuing office; (14) the location of the grain when the service was performed; (15) a space for remarks; (16) whether a reinspection or appeal inspection service was based in whole or in part on file samples when file samples are used; (17) a statement reflecting the results of a stowage examination, when applicable; (18) seal records, when applicable; and (19) the name of the person issuing the certificate.

(d) *Required statements.* Each official certificate shall include the following statements according to the instructions: (1) A statement that the certificate is issued under the authority of the United States Grain Standards Act; (2) a nonnegotiability statement; (3) a warning statement; and (4) a statement referencing the certificate number and date. Each official certificate for an official sample-lot inspection service shall include a caption "U.S. Grain Standards Act" and a USDA-FGIS shield ghosted across the front. Each official certificate for a warehouseman's sample-lot inspection, a submitted sample inspection, or Class Y weighing service shall include a statement that the certificate does not meet the requirements of Section 5 of the Act of warehouseman's sample-lot inspection, the word "QUALIFIED;" for submitted sample inspections, the words "Not Officially Sampled;" for Class Y weighing, the words "Class Y Weighing" screened across the front.

(e) *Permissive information and statements.*—(1) *Certificates.* Information and statements requested by the applicant but not required by the regulations or instructions may be shown on the certificate if the information or statements have been approved in the instructions or on a case-by-case basis by the Administrator.

(2) *Letterhead.* Information and statements requested by the applicant but not required by the regulations or instructions may be shown on letterhead stationary of the Service or an agency when (i) ample space is not available for reporting the information or statements on the certificate, (ii) letterhead stationary is determined to be more suitable than the official certificate, and (iii) the certificate is referenced on the letterhead stationary and distributed according to § 800.160. Letterhead stationary of the Service shall be used for all export grain.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

24. Section 800.162 is revised as follows:

§ 800.162 Certification of grade; special requirements.

(a) *General.* Each official certificate for grade shall show (1) the grade and factor information required by the Official U.S. Standards for Grain; (2) the test weight of the grain; (3) the moisture content of the grain; (4) the results for each official factor for which a determination was made; (5) the result for each official factor that determined the grade when the grain is graded other than U.S. No. 1; (6) any other factor information considered necessary to describe the grain; and (7) any additional factor results requested by the applicant for official factors defined in the Official U.S. Standards for Grain.

(b) *Cargo shipments.* Each official certificate for grade representing a cargo shipment shall show, in addition to the requirements of paragraph (a) of this section, the results of all official factors defined in the Official U.S. Standards for Grain for the type of grain being inspected.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

25. Section 800.163 is revised as follows:

§ 800.163 Divided-lot certificates.

(a) *General.* When shiplot grain is offered for inspection or Class X weighing as a single lot and is certificated as a single lot, the applicant may exchange the official certificate for two or more divided-lot certificates. This applies to original inspection, reinspection, appeal inspection, Board appeal inspection, and Class X weighing services.

(b) *Application.* Requests for divided-lot certificates shall be made (1) in writing; (2) by the applicant who filed the inital request; (3) to the office that issued the outstanding certificate; (4) within 5 business days of the outstanding certificate date; and (5) before the identity of the grain has been lost.

(c) *Quantity restrictions.* Divided-lot certificates shall not show a aggregate quantity different than the total quantity shown on the superseded certificate.

(d) *Surrender of certificate.* The certificate that will be superseded shall (1) be in the custody of the agency or the Service; (2) be marked "Void;" and (3) show the identification of the divided-lot certificates.

(e) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the superseded certificate shall be shown on each divided-lot certificate. Divided-lot certificates shall show (1) a statement indicating the grain was inspected or weighed as an undivided lot; (2) the terms "Divided Lot-Original," and the copies shall show "Divided Lot-Copies;" (3) the same serial number with numbered suffix (for example, 1764-1, 1764-2, 1764-3, and the like); and (4) the quantity specified by the request.

(f) *Issuance and distribution.* Divided-lot certificates shall be issued no later than the close of business on the next business day after the request and be distributed according to § 800.160.

(g) *Limitations.* No divided-lot certificate can be issued (1) for grain in any shipment other than shiplot grain inspected or weighed as a single lot or (2) for an export certificate which has been superseded by another export certificate. After divided-lot certificates have been issued, further dividing or combining is prohibited except with the approval of the Service.

(h) *Use of superseded certificate prohibited.* As of the date of the divided-lot certificate, the superseded certificate will be void and shall not be used or represent the grain.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011)

26. Section 800.164 is revised as follows:

§ 800.164 Duplicate certificates

Upon request, a duplicate certificate may be issued for a lost or destroyed official certificate.

(a) *Application.* Requests for duplicate certificates shall be filed: (1) in writing; (2) by the applicant who requested the service covered by the lost or destroyed certificate; and (3) with the office that issued the initial certificate.

(b) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the lost or destroyed certificate shall be shown on the duplicate certificate. Duplicate certificates shall show (1) the terms "Duplicate-Original" and the copies shall show "Duplicate-Copies" and (2) a statement that the certificate was issued in lieu of a lost or destroyed certificate.

(c) *Issuance.* Duplicate certificates shall be issued as promptly as possible and distributed according to § 800.160.

(d) *Limitations.* Duplicate certificates will not be issued for certificates that have been superseded.

[The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011]

27. Section 800.165 is revised as follows:

§ 800.165 Corrected certificates.

(a) *General.* The accuracy of the statements and information shown on official certificates shall be verified by the individual whose name or signature is shown on the certificate, or by the authorized agent who affixed the name or signature. Errors found during this process shall be corrected according to this section.

(b) *Who may correct.* Only official personnel or their authorized agents may make corrections, erasures, additions, or other changes to official certificates.

(c) *Corrections prior to issuance.*—(1) *Export certificates.* No corrections, erasures, additions, or other changes can be made to an export certificate. If any error is found prior to issuance, a new certificate shall be prepared and issued and the incorrect certificate marked "Void."

(2) *Other than export certificates.* No corrections, erasures, additions, or other changes shall be made to other than export certificates which involve identification, grade, gross, tare, or net weight. If errors are found, a new certificate shall be prepared and issued and the incorrect certificate marked "Void." Otherwise, errors may be corrected provided that (i) the corrections are neat and legible, (ii) each correction is initialed by the individual who corrects the certificate, and (iii) the corrections and initials are shown on the original and all copies.

(d) *Corrections after issuance.*—(1) *General.* If errors are found on a certificate at any time up to a maximum of 1 year after issuance, the errors shall be corrected by obtaining the incorrect certificate and replacing it with a corrected certificate. When the incorrect certificate cannot be obtained, a corrected certificate can be issued superseding the incorrect one.

(2) *Certification requirements.* The same statements and information, including permissive statements, that were shown on the incorrect certificate, along with the correct statement or information, shall be shown on the corrected certificate. According to this section and the instructions, corrected certificafes shall show (i) the terms "Corrected-Original" and "Corrected-Copy;" (ii) a statement identifying the superseded certificate and the corrections; (iii) a statement indicating the superseded certificate was not surrended if the incorrect certificate was not surrendered; and (iv) a new serial number. In addition, the incorrect certificate shall be marked "Void" when submitted.

(e) *Limitations.* Corrected certificates cannot be issued for a certificate that has been superseded by another certificate or on the basis of a subsequent analysis for quality.

[The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011]

(f) *Use of superseded certificate prohibited.* As of the date of issuance of the corrected certificate, the superseded certificate will be void and shall not be used to represent the grain.

28. Section 800.166 is revised as follows:

§ 800.166 Reproducing certificates.

Official certificates may be photo copied or similarly reproduced.

[The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0011]

Dated: October 17, 1985.

Kenneth A. Gilles,

Administrator.

[FR Doc. 85-25983 Filed 10-30-85; 8:45 am]

BILLING CODE 3410-EN-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 72

Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors

Correction

In FR Doc. 85-24584, beginning on page 41662 in the issue of Tuesday, October 15, 1985, make the following corrections:

1. On page 41666, third column, fifteenth line from the bottom of the page, "such as" should read "such a".

2. On page 41667, third column:

a. In the next to last paragraph, third line, "time" should read "timing".

b. In the last paragraph, first line, "time" should read "timing."

3. On page 41669, second column, first complete paragraph, fourteenth line, "regulation" should read "regulations".

4. On page 41671, § 2.1115(a), fourth line, "arguments" should read "argument".

5. On page 41672, first column:

a. In § 2.1115(c)(1), thirteenth line, "expend" should read "expand".

b. In § 2.1115(c)(2), first line, insert "issue" between "design" and "fully".

c. In § 2.1115(c)(2), seventh line, "or" should read "of".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published from time to time by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective August 13, 1985 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: November 12, 1985.

FOR FURTHER INFORMATION CONTACT: Jamie Lenoci, Financial Analyst, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202–452–2781, or Joy W. O'Connell, Telecommunication Device for the Deaf (TDD) (202) 452–3244.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. A copy of the complete List incorporating these additions and deletions was filed with the original of this document. This List supersedes the last complete List which was effective August 13, 1985 (50 FR 30931, July 31, 1985). The List includes those stocks that the Board of Governors has found meet the criteria specified by the Board and thus have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant incorporating such stocks within the requirements of Regulations G, T, U and X (12 CFR Parts 207, 220, 221 and 224, respectively). It also includes, as a result of an amendment to the margin regulations (49 FR 35756, September 12, 1984), any stock designated under an SEC rule as qualified for trading in a national market system (NMS Security). The List of Marginable OTS Stocks, as it is now called, is a composite of the List of OTC Margin Stocks and all NMS securities. Additional OTC securities may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their designation. The names of these securities are available at the Board and the Securities and Exchange Commission and will be subsequently incorporated into the Board's next quarterly List. Copies of the current List may be obtained from any Federal Reserve Bank.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting requirements; Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, Securities, National Market System (NMS Security), Reporting requirements.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with § 207.2(k) and 6(c) of Regulation G, § 220.2(s) and 17(c) of Regulation T, and § 221.2(j) and 7(c) of Regulation U, there is set forth below a listing of additions to and deletions from the Board's List:

Additions to the List

ABS Industries, Inc.
No par common
Aca Joe
$.10 par common
Agnico-Eagle Mines Limited
No par common
Alco Health Services Corporation
$.01 par common
Amcole Energy Corporation
$.01 par common
America First Federally Guaranteed Mortgage Fund, L.P.
Units of limited partnership interest
American City Business Journals, Inc.
$.01 par common
American Land Cruisers, Inc.
Warrants (expire 05–04–89)
American Restaurants Corporation
No par common
Apple Bank for Savings (New York)
$1.00 par common
Atlantic Financial Federal
Series A, $1.00 par cumulative convertible preferred
BT Financial Corporation
$5.00 par common
Basic Resources International (Bahamas) Limited
Ordinary Shares (B$0.03)
Beeba's Creations, Inc.
No par common
Bercor, Inc.
No par common
Best Buy Co., Inc.
$.10 par common
Birdfinder Corporation
$.01 par common
Bridge Communications, Inc.
No par common
Butler National Corporation
$1.00 par common
CF&I Steel Corporation
$5.00 par common
CFS Financial Corporation, Inc.
$1.00 par common
Calfornia Biotechnolgy, Inc.
No par common
Citizens Banking Corporation
$10.00 par common
Citizens Cable Communications, Inc.
No par common
Cityfed Financial Corporation
Series C, $.40 junior preferred
Coated Sales, Inc.
$.01 par common
Commonwealth Savings Association (Texas)
No par common
Compucom Development Corporation
$1.00 par common
Comtrex Systems Corporation
No par common
Consolidated Capital Income Opportunity Trust
Warrants (expire 12–19–89)
Control Resource Industries, Inc.
$.01 par common
Corporation for Entertainment and Learning, Inc. (THE)
$.01 par common
Data Translation, Inc.
$.01 par common
Datron Systems, Inc.
No par common
Decom Systems, Inc.
Warrants (expire 01–23–86)
Decor Corporation
No par common
Divi Hotels, N.V.
Warrants (expire 03–17–88)
Encore Computer Corporation
$.01 par common
Environmental Processing, Inc.
Warrants (expire 07–13–89)
Evans, Inc.
$1.00 par common
Expeditors International of Washington, Inc.
Warrants (expire 09–17–89)
Exposaic Industries, Inc.
No par common

First Capital Holdings Corporation
$.01 par common
First Executive Corporation
Series F, $1.00 par depository preferred
First of America Bank Corporation
Series D, no par convertible preferred
First United Bancshares, Inc.
$1.00 par common
Fundsnet, Inc.
$.01 par common
Galactic Resources Ltd.
No par common
Heritage Entertainment, Inc.
$.01 par common
Hooper Holmes, Inc.
$.04 par common
Infotech Management, Inc.
$.01 par common
Inland Vacuum Industries, Inc.
$.10 par common
Insituform Group Limited
Common stock, par value 1 pence
Warrants (expire 07-16-90)
Intermet Corporation
$.10 par common
International Container Systems, Inc.
$.01 par common
Jacor Communications, Inc.
No par common
Keithley Instruments, Inc.
No par common
Keystone Heritage Group, Inc.
$5.00 par common
Lsb Bancshares, Inc.
$5.00 par common
Lacana Mining Corporation
No par common
Laidlaw Transportation Limited
Class A, no par common
Lancer Corporation
$.01 par common
Merchants Bancshares, Inc.
$2.50 par common
Metro-Tel Corporation
$.02-½ par common
Modulaire Industries
No par common
Morlan International, Inc.
$.01 par common
Mutual Home Federal Savings Bank (Michigan)
$1.00 par common
NAC RE Corporation
$.10 par common
Nova Pharmaceutical Corporation
$.01 par common Class A, warrants (expires 02-05-86)
Numerex Corporation
$.01 par common
Old Republic International Corporation
Series E, no par cumulative convertible preferred
One Liberty Firestone Properties, Inc.
$1.00 par common
OshKosh B' Gosh, Inc.
Class A, $.01 par common
Class B, $.01 par common
Oshkosh Truck Corporation
Class B, $.01 par common
PNC Financial Corp.
Series D, $1.80 cumulative convertible preferred
Pasta & Cheese Inc.
$.01 par common
Pawnee Industries, Inc.
$.01 par common
Pennsylvania National Financial Corporation
$10.00 par common
Perpetual American Bank, F.S.B. (Virgina)
Series A, $.01 per preferred
Preferred Health Care Corporation
$.01 par common
Progress Federal Savings Bank (Pennsylvania)
$1.00 par common
Provident American Corporation
$1.00 par common
QT&T, Inc.
$.10 par common
Reebok International Ltd.
$.01 par common
Regency Equities Corporation
$1.00 par common
Richton International Corporation
$.10 par common
Ross Stores, Inc.
$.01 par common
S.P.I. Suspension and Parts Industries Limited
Ordinary Shares, IS 250 par value
Salick Health Care, Inc.
No par common
Sands Regent, The
$.10 par common
Saratoga Standardbreds, Inc.
$1.00 par common
Scott Cable Communications, Inc.
No par common
Somerset Bancorp, Inc.
$5.00 par common
Sound Warehouse, Inc.
$.01 par common
Southwest Water Company
$.50 par common
State-O-Maine, Inc.
$.10 par common
Status Game Corporation
$.01 par common
T.R.V. Minerals Corporation
No par common
TS Industries, Inc.
$.02 par common
Techdyne, Inc.
$.10 par common
Termiflex Corporation
$.10 par common
Travelers Realty Income Investors
No par shares of beneficial interest
Triton Energy Corporation
Warrants (expire 11-15-89)
Triton Group Ltd.
$.10 par common Series C, $1.20 par convertible preferred
United Home Life Insurance Company
$1.00 par common
VMS Mortgage Investors, L.P.
$10.00 par units of limited partnership
Visual Electronics Corporation
$.10 par common
WNS, Inc.
$.10 par common
Warner Computer Systems, Inc.
$.01 par common
Western Federal Savings Bank (Puerto Rico) $1.00 par common
Wings West Airlines, Inc.
No par common
Zeta Laboratories, Inc.
No par common

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

Aerosonic Corporation
$.40 par common
Alliance Well Service, Inc.
$.01 par common
Altair Corporation (Illinois)
$.25 par common
American Quasar Petroleum Company
No par common
Billings Corporation
$.01 par common
Brock Exploration Corporation
$.10 par common
Butterfield Equities Corporation
No par common
Bycom Systems, Inc.
$1.00 par common
Century Oil & Gas Corporation
Class A, $.02 par common
Chad Therapeutics, Inc.
$.01 par common
Comserv Corporation
$.10 par common
Comtech, Inc.
$.10 par common
Emcor Petroleum, Inc.
$.00625 par common
Energro, Inc.
$.10 par common
Energy Reserve, Inc.
No par common
Energy Venture Inc.
$1.00 par common
FCP, Inc.
$.01 par common
Fafco, Inc.
$.125 par common
Figgie International Holdings Inc.
3rd Series, $1.00 par cumulative convertible preferred
First Bancshares of Texas
$1.00 par common
Firstar Corporation
$5.00 par common
Formaster Corporation
No par common
Geodyne Resources, Inc.
$.10 par common
Inco Limited
Warrants (expire 08-20-85)

Interdyne Company
$.25 par common
Kelly-Johnston Enterprises, Inc.
$1.00 par common
LJN Toys, Ltd.
$.10 par common
Laidlaw Industries, Inc.
Series A, $1.00 par cumulative convertible preferred
Moncor, Inc.
$3.00 par common
Optimum Holding Corporation
$.20 par common
Pettibone Corporation
$1.00 par common
S-P Drug Company, Inc.
$.01 par common
Sperti Drug Products, Inc.
No par common
Sunrise Savings & Loan Association of Florida
Class A, $.01 par common
Veta Grande Companies, Inc., The
$.01 par common
Zytrex Corporation
$.00025 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

Centran Corporation
$8.00 par common
Chomerics, Inc.
$.10 par common
D.A.B. Industries, Inc.
$1.00 par common
Diversifood, Inc.
$.01 par common
Docutel/Olivetti Corporation
$.10 par common
Duckwall-Alco Stores, Inc.
$2.50 par common
Duralith Corporation
No par common
Energy Oil, Inc.
$.01 par common
Fairmont Financial, Inc.
No par common
Filmtec Corporation
$.10 par common
First National Supermarkets, Inc.
$.01 par common
First Savings Association of Wisconsin
$1.00 par common
Firstgulf Bancorp
$4.00 par common
Florida Cypress Gardens, Inc.
$.25 par common
Groman Corporation
$1.00 par common
Guaranty Commerce Corporation
$10.00 par common
Gull, Inc.
$.10 par common
Halifax Engineering, Inc.
$.35 par common
Halmi, Robert Inc.
$1.00 par common
Healthgroup International, Inc.
No par common
Landmark Banking Corporation of Florida
$1.00 par common
Lyon Metal Products, Inc.
$2.50 par common
Monarch Capital Corporation
$1.00 par common
New York Airlines, Inc.
$.01 par common Warrants (expire 09-15-86)
Onyx-Imi, Inc.
No par common
Pauley Petroleum
$1.00 par common
Pearle Health Services, Inc.
$.01 par common
Southwest Bancorp
No par capital
Syncor International Corporation
$.01 par common
Systematics General Corporation
$.01-⅓ par common
TSC, Inc.
No par common
Triboro Communications, Inc.
$.01 par common
Vyquest Inc.
$.01 par common
Wedgestone Realty Investors Trust
$1.00 par shares of beneficial interest
Winn Enterprises
$.10 par shares of beneficial interest

By order the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), October 28, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-25939 Filed 10-28-85; 10:19 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-31]

Alteration of Alturas, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Alturas, California. This action is necessary to provide controlled airspace for aircraft executing the proposed amendment to the Non-Directional Beacon (NDB) Standard Instrument Approach Procedures (SIAP) at Alturas Municipal Airport. This amended SIAP requires controlled airspace to be lowered to 700 feet in the procedure turn area.

EFFECTIVE DATE: 0901 GMT, January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1649.

SUPPLEMENTARY INFORMATION:

History

On August 16, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will alter the transition area at Alturas, California (50 FR 33055). Interested parties were invited to paticipate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. The proposed amendment to the SIAP to Alturas, California, requires controlled airspace commencing at 700 feet for the procedure turn area. Without this additional controlled airspace, the minimum descent altitude would be raised. This amendment will enhance airport usage and safety. Section 71.181 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 lowers the controlled airspace to contain the proposed amendment to the SIAP at Alturas, California. This additional airspace is required to contain the procedure turn within controlled airspace.

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 impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of 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.

2. Section 71.181 is amended as follows:

Alturas, CA—[Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 41°34'00" N., long. 120°46'20" W.; to lat. 41°37'00" N., long. 120°28'40" W.; to lat. 41°11'30" N., long. 120°21'00" W.; to lat. 41°08'45" N., long. 120°38'10" W.; thence to the point of beginning; that airspace extending upward from 1200 feet above the surface beginning at lat. 41°22'10" N., long. 120°58'00" W.; to lat. 41°28'20" N., long. 120°44'20" W.; to lat. 41°19'10" N., long. 120°41'30" W.; to lat. 41°15'00" N., long. 120°51'00" W.; thence along the east edge of V-452 to the point of beginning; and that airspace extending upward from 1,200 feet above the surface beginning at lat. 41°33'30" N., long. 120°27'40" W.; to lat. 41°34'30" N., long. 120°20'00" W.; to lat. 41°25'50" N., long. 120°18'30" W.; to lat. 41°25'00" N., long. 120°25'00" W.; thence along the west edge of V-165 to the point of beginning.

Issued in Los Angeles, California on October 22, 1985.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 85-25933 Filed 10-30-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWP-28]

Alteration of the Santa Rosa, CA, Transition Area

AGENCY: Federal Aviation Administration.

ACTION: Final rule.

SUMMARY: This action expands the transition area at Santa Rosa, California. The additional 700 foot transition area is required to contain the proposed amendment 13 to ILS Runway 32 Standard Instrument Approach Procedures (SIAP). This amendment to the SIAP was the result of providing lower minimums made possible by removal of the controlling obstacle that previously restricted the approach.

EFFECTIVE DATE: 0901 Gmt, January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1649.

SUPPLEMENTARY INFORMATION:

History

On August 12, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to expand the Santa Rosa, California, Transition Area (50 FR 32441). This change to the transition area is necessary to contain the proposed amendment to the ILS Runway 32 Standard Instrument Procedure (SIAP) developed for Sonoma County Airport in controlled airspace. 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. This amendment is the same as that proposed in the notice. Section 71.181 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 will expand the 700 foot transition area to contain the proposed amendment to the ILS Runway 32 SIAP at Sonoma 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, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

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.

2. Section 71.181 is amended as follows:

Santa Rosa, CA—[Revised]

"That airspace extending upward from 700 feet above the surface beginning at lat. 38°27'40" N., long. 122°44'20" W.; thence clockwise via the 5-mile radius arc of the Sonoma County Airport (lat. 38°30'30" N., long. 122°48'45" W.); to lat. 38°26'30" N., long. 122°48'40" W.; to lat. 38°24'30" N., long. 122°47'30" W.; to lat. 38°26'20" N., long. 122°43'20" W.; thence to the point of beginning."

Issued in Los Angeles, California on October 22, 1985.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 85-25935 Filed 10-30-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWP-30]

Establishment of Transition Area at Little River, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish a transition area at Mendocino County Airport, Little River, California. This transition area is necessary to contain Instrument Flight Rules (IFR) operations in controlled airspace while executing the proposed VOR/DME Runway 29 Standard Instrument Approach Procedures (SIAP) for that airport.

EFFECTIVE DATE: 0901 G.m.t., January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1649.

SUPPLEMENTARY INFORMATION:

History

On August 9, 1985, the FAA proposed to amend Part 71 of the Federal Aviation

Regulations (14 CFR Part 71) to establish a transition area at Little River, California (50 FR 32228). The establishment of this transition area is necessary to contain the proposed VOR/DME Runway 29 SIAP for Mendocino County Airport, Little River, California, in controlled airspace. 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. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) was republished in Handbook 7400.6A, dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) will establish a transition area to contain the proposed VOR/DME Runway 29 SIAP at Mendocino County Airport, Little River, California, in controlled airspace.

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

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

PART 71—[AMENDED]

Adoption of the Amendment

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. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Little River, CA—[New]

"That airspace extending upward from 700 feet above the surface within a 5-mile radius of Mendocino County Airport (lat. 39°15'47" N., long. 123°45'06" W.) within 2 miles each side of a bearing 119° from the airport extending from the 5-mile radius area to 9.5 miles southeast of the airport."

Issued in Los Angeles, California on October 22, 1985.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 85-25934 Filed 10-30-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 440

[Docket No. 85N-0173]

Antibiotic Drugs; Sterile Ticarcillin Disodium and Clavulanate Potassium

Correction

In FR Doc. 85-24832, appearing on page 42156 in the issue of Friday, October 18, 1985, in the first column, in a correction to § 440.290b, the last word in amendatory instruction 2, reading "milligrams", should have read "milligram".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 813 and 913

[Docket No. N-85-1246; FR-2052]

Technical Amendments to Definition of Income; Announcement of Revised Effective Dates

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revised effective dates.

SUMMARY: On September 27, 1985, HUD published a final rule amending the definition of income in several parts of Title 24 of the Code of Federal Regulations (50 FR 39092). The effective date note published on that date indicated that the changes would be effective on November 1, 1985, except for amendments to §§ 913.102 and 913.106, which would become effective upon subsequent notice in the **Federal Register**. This document announces the effective date for §§ 913.102 and 913.106 and revises the effective date for §§ 813.102 and 813.106 with respect to the section 8 Existing Housing program.

DATES: The effective date for the final rule published on September 27, 1985 (50 FR 39092), is November 1, 1985, except that the rule will be effective on December 1, 1985, with respect to the changes in §§ 913.102 and 913.106 and with respect to the changes in §§ 813.102 and 813.106 as applied to the section 8 Housing Assistance Payments Program—Existing Housing under Part 882.

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Chief, Occupancy Branch, Office of Public Housing, Department of Housing and Urban Development, Room 4206, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 426-0744. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The changes in the income definition rule are not all able to be made effective on the same date because the procedures and instructions for the Public and Indian Housing programs (covered by Part 913) and the section 8 Existing Housing program (covered by Part 813) are developed separately from those for the other section 8 Housing Assistance Payments programs (covered by Part 813). The procedures and instructions for one set of programs were available earlier than for the other set, and HUD believes it is advantageous to tenants and program administrators to make the changes effective as soon as possible for each set of programs.

Dated: October 28, 1985.

Donald A. Franck,

Acting Assistant General Counsel for Regulations.

[FR Doc. 85-25991 Filed 10-30-85; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 85-091]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of Temporary Rules Issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and special local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety Zones are

established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Security zones are temporarily established in response to a risk to national security present in a particular area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between July 1, 1985 and September 30, 1985 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the last published list.

ADDRESS: The complete text of any temporary regulations may be examined at, and is available on request from, Executive Secretary, Marine Safety Council (G-CMC), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Deputy Executive Secretary, Marine Safety Council at (202) 426-1477.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since Marine events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforement action, **Federal Register** notice is not required to place the special local regulations, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary special local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in the entirety if sufficient time is available to do so before they are placed in effect or terminated.

Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 1, 1985 through September 30, 1985 unless otherwise indicated:

Docket No.	Location	Type	Date
1-85-6R	Boston, MA	Safety zone	July 3, 1985.
COTP Providence, RI, 85-T07	Narragansett Bay	do	Aug. 4, 1985.
1-85-7R	Portland, ME	Special local regulation	Aug. 3, 1985.
2-85-12	Cumberland River, Mile 190.0	do	July 4, 1985.
2-85-18	Mississippi River, Mile 697.0	do	July 3, 1985.
2-85-17	Ohio River, Mile 128.5	do	July 6, 1985.
2-85-15	Ohio River, Mile 555.0	do	July 4, 1985.
2-85-14	Mississippi River, Mile 177.0	do	Do.
2-85-21	Ohio River, Mile 66.0	do	July 13, 1985.
2-85-20	Mississippi River, Mile 854.8	do	July 27, 1985.
2-85-24	Ohio River, Mile 307.5	do	Do.
2-85-23	Mississippi River, Mile 856.0	do	July 20, 1985.
2-85-22	Missouri River, Mile 731.0	do	July 24, 1985.
2-85-32	Illinois Waterway, Mile 151.5	do	Aug. 3, 1985.
2-85-03	Pittsburgh, PA	do	Aug. 1, 1985.
2-85-31	Mississippi River, Mile 814.0	do	July 27, 1985.
2-85-26	Allegheny River, Mile 6.0	do	Do.
2-85-28	Mississippi River, Mile 813.0	do	Do.
COTP Memphis, TN, 85-10	Arkansas River, Mile 146.0	Safety zone	July 6, 1985.
COTP St. Louis, MO, 85-03	Mississippi River, Mile 535.1	do	April 8, 1985.
2-85-30	Mississippi River, Mile 693.8	Special local regulation	Aug. 3, 1985.
COTP St. Louis, MO, 85-02	Mississippi River, Mile 327.0	Safety zone	May 16, 1985.
COTP St. Louis, MO, 85-05	Mississippi River, Mile 167.5	do	July 11, 1985.
COTP St. Louis, MO, 85-04	Mississippi River, Mile 519.0	do	July 4, 1985.
COTP St. Louis, MO, 85-33	Mississippi River, Mile 179.7	do	Aug. 24, 1985.
2-85-05	Ohio River, Mile 220.0	Special local regulation	Aug. 10, 1985.
2-85-06	Ohio River, Mile 355.5	do	Aug. 30, 1985.
2-85-36	Ohio River, Mile 184.0	do	Aug. 17, 1985.
2-85-37	Ohio River, Mile 483.0	do	Aug. 18, 1985.
2-85-43	Ohio River, Mile 505.5	do	Aug. 24, 1985.
2-85-41	Ohio River, Mile 170.5	do	Sept. 7, 1985.
2-85-44	Ohio River, Mile 469.5	do	Sept. 2, 1985.
2-85-48	Ohio River, Mile 449.0	do	Sept. 15, 1985.
2-85-40	Kanawha River, Mile 58.0	do	Aug. 25, 1985.
3-85-46	Orient Harbor, LI	Safety zone	July 4, 1985.
3-85-48	New London Harbor, CT	do	July 6, 1985.
3-85-49	do	do	Do.
3-85-35	Philadelphia, PA	do	July 27, 1985.
3-85-50	Passaic River, Mile 4.6	do	July 18, 1985.
3-85-59	Lower Hudson River	do	Aug. 31, 1985.
3-85-62	East River, NY	do	Sept. 11, 1985.
3-85-61	Upper New York Bay	do	Sept. 12, 1985.
3-85-22	Riverhead, LI	do	Aug. 23, 1985.
3-85-58	Albany, NY	do	Sept. 2, 1985.
3-85-64	Upper New York Bay	do	Sept. 27 1985.
3-85-17	do	Special local regulation	June 28, 1985.
COTP Hampton Roads, VA, 85-11	Newport News, VA	Safety zone	July 20, 1985.
COTP Hampton Roads, VA, 85-12	Norfolk, VA	do	July 31, 1985.
COTP Wilmington, NC, 85-06	Wilmington, NC	do	Aug. 18, 1985.
COTP Wilmington, NC, 85-07	do	do	Sept. 9, 1985.
COTP Wilmington, NC, 85-08	do	do	Sept. 16, 1985.
COTP Wilmington, NC, 85-09	do	do	Sept. 16, 1985.
COTP Baltimore, MD, 85-08	Baltimore, MD	do	Sept. 22, 1985.
COTP Tampa, FL, 7-85-25	Sarasota, FL	do	July 6, 1995.
COTP Savannah, GA, 7-85-30	Savannah, GA	do	July 7, 1985.

Docket No.	Location	Type	Date
COTP Savannah, GA, 7-85-33	do	do	July 5, 1985.
COTP Savannah, GA, 7-85-34	Brunswick, GA	do	July 6, 1985.
COTP Savannah, GA, 7-85-43	Savannah, GA	do	Sept. 5, 1985.
COTP Miami, FL, 7-85-45	Boca Raton, FL	do	Sept. 7, 1985.
COTP New Orleans, LA, 85-17	Lockport, LA	Security zone	July 31, 1985.
COTP New Orleans, LA, 85-14	Avoca Island, LA	Safety zone	May 20, 1985.
COTP Mobile, AL, 85-09	Pensacola, FL	do	July 4, 1985.
COTP Mobile, AL, 85-10	do	do	July 25, 1985.
COTP Mobile, AL, 85-11	Moss Point, MS	do	Aug. 15, 1985.
COTP Mobile, AL, 85-12	Alabama River, Mile 66.8	do	Aug. 27, 1985.
COTP Mobile, AL, 85-13	Port St. Joe, FL; Panama City, FL; Pensacola, FL; Mobile, AL; Pascagoula, MS; Gulfport, MS	do	Sept. 2, 1985.
COTP Cleveland, OH, 09-85-011	Cleveland, OH	do	July 26, 1985.
9-85-01	Oswego, NY	do	July 29, 1985.
COTP Buffalo, NY	Erie, PA	do	July 17, 1985.
COTP San Diego, CA, 85-10	San Diego Bay, CA	do	Sept. 22, 1985.
COTP LA/LB, 85-09	Long Beach Harbor, CA	do	Aug. 17, 1985.
11-85-08	Mission Bay, CA	Special local regulation	Sept. 13, 1985.
COTP San Francisco, CA, 85-02	San Francisco Bay, CA	Safety zone	July 4, 1985.
COTP San Francisco, CA, 85-03	Sacramento River Deep Water Channel	do	July 24, 1985.
COTP San Francisco, CA, 85-07	Oakland, CA	do	Sept. 2, 1985.
13-85-13	Tacoma, WA	Special local regulation	July 4, 1985.
13-85-14	Anacortes, WA	do	July 13, 1985.
COTP Portland, OR, 85-02	Astoria, OR	Safety zone	June 23, 1985.
COTP Portland, OR, 85-04	do	do	July 25, 1985.
COTP Portland, OR, 85-03	North Bend, OR	do	June 29, 1985.

Dated: October 28, 1985.

R.F. Ingraham

Captain, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

[FR Doc. 85-26012 Filed 10-30-85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6686]

Flood Insurance; Communities Eligible for Sale; Massachusetts; Correction

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule; correction.

SUMMARY: This rule corrects the final rules published in the **Federal Register** on Monday, September 30, 1985, FR 39674 and Tuesday, October 15, 1985, FR 41689. The Town of Ashfield is erroneously listed in the State of Maine. The correct State is Massachusetts. The other communities are listed correctly. Please amend records accordingly.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, Southwest, FEMA—Room 416, Washington, D.C. 20472.

Issued: October 25, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-25985 Filed 10-30-85; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. 6645]

National Flood Insurance Program; Final Flood Elevation Determinations; Oregon; Correction

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a Notice of Final Determinations of base (100-year) flood elevations for selected locations in the City of Cottage Grove, Oregon, previously published at 50 FR 30184 on July 24, 1985.

EFFECTIVE DATE: July 24, 1985.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Final Determinations of base (100-year) flood elevations for selected locations in the City of Cottage Grove, previously published at 50 FR 30184 on July 24, 1985, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)); 42 U.S.C. 4001-4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The entry for the City of Cottage Grove, Oregon, is corrected to read:

Oregon	
City of Cottage Grove	
Coast Fork Willamette River:	
100 feet upstream of the north crossing of State Highway 99	*629
300 feet upstream of Harrison Avenue	*647

Issued: October 25, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-25984 Filed 10-30-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

Intrepretation Letter

AGENCY: Federal Communications Commission.

ACTION: Interpretation Letter.

SUMMARY: Under delegated authority, the Common Carrier Bureau, in response to a request by the National Exhange Carrier Association, Inc. has provided an interpretation of Part 67 of the *FCC Rules and Regulations*. The issue concerns the frozen study area boundaries established in accordance with the *Decision and Order* in FCC Docket Nos. 78-72 and 80-286, released December 28, 1984 and is intended to clarify their interpretation.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:
Arthur S. Leahy, Common Carrier Bureau, (202) 632-7500.

William J. Tricarico,
Secretary, Federal Communications Commission.

Federal Communications Commission

Washington, DC 20554

October 18, 1985.

Mr. Gordon R. Evans,
Director, Tariff and Regulatory Matters, National Exchange Carrier Association, Inc., 100 South Jefferson Road, Whippany, New Jersey 07981.

Dear Mr. Evans: In your letter of May 27, 1985, you requested clarification of the Commission's *Decision and Order* in *MTS and WATS Market Structure Inquiry* and *Amendment of Part 67 of the Rules*, CC Docket Nos. 78-72 and 80-286, released December 28, 1984. Specifically, you requested information regarding the Commission's interpretation of the provision concerning frozen study area boundaries for separations purposes. In response to that request, we are providing the following interpretation of the Separations Manual, Part 67 of the FCC Rules and Regulations.

In the *Recommended Decision and Order* in CC Docket Nos. 78-72 and 80-286, released November 23, 1984, the Joint Board recommended amendment of the term "study area" in the glossary of Part 67 of the FCC Rules and Regulations to read as follows: "Study area—Study area boundaries shall be frozen as they are on November 15, 1984." In discussing the effect of the proposed revision, the Joint Board stated:

"Under this approach, an existing company study area purchased by a holding company which owned other companies within the same state could continue to be treated separately for separations purposes. Areas in which telephone service was instituted for the first time could also be treated as a separate study area if separately incorporated. In either case, the parent company would have the option of folding the new service territory into one of its existing companies and using the average NTS costs for the expanded service area in determining the high cost assistance. We expect this to be the case when the benefits of consolidated operations exceed the reduction in high cost support. However, companies would be prohibited from setting up high cost exchanges within their existing service territory as separate companies to maximize high cost support."

On December 28, 1984, the Commission released a *Decision and Order* in CC Docket Nos. 78-72 and 80-286, which adopted the definition of the term "study area" proposed by the Joint Board.

The basic intent of this language is to ensure that Companies do not set up high cost exchanges within their existing service territory as separate companies to maximize high cost support. This is consistent with the Joint Board's November 23, 1984 *Recommended Decision and Order*. It should not, however, be interpreted as the "only" prohibition in this regard as it is described in your letter. For example, telephone companies involved in sales, transfers, or extensions of service territories differing from those situations described in the November 23, 1984 *Recommended Decision and Order* should obtain a letter of interpretation from the Accounting and Audits Division concerning the effect on study area boundaries. The interpretation request should provide information concerning the effect on the company's service territory boundaries and the number of subscribers affected, as well as any available information concerning non-traffic sensitive (NTS) costs for the areas involved.

If you have any questions concerning this response, please contact Arthur Leahy at (202) 632-7500.

Sincerely,

Gerald P. Vaughan,
Chief, Accounting and Audits Division.

[FR Doc. 85-25944 Filed 10-30-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 78

Clarification of Protection Provisions for the Table Mountain Radio Receiving Zone

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This Document is a correction of an Order regarding Table Mountain Radio Receiving Zone with regard to the numbering of subparagraphs in Part 78. (FCC 85-497).

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

FOR FURTHER INFORMATION CONTACT:
Melvin J. Murray, Spectrum Management Division, Office of Science and Technology, Washington, D.C. 20554 (202) 653-8168.

Second Erratum

In the matter of amendment of Parts 21, 22, 23, 25, 73, 78, 90, and 94 the Commission's Rules to clarify the protection provisions for the Table Mountain Radio Receiving Zone.

Released: October 25, 1985.

1. The Commission's *Order*, FCC 85-497, released on September 16, 1985 (50 FR 39000; September 26, 1985), clarifying the Commission's intention to provide protection from radio interference to the Table Mountain Radio Receiving Zone failed to include Part 78. Also, the subparagraphs in § 25.203(f) were incorrectly numbered.

2. An *Erratum* in this proceeding was released on September 30, 1985 to correct these errors (50 FR 40862; October 7, 1985).

3. This *Second Erratum* is being issued to correct an error in the numbering of § 78.19. Accordingly, "§ 78.19(e)" is corrected to read "§ 78.19(d)" in the first column of page 40863.

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 85-25943 Filed 10-30-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR-6, Notice No. 10]

Partial Grant of Petition for Reconsideration; Control of Alcohol and Drug Use in Railroad Operations; Technical Amendments

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Technical amendments to final rule; notice of grant of petition for reconsideration.

SUMMARY: This notice sets forth technical amendments to the final rule document on Control of Alcohol and Drug Use in Railroad Operations that were prompted by a petition for reconsideration. The amendments are clarifying in nature.

DATE: The amendments made by this notice are effective, on November 1, 1985.

FOR FURTHER INFORMATION CONTACT:
Walter C. Rockey, Executive Assistant to the Associate Administrator for Safety, FRA, Washington, DC 20590 (Telephone: 202-426-0895) or Grady C. Cothen, Jr., Special Assistant to the Chief Counsel, FRA, Washington, DC 20590 (Telephone: 202-426-9416).

SUPPLEMENTARY INFORMATION: On July 29, 1985, FRA issued a final rule on Control of Alcohol and Drug Use in Railroad Operations (50 FR 31508; Aug. 2, 1985). On September 24, 1985, FRA published a notice correcting the final rule and announcing approval of the information collection requirements. On or prior to October 1, 1985, FRA received two petitions for reconsideration of the final rule. FRA has denied the Petition for Reconsideration of the Railway Labor Executives Association. However, FRA has determined that it is appropriate to grant, in part, the Petition for Reconsideration of the Brotherhood of Locomotive Engineers (BLE Petition), denying the petition in all other respects.

The BLE Petition raises two points that bear on the clarity of the final rule as issued. First, it is claimed that

§ 219.11(c)(2) is overbroad. That provision requires that employees in certain safety-sensitive functions consent to the release to FRA of laboratory test results, conducted by or for a treating medical facility, on blood or urine samples taken by the medical facility after an accident or incident subject to mandatory post-accident testing (Subpart C) or reasonable cause testing (Subpart D). The objective of the provision was to provide FRA with access to the results of laboratory tests undertaken by medical facilities to ascertain the presence of alcohol and other drugs. The objective was not to permit FRA to have access to other test results which may be obtained from blood or urine samples. The technical amendment merely makes this intent explicit on the face of the rule.

Second, the BLE Petition states that, in the petitioner's view, § 219.303(d)(2) could be read to excuse one of the two breath tests contemplated by § 219.303(a) in a case where a screening test was used. Section 219.303(a) describes detailed safeguards, including use of approved devices and trained and qualified operators. In FRA's judgment, the provision as presently worded requires that two "evidentiary" tests must be done in appropriate cases (where the first such "evidentiary" test is positive). The screening test cannot substitute for either. FRA has not encountered significant misunderstanding during the industry seminars and many other contacts with employee representatives and railroad representatives since the issuance of the final rule.

However, effective presentation is an important attribute of any rule of law, whether statutory or regulatory. Accordingly, FRA has endeavored to reformulate that provision in a way that will make abundantly clear to all readers that a screening test is in no way a substitute for evidential-quality testing, using approved equipment and other safeguards. In the case where both the screening test and the first evidential test are positive, a second evidential-quality test is required. The point originally intended by the revised provision is retained—*i.e.*, the 15-minute period of § 219.303(a)(5) is satisfied if the second test that meets the criteria of paragraph (a) is conducted at least 15 minutes after the screening test. The purpose of the 15-minute requirement is to permit breath alcohol to dissipate. The interval between the two evidential tests is, by itself, not significant.

Notice and Public Procedure

FRA determines that confusion could result from the alleged imprecision of the existing rule which becomes effective on November 1, 1985 and since this amendment imposes no additional burden on any person FRA concludes that notice and comment are impractical and unnecessary in this instance. In addition, FRA determines that there is good cause for making these technical changes effective on the effective date of the new Part 219, which is less than 30 days after publication of this notice in the **Federal Register**, since they are clarifying in nature and will impose no new substantive burden on any person.

Regulatory Impact

This technical amendment to the final rule has been evaluated in accordance with existing regulatory policies and is considered to be non-major under Executive Order 12291. Although the final rule in this proceeding was deemed to be significant under DOT policies and procedures (44 FR 11034), this amendment is not deemed to be significant. This amendment contains only minor technical changes intended to clarify the rule published on August 2, 1985 and will have no economic impact.

This amendment will not increase the economic burden of the existing regulation for any party since it only clarifies the present rules and does not substantively alter them. Accordingly, it is certified that this amendment will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In addition, this amendment does not contain directly or indirectly provisions concerning the collection of information that are subject to the Paper Work Reduction Act of 1980 (5 U.S.C. 3501 *et seq.*).

List of Subjects in 49 CFR Part 219

Railroad safety, Control of alcohol and drug use.

PART 219—[AMENDED]

In consideration of the foregoing, Part 219, Title 49, Code of Federal Regulations is amended as follows:

1. The authority for Part 219 continues to read as follows:

Authority: Secs. 202 and 209, Pub. L. 91–458, 84 Stat. 971 and 975, as amended (45 U.S.C. 431, 438) and 49 CFR 1.49. Subpart C also issued under sec. 208, Pub. L. 91–458, 84 Stat. 974, as amended (45 U.S.C. 437).

2. Section 219.11 is amended by revising paragraph (c)(2) as follows. Paragraph (c) introductory text is shown for user convenience only.

§ 219.11 Consent required; implied.

* * * * *

(c) A covered employee who is required to be tested under Subpart C or D and who is taken to a medical facility for observation or treatment after an accident or incident shall be deemed to have consented to the release to FRA of the following:

* * * * *

(2) The results of any laboratory tests for alcohol or any drug conducted by or for the treating facility on such sample; and

* * * * *

3. Section 219.303 is amended by revising paragraph (d)(2) as follows:

§ 219.303 Breath test procedures and safeguards.

* * * * *

(d) * * *

(2) Except as provided in paragraph (d)(2)(iii) of this section, the conduct of a screening test under paragraph (d)(1) of this section does not excuse full compliance with paragraph (a) of this section with respect to any breath test procedure which is then undertaken. If a screening test is positive, the following procedures govern:

(i) An initial breath test shall be conducted meeting the criteria of paragraph (a) of this section.

(ii) If that test is positive, a second breath test shall be conducted meeting the criteria of paragraph (a) of this section.

(iii) The second test meeting the criteria of paragraph (a) of this section must be conducted at least 15 minutes after the positive screening test conducted under paragraph (d)(1) of this section. However, since a waiting period of 15 minutes is sufficient to permit the dissipation of any alcohol in the mouth, the requirement of paragraph (a)(5) of this section that there be a period of at least 15 minutes between the two tests meeting the criteria of paragraph (a) of this section does not apply.

Issued in Washington, D.C., on October 28, 1985.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 85–26061 Filed 10–30–85; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

Special Rule on the American Alligator

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) revises its special rule in 50 CFR 17.42(a), regulating commercial activities with the hides, meat and other parts of lawfully taken American alligators (*Alligator mississippiensis*), to: (1) Delete the requirement that State-licensed alligator farmers also obtain a Federal Alligator Farmer Permit; (2) allow the export of meat and other parts such as skulls and teeth; (3) improve the hide tagging system; and (4) delete a redundant requirement. The final rule is not different from the proposed rule.

EFFECTIVE DATE: This rule is effective on October 31, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Larry LaRochelle, Staff Biologist, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201 (703/235–1903).

SUPPLEMENTARY INFORMATION:

I. Background

On October 23, 1984 (49 FR 42594), the Service published a Proposed Rule to change its special rule in 50 CFR 17.42(a), regulating commercial activities with the hides, meat and other parts of lawfully taken American alligators (Alligator mississippiensis), to: (1) Delete the requirement that State-licensed alligator farmers also obtain a Federal Alligator Farmer permit; (2) allow the export of meat and other part such as skulls and teeth; (3) improve the hide tagging system; and (4) delete a redundant requirement. The October 23, 1984, notice discussed the need, purpose and details of the Services, proposal and invited comments from interested parties until November 23, 1984.

The Service received comments from one alligator farmers association and one State wildlife agency. Both supported all parts of the Service's proposal. Significant comments pertinent to the Service's Proposed Rule are summarized and discussed below together with the Service's responses.

II. Comments

1. *Delete the requirement that State-licensed alligator farmers also obtain a Federal Alligator Farmers Permit.* Both commenters agreed with this proposal noting that the Federal permit is a duplication of State permits, recordkeeping and inspection. The Service agrees and so amends the rule.

2. *Allow the export of meat and other parts such as skulls and teeth.* Both commenters favored this action, while urging caution by the Service against requiring additional marking, packaging and shipping requirements for these items. The Service agrees with these comments and so amends the rule. It should be pointed out, however, that although the export of meat and parts will in fact be allowed by this final rule under authority of the U.S. Endangered Species Act and 50 CFR 17.42(a), the alligator is also listed on Appendix II of the Convention on International Trade in Endangered Species (CITES). As such, the import, or export or reexport of the specimen or readily-recognizable, parts, products or derivatives of species so listed must also meet the criteria set forth by CITES and 50 CFR Part 23.

3. *Improvements to the hide tagging system.* Tags used will be the same as those required for export of hides of other species under CITES. Both commenters endorsed this proposed action and the Service so amends the rule.

4. *Deletion of a redundant requirement.* Section 17.42(a)(2)(i)(D)(1)–(5) unnecessarily repeats 17.42(a)(2)(i)(C). No comments were received on this point. The Service so amends the rule.

Required Determinations

National Environment Policy Act (NEPA)

An Environmental Assessment (EA) has been prepared and is available to the public at the Federal Wildlife Permit Office at the address listed above. Based upon the information considered in the EA, a decision has been made that the preparation of an Environmental Impact Statement is not required for this action.

Note.—The Department of the Interior has determined that this is not a major rule and does not require preparation of a regulatory analysis under Executive Order 12291. Further, the Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This determination is based on the fact that the rule will involve only minimal costs, i.e., the continued cost of permits for small entities, while providing for less reporting requirements and simplifying permit administration.

This rule, as amended, meets the "necessary and advisable" test of section 4(d) of the Endangered Species Act of 1973 as amended. Further, this rule relieves restrictions previously imposed through section 4(d) of the Endangered Species Act of 1973 as amended. The Service, therefore, finds that "good cause" exists within the terms of 5 U.S.C. 553(d) (1) and (3) of the Administrative Procedures Act, for this rule to take effect immediately upon publication.

Information Collection

The information collection requirements associated with fish and wildlife permits covered by this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022.

Author: The author of this rule is Larry LaRochelle, Staff, Biologist, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, Washington, D.C. 20240 (703/235–1903).

List of Subjects

50 CFR Part 13

Administrative practice and procedures.

50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, the Service amends Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

1. The authority citation for Part 13 continues to read as follows:

Authority: 18 U.S.C. 42; sec. 4, Pub. L. 97–79, 95 Stat. 1074 (16 U.S.C. 3373); sec. 7, Pub. L. 97–78, 95 Stat. 1078 (16 U.S.C. 3376); sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(b)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712; sec. 2, 54 Stat. 251, as amended by sec. 9, Pub. L. 95–616, 92 Stat. 3114 (16 U.S.C. 668a); sec. 102, 76 Stat. 73 (19 U.S.C. 1202, "Schedule 1, Part 15D, Headnote 2(d), Tariff Schedules of the United States"; sec. 9(d), Pub. L. 93–205, 87 Stat. 893 (16 U.S.C. 1538(d); sec. 6(a)(1), Pub. L. 96–159, 93 Stat. 1228 (16 U.S.C. 1537a); E.O. 11911, 41 FR 15683, 3 CFR, 1976 Comp., p. 112; sec. 10, Pub. L. 93–205, 87 Stat. 896, as amended by secs. 2 and 3, Pub. L. 94–359, 90 Stat. 3760; sec. 7, Pub. L. 96–359, 90 Stat. 911 and 912; sec. 5, Pub. L. 95–632, 92 Stat. 3760; sec. 7, Pub. L. 96–159, 93 Stat. 1230 (16 U.S.C. 1539); sec. 11, Pub. L. 93–205, 87 Stat. 897, as amended by sec. 6(4), Pub. L. 95–632, 92 Stat. 3761 (16 U.S.C. 1504(b)(2)(f); sec. 13(d), 86 Stat. 905, amending 85 Stat. 480 (16 U.S.C. 742j–l); Title 1, sec. 112, Pub. L. 92–522, 86 Stat. 1042, as amended by Title II, sec. 201(e), Pub. L. 96–470, 94 Stat. 2241 (16 U.S.C. 1382); 65 Stat. 290 (31 U.S.C 483(a)).

§ 13.12 [Amended]

2. Amend § 13.12(b) by removing "American alligator—American alligator in capitivity . . . 17.42(a)" from the list of permits.

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

3. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 et seq.).

4. Revise § 17.42(a)(2)(i)(C) introductory text and (a)(2)(i)(C)(*3*) to read as follows:

§ 17.42 Special rules—reptiles.

(a) * * *
(2) * * *
(i) * * *

(C) Any person may take an American alligator in the wild wherever listed under § 17.11 as Threatened—Similarity of Appearance [T(S/A)], or one which was born in captivity or lawfully placed in captivity, in accordance with the laws and regulations of the State of taking, subject to the following conditions:

* * * * *

(*3*) The State of taking requires hides to be tagged by State officials, or under State supervision, with a Service-approved tag, a sample of which must be on file in the Federal Wildlife Permit Office (FWPO), that:

(*i*) Is made of permanent material;

(*ii*) Shows State of origin, year of take, species, and is serially unique; and,

(*iii*) Cannot be opened and reused once attached to the hide.

* * * * *

5. Remove § 17.42(a)(2)(i)(C)(*4*).

6. Renumber § 17.42(a)(2)(i)(C)(*5*) as § 17.42(a)(2)(i)(C)(*4*).

7. Revise § 17.42(a)(2)(i)(D) to read as follows:

§ 17.42 Special rules—reptiles.

(a) * * *
(2) * * *
(i) * * *

(D) When an American alligator is taken by State or Federal officials in accordance with paragraphs (a)(2)(i) (A) or (B) of this section, the hide, meat, and other parts may be sold or transferred by their respective agencies, subject to the conditions of paragraphs (a)(2)(i)(C)(*1*)–(*4*) of the section.

* * * * *

8. Revise § 17.42(a)(2)(iii) to read as follows:

§ 17.42 Special rules—reptiles.

(a) * * *
(2) * * *

(iii) *Import or Export.* No person may import or export any American alligator, except that hides, manufactured products, meat or other parts meeting the requirements of paragraph (a)(2)(i)(C) may be imported or exported in accordance with Part 23 of this chapter.

* * * * *

9. Revise § 17.42(a)(2)(iv)(B) to read as follows:

§ 17.42 Special rules—reptiles.

(a) * * *
(2) * * *
(iv) * * *

(B) Any meat or other part, except the hide, from a lawfully taken American alligator which is sold or otherwise transferred in accordance with paragraphs (a)(2)(i)(C)(*2*), (*3*) and (*4*) of this section and the laws and regulations of the State of taking and the State in which the sale or transfer occurs may be delivered, received, carried, transported, or shipped in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, and may be sold or offered for sale in interstate or foreign commerce and may be exported in accordance with Part 23 of this chapter.

* * * * *

10. Remove § 17.42(a)(3)(iv).

Dated: October 9, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–26022 Filed 10–30–85; 8:45 am
BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 50, No. 211
Thursday, October 31, 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.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 431

[Docket No. 0029A]

Soybean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Prescribe procedures for insuring soybeans on an "Actual Production History" (APH) basis and provide for cancellation for not furnishing records; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) eliminate row width provisions; (4) change the calculation in computing replanting payments; (5) shorten the length of time an insured has to give notice when claiming an indemnity; (6) clarify the method of computing indemnities when acreage, share or practice is underreported; (7) add definitions of "Loss ratio", and "ASCS"; (8) redefine "County" to clarify when land located outside the county is included in the county; and (9) increase the minimum amount necessary to replant before a replanting payment will be made. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than December 2, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined and certifies that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

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

Other than minor changes in language and format, the principal changes in the soybean policy are:

1. Section 2.c.—Add a clause to change the method of calculating the share of an indemnity on crops transferred before harvest. This will limit indemnities to the insured's insurable interest at the time of loss when the crop is transferred after planting but before harvest.

2. Section 2.f.—Remove the row width requirements at planting unless specified in the actuarial table. This change conforms to present farming practices.

3. Section 9.f.—Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment and clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date. This reduces the number of inspections by eliminating small replant payments and paperwork.

4. Section 8.a.(4)—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

5. Section 9.d.—When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the complexity of calculations.

6. Section 15.c.—Add a clause to cancel the contract if the prior year's production records are not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

7. Section 17.—Add definitions of "ASCS" and "Loss ratio". Amend the "County" definition to clarify when land located outside the county is deemed to be in the county.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 431

Crop insurance; Soybeans.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance

Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1986 and succeeding crop years, to read as follows:

PART 431—SOYBEAN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

431.1 Availability of soybean crop insurance.
431.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
431.3 OMB control numbers.
431.4 Creditors.
431.5 Good faith reliance on misrepresentation.
431.6 The contract.
431.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and suceeding crop years.

§ 431.1 Availability of soybean crop insurance.

Insurance shall be offered under the provisions of this subpart on soybeans in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 431.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for soybeans which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 431.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 431.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer of other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 431.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Soybean insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation of other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Request for relief under this section must be submitted to the Corporation in writing.

§ 431.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the soybean crop as provided in the policy. The contract shall consist of the application, the policy and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 431.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the soybean crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extented date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a soybean contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Soybean Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Soybean—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good soybean farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) the failure to follow good soybean irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be soybeans which are planted for harvest as beans, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be soybeans planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured soybeans at the time of planting. However, for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to soybeans, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;

(5) Of volunteer soybeans;

(6) Planted to a type or variety of soybean not established as adapted to the area or excluded by the actuarial table;

(7) Planted with a crop other than soybeans; or

(8) Of a second soybean crop following a soybean crop harvested in the same crop year.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good soybean irrigation practice.

f. Unless otherwise provided in the actuarial table, insurance will attach only on acreage initially planted in rows; but, if such insured acreage is destroyed and replanted by broadcasting or drilling, it will be regarded as insured acreage.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

h. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of soybeans in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any soybeans planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the soybean policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the soybeans are planted and ends at the earliest of:

a. Total destruction of the soybeans;

b. Combining, threshing, or removal from the field;

c. Final adjustment of a loss; or

d. The date immediately following planting as follows:

(1) Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia—December 20;

(2) All other states—December 10.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant soybeans damaged due to any insured cause (see subsection 9.f.);

(b) During the period before harvest, the soybeans on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the soybeans and given written consent. We will not consent to another use until it is too late replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of the unharvested soybeans (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the soybeans on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the soybeans on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you detroy any of the soybeans which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the soybeans on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of soybeans on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of soybeans to be counted [see section 9.e];

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from the insurable acreage, whether or not reported as insurable will count against the production guarantee.

e. Total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature soybean production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent.

(2) Mature soybean production which, due to insurable causes:

(a) Has a test weight of less than 49 pounds per bushel; or

(b) Is of distinctly low quality, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act will be adjusted by:

(c) Dividing the value per bushel of such soybeans by the price per bushel of U.S. No. 2 soybeans; and

(d) Multiplying the result by the number of bushels of such soybeans.

The applicable price for No 2 soybeans will be the local market price on the earlier of the day the loss is adjusted or the day such soybeans are sold.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good soybean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of soybeans becomes general in the county and reappraised by us;

(b) Harvested; or

(c) Further damaged by an insured cause and reappraised by us.

(5) The amount of production of any unharvested soybeans may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) If you elect to exclude hail and fire as insured cause of loss and the soybeans are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured soybeans replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit as determined on the final planting date.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceed 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the price election multiplied by 3 bushels multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1506(c). You must bring suit within 12 months of the date notice of denial is received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the soybeans are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. concealment of fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment if indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all soybeans produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Ninety days prior to the cancellation date for any crop year you must:

(1) Furnish to the Corporation, satisfactory production records for the previous crop year or the contract will be cancelled for the subsequent crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood, or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable).

You may furnish the records required by this section for any crop year prior to that crop year's cancellation date. Your election of this option will result in the inclusion of that crop year's production information in next year's yield guarantee.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign the claim; or

(2) Payment under another program administered by United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State, County and Cancellation and *Termination Dates*
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas, and all Texas counties south thereof—February 15
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas—March 31
All other Texas counties and all other states—April 15

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise.

If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consective years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is not longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 proceding the cancellation date for all other counties. Acceptance of any change will be conclusively persumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of soybean crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding soybean insurance in the county.

b. "ASCS" means the Agricultural Stablization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land indentified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the soybeans are normally grown and will be designated by the calendar year in which the soybeans are normally harvested.

e. "Harvest" means the completion of combining or threshing of soybeans on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Persons" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to soybeans.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the soybeans or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of soybeans in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the soybeans on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephoine or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C. on October 23, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-26058 Filed 10-30-85; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563b

[No. 85-938]

Voluntary Supervisory Conversions and Modified Conversions

Date: October 17, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board proposes to adopt several technical amendments to its regulations governing voluntary supervisory conversions and modified conversions of mutual insured institutions to stock form. The purposes of the proposed amendments are to clarify several of the

policies and interpretations of the Federal Home Loan Bank Board relating to the voluntary supervisory conversions process, to expedite the processing of voluntary supervisory conversion and modified conversion applications, and to facilitate the voluntary supervisory conversion and modified conversion procedures and encourage their use by insured institutions as capital-raising tools.

DATE: Comments must be received by November 25, 1985.

ADDRESS: Send comments to Director, Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Donna R. Gunther, Assistant Director, Corporate and Securities Division (202–377–6427), J. Larry Fleck, Deputy Director for Conversions and Associate General Counsel, Corporate and Securities Division (202–377–6413), or Julie L. Williams, Director and Associate General Counsel, Corporate and Securities Division (202–377–6459), Office of the General Counsel, at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has been granted broad authority to authorize the mutual-to-stock conversions of insured institutions under sections 5(i) (1) and (2) of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464(i)(1), (2), and section 402(j) of the National Housing Act ("NHA"), 12 U.S.C. 1725(j). Sections 5(i) (1) and (2) provide, respectively, that subject to the rules and regulations of the Board, any institution which is, or is eligible to become, a Federal Home Loan Bank member may convert itself into a federal savings and loan association or federal savings bank, and simultaneously or subsequently may convert directly from mutual to stock form; and any federal association may convert from the mutual to stock form of organization. Pursuant to section 402(j) of the NHA, mutual insured institutions may convert to federally or state-chartered stock form only in accordance with the rules and regulations of the Board.

Section 121 of the Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain Act"), which added paragraph (p) to section 5 of the HOLA, 12 U.S.C. 1464(p), enhances the Board's conversion authority under sections 5(i) (1) and (2) of the HOLA and section 402(j) of the HA by empowering the Board to preempt other provisions of federal and state law, and to authorize, and in the case of a federally chartered insured institution to require, the conversion of a mutual FSLIC-insured institution to federal stock form, or to charter a federal stock savings and loan association or federal stock savings bank to acquire the assets of, or merge with, such a mutual institution under the rules and regulations of the Board. The Board's conversion authority with respect to an FSLIC-insured institution under section 5(p) of the HOLA arises only if (1) the institution is in receivership, (2) the Corporation has contracted to provide assistance to the institution under section 406 of the NHA, or (3) the Board has determined that severe financial conditions exist which threaten the stability of the institution and that such authorization is likely to improve the financial condition of the institution. Congress has extended the authority of the Board under section 5(p) of the HOLA until April 15, 1985. Pub. L. 99–120 (Oct. 8, 1985).

In order to implement its comprehensive conversion authority under sections 5(i) (1) and (2) and 5(p) of the HOLA and section 402(j) of the NHA, the Board, by Resolution No. 83–149, dated March 17, 1983, promulgated Subparts C and D of the Conversion Regulations, 12 CFR 563b.20 through 563b.33 and 563b.34 through 563b.38, respectively (1985); *Conversions from Mutual to Stock Form*, 48 FR 15591 (Apr. 12, 1983). Subpart C of the Conversion Regulations specifies the qualifications for and the rules and procedures applicable to voluntary supervisory conversions of insured institutions from the mutual to the stock form of organization. Subpart D of the Conversion Regulations provides guidelines for modified conversions to stock form of mutual insured institutions.

In voluntary supervisory conversions, the substantive and procedural rights granted to members in converting mutual insured institutions by the Board's standard conversion rules under Subpart A, 12 CFR 563b.1 through 563b.10 (1985), are eliminated. The members of the insured institution converting to stock form on a voluntary supervisory basis have no right of approval or participation, and upon completion of the conversion have no legal or beneficial ownership interest in the converted insured institution. In order to qualify for Board authorization of a voluntary supervisory conversion, and insured institution must satisfy all of the following criteria, which are set forth in current § 563b.23 of Subpart C: (1) As to a federally chartered insured institution, the Board has the power to appoint a receiver for the purpose of liquidation, or, as to a state-chartered insured institution, the Board would have the power to appoint a receiver for the purpose of liquidation were the institution federally chartered; (2) upon liquidation, there would be no equity value realizable by the mutual accountholders; (3) the insured institution is in receivership, or the Corporation has contracted to provide assistance to the insured institution under Section 406 of the NHA, or the Board has determined that severe financial conditions exist which threaten the financial condition of the insured institution and that such authorization is likely to improve the financial condition of the insured institution; and (4) the insured institution would be a viable entity under § 563b.26 of Subpart C following the conversion.

In modified conversions, the substantive and procedural rights granted to members in mutual insured institutions converting under Subpart A may be restricted in order to meet the needs of insured institutions whose financial condition has so deteriorated that standard conversions are not feasible. By Resolution No. 85–321, dated April 30, 1985, the Board adopted amendments to its modified conversion guidelines in order to facilitate the procedure and enhance its use as a capitalization vehicle. *Modified Conversions*, 50 FR 20390 (May 16, 1985). Modified conversions may be effected without the approval of members, must involve sales of conversion stock at an aggregate price in excess of the *pro forma* market value of the institution as determined by an independent appraiser, and may involve the limitation of members' preemptive rights. Pursuant to section 563b.36(a), in order to qualify for Board authorization of a modified conversion, an insured institution must meet one of the three previously described conditions set forth in section 5(p)(2) of the HOLA. The Board has established the following criteria under § 563b.36(c) of Subpart D for determining the existence of the section 5(p)(2) requirement of severe financial conditions threatening the stability of the insured institution: (1) Failure of the institution to meet its regulatory net-worth requirement; (2) insufficiency of current and projected income from operations to restore and maintain the institution's regulatorily

required net worth; and (3) a demonstration that a standard conversion would not be feasible.

II. Proposed Revisions to Subpart C

A. Introduction

Approximately 30 voluntary supervisory conversions have been completed since the adoption of Subpart C, and a similar number of voluntary supervisory conversion applications are now pending in various stages of the application process. In its review of both the completed and pending voluntary supervisory conversions, the Board and its staff repeatedly have been confronted with questions not clearly answered in Subpart C, such as the acceptable treatment for appraised equity capital, net-worth certificates, deferred losses, and supervisory forbearances in determining whether an insured institution qualifies for voluntary supervisory conversion; the permissibility of employment contracts incident to a voluntary supervisory conversion, the amount of expenses an insured institution may incur in connection with a voluntary supervisory conversion, the components of a voluntary supervisory conversion application, the nature of the consideration to be given by the Board to the character and financial condition of the prospective conversion stock purchasers and other features of the transaction, and the eligibility of FDIC-insured savings banks for voluntary supervisory conversion under section 112 of the Garn-St Germain Act. 12 U.S.C. 1464(o) (1982). The Board is proposing to amend Subpart C to clarify its interpretations and policies regarding these matters, in order to facilitate compliance with the voluntary supervisory conversion procedure, expedite applications processing, and encourage the use of the voluntary supervisory conversion procedure as a method of raising capital.

In addition, the Board is proposing to amend Subpart C to remove the requirement that the offer and sale of capital stock in a voluntary supervisory conversion must constitute a non-public offering. The Board believes that by allowing insured institutions the option to publicly offer conversion stock, the use of the voluntary supervisory conversion procedure as a means of capitalizing and rehabilitating insolvent and financially troubled insured institutions will be encouraged. It is the view of the Board that the potential risk to the institution of a failure to compete the conversion through the sale of conversion stock to the public is outweighed by the need to provide mutual insured institutions with the maximum appropriate flexibility to structure a plan of voluntary supervisory conversion in the manner that will be the most effective as a capital-raising device. Finally, the Board is taking this opportunity to propose adoptin of certain other technical amendments to Subpart C.

B. Scope of Subpart C

The Board has always regarded the Conversion Regulations as applicable to all institutions that satisfy the definition of an "insured institution" under its rules, which includes federal savings banks insured by the Federal Deposit Insurance Corporation ("FDIC") and chartered by the Board under section 112 of the Garn-St Germain Act. 12 CFR 563b.2(a)(18) and 561.1 (1985), 12 U.S.C. 1464(o) (1982). Consistent with a similar recent amendment to the modified conversion rules under Subpart D, *see* 12 CFR 563b.34(a), 563b.36(b) (1985), the Board is proposing to revise § 563b.20 of Subpart C to clarify its applicability to mutual-to-stock conversions under section 5(o)(2)(F) of the HOLA, as well as to sections 5(i) (1) and (2) and 5(p) of the HOLA and section 402(j) of the NHA, and to revise current § 563b.23, and which would be redesignated as § 563b.22, to specify the eligibility of FDIC-insured mutual savings banks for conversion thereunder. The Board notes that while Subpart C does not expressly encompass such conversions, several voluntary supervisory conversions of FDIC-insured federally and state-chartered mutual savings banks to federal stock form have been undertaken pursuant to joint action by the FDIC and the Board under section 5(o)(2)(F) of the HOLA. Specifically, such conversions may occur under section 5(o)(2)(F) when the FDIC has certified that severe financial conditions exist that threaten the stability of an FDIC-insured savings bank and that conversion to federal stock form is likely to improve the financial condition of the savings bank, and the Board has concurred in the determination of the FDIC and authorized the conversion. A section 5(o)(2)(F) conversion must comply with other applicable requirements of Subpart C. The Board proposes to set forth the eligibility requirements for a section 5(o)(2)(F) voluntary supervisory conversion in new § 563b.22(b)(i).

In order to ensure that a voluntary supervisory conversion undertaken pursuant to Subpart C will be subject to the same equitable standards and safeguards as a standard conversion undertaken pursuant to Subpart A, the Board is proposing to add to section 563b.20 a requirement that all of the provisions of Subpart A shall apply to a voluntary supervisory conversion undertaken pursuant to Subpart C unless clearly inapplicable. The Board notes that as a result of the addition of this provision, it would be unnecessary to retain current §§ 563b.28(c) and 563b.31, the first of which restates the provisions of § 563.8b(d) of Subpart A regarding the status of a converting insured institution's charter, and the second of which subjects a converted insured institution to the dividend and repurchase restrictions set forth in § 563b.3(g)(2)(ii) and (3) of Subpart A. The Board, therefore, proposes to delete §§ 563b.28(c) and 563b.31.

C. Definition of Voluntary Supervisory Conversions

In order to eliminate uncertainty as to the types and structures of transactions that fall within the scope of Subpart C, the Board is proposing to amend § 563b.21 to clarify that in addition to the sale of the converting insured institution's conversion stock directly to a person or persons, a voluntary supervisory conversion may be accomplished through the merger of the institution into a stock institution that has been organized and newly chartered for the purpose of facilitating the coversion. Subpart C would continue to govern only voluntary supervisory conversions, and the Board would continue to exercise its power to authorize and order non-voluntary supervisory stock conversions on a case-by-case basis.

D. Qualification for Voluntary Supervisory Conversion

The Board proposes to clarify current §563b.23, which sets forth the four qualification criteria for voluntary supervisory conversion discussed in Part I. above, as follows. First, in recognition of the fact that the Board has the authority to approve voluntary supervisory conversions of both FSLIC-insured and FDIC-insured institutions but that it is not feasible—and in the case of section 5(o)(2)(F) conversions, not required—for the Board to apply the same voluntary supervisory conversion qualification criteria to FSLIC-insured and FDIC-insured institutions, the Board proposes to clarify in new paragraph (a) of § 563b.22 that the existing qualification criteria in § 563b.23 would apply only to FSLIC-insured institutions and to specify in new paragraph (b) of § 563b.22 qualification criteria applicable to FDIC-insured institutions.

New paragraph (b)(i) of § 563b.22 would establish the qualification

standards applicable to a section 5(o)(2)(F) conversion undertaken by an FDIC-insured institution. *See* Part II.B. above, and new paragraph (b)(ii) would establish the qualification criteria applicable to a voluntary supervisory coversion undertaken by an FDIC-insured mutual institution to federal stock form pursuant to section 5(i) of the HOLA. Accordingly, the Board proposes in new § 563b.22(b)(ii) that it may, in its discretion, authorize an FDIC-insured institution to undergo a voluntary supervisory coversion to federal stock form if the following conditions have been met: (1) Based upon the capital requirements imposed by the FDIC, the institution is insolvent on either a book-value balance-sheet basis or a market-value balance-sheet basis, *i.e.*, book-value balance-sheet basis insolvency is projected to occur in less than one year and such projected book-value insolvency is not reasonably reversible; (2) the FDIC has indicated that, upon liquidation, there would be no equity value realizable by the mutual account holders; and (3) a sufficient amount of permanent capital stock is issued in connection with the voluntary supervisory conversion to allow the institution to meet its capital requirement as imposed by the FDIC immediately upon completion of the conversion, or the FDIC has indicated that, based upon the institution's proposed post-conversion operating plan, the institution would be a viable entity following the conversion and would achieve a capital level acceptable to the FDIC within a period satisfactory to the FDIC. A voluntary supervisory conversion undertaken by an FDIC-insured institution under proposed § 563b.22(b)(ii) would be required to comply with other applicable requirements of Subpart C. The Board intends that the proposed § 563b.22(b)(ii) voluntary supervisory conversion procedure would be available to FDIC-insured institutions as an alternative to a 5(o)(2)(F) conversion.

Second, the Board proposes to amend the four voluntary supervisory conversion qualification criteria applicable to FSLIC-insured institutions by clarifying in the first criterion that if the converting institution is state-chartered and is converting to state stock form, the conversion must be authorized under state law, and by adding as a fifth criterion a requirement that the transaction must be in the best interests of, and not present the potential for injury to, the converting institution, its depositors, or the FSLIC. The Board proposes to add the fifth criterion as a result of its experience in several cases where the character and financial condition of the prospective conversion stock purchaser or other features of the supervisory conversion transaction presented significant concerns to the Board and its staff relating to the safety and soundness of the insured institution after conversion, as well as the welfare of depositors and risk of the FSLIC. The qualification criteria do not currently include a standard similar to the proposed fifth criterion, the effect of which, if adopted, would empower the Board to disapprove a voluntary supervisory conversion on the basis of the character or financial condition of the prospective conversion stock purchaser or other unfavorable features of the transaction. With respect to the character or financial condition of the prospective acquiror, the Board would continue to have the option to disapprove a change-in-control notice or holding company application filed as part of the conversion application under the respective standards of 12 CFR 563.18–2, 584.4 (1985).

E. Viability of Converted FSLIC-Insured Institution

The Board notes that questions have arisen with respect to the application of the qualification criterion that the converted FSLIC-insured institution shall be a viable entity following the voluntary supervisory conversion. Current § 563b.26 sets forth the two required components of a viable entity: the net worth of the insured institution after conversion would (1) meet regulatory requirements, and (2) be reasonably sufficient to absorb projected operating losses for a period of not less than three years after completion of the conversion. The Board proposes to amend the current definition of viable entity, which would be redesignated as § 563b.25, to codify its present practice of requiring that the amount of permanent equity capital issued in connection with the supervisory conversion be sufficient to satisfy both of the above-described components of viability. The Board does not intend to foreclose the use of securities which do not constitute permanent equity capital, however, such as subordinated debt or redeemable preferred stock, to satisfy the viability standard. Nevertheless, the Board wishes to emphasize that the use of such securities would be an exception that must be justified, and that the Board would disfavor any conversion plan where securities not constituting permanent equity capital made up more than one-third of the consideration necessary to meet the institution's regulatory net-worth requirement.

In addition, the Board proposes to revise the first component of the current definition of viable entity by clarifying that an FSLIC-insured institution must satisfy its regulatory net-worth requirement immediately upon completion of the conversion. Further, the Board proposes to clarify the category of items that should be disregarded in determining whether an FSLIC-insured institution will be a viable entity following the voluntary supervisory conversion to include any supervisory forbearances proposed to be granted in connection with the conversion, and to require that all losses on sales or other dispositions of mortgage loans, redeemable ground-rent leases or other securities (as defined in 12 CFR 563.17–4(a)(4)) that were previously deferred for regulatory accounting purposes pursuant to 12 CFR 563c.14 must be recognized for purposes of determining the viability of an FSLIC-insured institution. The effect of disregarding proposed supervisory forbearances and recognizing losses would be to decrease the institution's regulatory net worth, resulting in the necessity for a prospective conversion stock purchaser to infuse a greater amount of permanent equity capital to satisfy the viability standard than would be required under the current regulations. The Board is of the view that the resultant additional amount of permanent equity capital that would be infused into FSLIC-insured institutions would enhance the ability of such institutions to operate in a safe and sound manner following the voluntary supervisory conversion.

F. Voluntary Supervisory Conversion Application

The Board notes that a variety of documents and information necessary for its staff to review and formulate a recommendation for appropriate Board action on a voluntary supervisory conversion and related transactions are not now required to be filed as part of the application under current § 563b.27. The Board, therefore, is proposing to amend § 563b.27, which would be redesignated as § 563b.26, to require that the following information and documents, if applicable to the transaction, be filed by an insured institution as part of its voluntary supervisory conversion application: (1) Board of directors' resolution regarding appraised equity capital, deferred loan losses, or net-worth certificates, *see* Part II.H. and I. below; (2) a subordinated debt application; (3) applications for permission to organize a stock institution, Federal Home Loan Bank

membership, insurance of accounts, and merger; (4) an opinion of an independent public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Board Memorandum No. R–55; (5) information to support the value of any non-cash assets to be contributed to the insured institution in connection with the voluntary supervisory conversion (appraisals submitted in this connection would be required to meet the standards of Board Memorandum No. R–41lb); (6) a description of the estimated expenses of the voluntary supervisory conversion to the insured institution; (7) the most current audited or unaudited financial information dated after the date of the FSLIC-insured institution's latest quarterly report; (8) an opinion of independent counsel that the voluntary supervisory conversion of a state-chartered insured institution to state stock form is authorized under applicable state law; and (9) a specific description of any of the features of the insured institution's application that do not conform to the requirements of Subpart C and of any waivers or supervisory forbearances that are requested as part of the voluntary supervisory conversion.

The Board is additionally proposing to eliminate the alternative in current § 563b.27 for the proposed conversion stock purchaser to guarantee to maintain the insured institution's net worth at regulatorily required levels for a period of not less than three years from the date of completion of the conversion in lieu of providing an opinion of qualified, independent counsel or an independent certified public accountant regarding the tax consequences to the insured institution arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization. The Board believes that the viability of the institution over its first three years after conversion is adequately addressed by the three-year viability component of the supervisory conversion qualification criteria, and that it is important for a converting insured institution, as well as the Corporation, to receive professional advice regarding the tax consequences arising from a voluntary supervisory conversion. The Board would continue to have the option to impose, on a case-by-case basis, net-worth maintenance requirements as a condition of approval of voluntary supervisory conversions.

The Board is also taking this opportunity to propose an amendment to the procedures for filing voluntary supervisory conversion applications, by revising current § 563b.28, to be redesignated as § 563.27. Under current § 563b.28(a), an applicant is required to file an original and two copies of the voluntary supervisory conversion application with the Principal Supervisory Agent of the applicable Federal Home Loan Bank ("PSA") and one copy with the Board's Office of Examinations and Supervision. In order to expedite the application processing procedure, proposed § 563b.27(a) would require an applicant to file the original and three copies of an application for approval with the Corporate and Securities Division of the Board's Office of General Counsel.

G. Sale of Conversion Stock

As discussed in Part II.A. above, the Board is proposing to remove the requirement in current § 563b.30, which would be redesignated as § 563b.29, that the offering and sale of voluntary supervisory conversion stock must constitue a non-public offering under 12 CFR Part 563g, as proposed by the Board by Resolution No. 85–822, dated September 13, 1985; *Securities Offerings*, 50 FR 38839 (September 25, 1985). Pursuant to proposed § 563b.29, each insured institution that converts on a voluntary supervisory basis would continue to be required to offer and sell its conversion stock pursuant to the requirements of proposed 12 CFR Part 563g, or such final regulatory requirements on that subject as may be adopted by the Board. In addition, as previously mentioned, pursuant to proposed § 563b.20(c), the offer and sale of a converting insured institution's voluntary supervisory conversion stock would be subject to the provisions of Subpart A unless clearly inapplicable.

H. Treatment of Appraised Equity Capital and Deferred Losses

The Board and its staff have received many inquiries regarding the application of the qualification criterion set forth in current § 563b.23(a), which specifies that as to a federally chartered FSLIC-insured institution, the Board must have the power to appoint a receiver for the purpose of liquidation and that as to a state-chartered FSLIC-insured institution, the Board would have the power to appoint a receiver for the purpose of liquidation if the institution were federally chartered. Specifically, the inquiries have arisen with respect to whether the converting insured institution may reverse certain accounting techniques permitted under regulatory accounting principles in order that the institution may be determined to be insolvent on either a book-value balance-sheet basis or a market-value balance-sheet basis, thus satisfying the above-described qualification criterion.

The Board has allowed insured institutions, in determining whether they qualify for voluntary supervisory conversion, to revoke a prior election to include in their regulatory net-worth calculations, for purposes to satisfying the regulatory net-worth requirement, appraised equity capital pursuant to 12 CFR 563.13(c) (1985), provided that the exclusion of appraised equity capital is total and appraised equity capital is not included in an institution's regulatory net-worth calculations after the conversion. The Board's rationale for allowing the revocation of a prior election to book appraised equity capital is that the accounting technique, which is not required under § 563.13(c) to be adopted by an insured institution, does not of itself improve the institution's proposed operating results.

Similarly, the Board has allowed insured institutions to elect to recognize losses on mortgage loans, redeemable ground-rent leases, or other secuities (as defined in 12 CFR 563.17–4(a)(4) (1985)) that previously had been deferred for regulatory accounting purposes pursuant to 12 CFR 563c.14 (1985), provided that the recognition of such losses is total and that losses are not deferred by these institutions after the voluntary supervisory conversion. Such treatment has been permitted notwithstanding a prior election under 12 CFR 563.13(e). The Board has taken this position based upon § 563c.14(a), which permits insured institutions to recognize losses that have previously been deferred for regulatory accounting purposes and thus lower regulatory net worth.

The Board notes that its position regarding the permissible treatment of appraised equity capital and deferred losses in a voluntary supervisory conversion context is consistent with its recent amendments and clarifications to the modified conversion regulations. *See* 12 CFR 563b.36(c) (1985). The exclusion of appraised equity capital and the recognition of previously deferred losses in a modified-conversion context reflects the Board's view that the statutory conditions for modified conversion may be satisfied by an institution that is meeting its regulatory net-worth requirement solely by virtue of such accounting treatment. *See Modified Conversions*, Resolution No. 84–655, 49 FR 47271 (Dec. 3, 1984). Similarly, the Board is of the view that the statutory conditions for voluntary

supervisory conversion may be satisfied by an institution that has avoided insolvency by virtue of deferred losses or appraised equity capital. Accordingly, the Board proposes to amend current § 563b.32, which would be redesignated as § 563b.30, to confirm its above-described position regarding the permissible treatment of appraised equity capital and deferred losses in a voluntary supervisory conversion context.

In addition, the Board is proposing to allow an insured institution to make the exclusion of appraised equity captial and the recognition of losses contingent upon Board approval of the voluntary supervisory conversion. The Board is proposing this action in order to avoid a situation where an institution would lower its regulatory net worth by changing its accounting treatment relating to these items, and subsequently might fail to receive Board approval of the voluntary supervisory conversion. Further, the Board is proposing that an insured institution that excludes appraised equity capital or recognizes losses to qualify for a voluntary supervisory conversion must submit as part of its application a resolution of its board of directors containing certain applicable information, such as the amount of appraised equity capital or losses that have been included or deferred, respectively, by the institution and the date of such inclusion or deferral; an undertaking that the exclusion of appraised equity capital or the recognition of losses will be total and will not be included or deferred, respectively, after the voluntary supervisory conversion; and a statement that the exclusion or recognition is contingent upon Board approval of the conversion.

The proposed amendments would not affect the treatment of appraised equity capital under current § 563b.32 when a converting insured institution has not previously elected to include it in its regulatory net-worth calculations, and the Board proposes that similar treatment be afforded an institution that has not previously elected to defer losses.

I. Treatment of Net-Worth Certificates

As with the treatment of appraised equity capital and deferred losses, questions have arisen as to whether an insured institution may qualify for voluntary supervisory conversion by excluding from its regulatory net worth net-worth certificates that have been issued or which the Corporation is committed to purchase pursuant to 12 CFR Part 572 (1985). The Board has allowed insured institutions to cancel or prepay net-worth certificates to qualify for voluntary supervisory conversion because it believes that the statutory conditions for voluntary supervisory conversion may be satisfied by an institution that is meeting its regulatory net-worth requirement and is avoiding insolvency solely or partially by virtue of net-worth certificates. Therefore, the Board proposes to amend current § 563b.33, which would be redesignated as § 563b.31, the codify this interpretation. In addition, for reasons similar to those articulated in Part II.H. above, the Board proposes to allow the cancellation or prepayment of net-worth certificates contingent upon Board approval of the voluntary supervisory conversion.

Finally, the Board is proposing to require an insured institution that cancels or prepays net-worth certificates to qualify for voluntary supervisory conversion, to submit as part of its application a resolution containing certain applicable information, such as the amount of net-worth certificates that have been issued or which the Corporation has committed to purchase and the date of such issuance or commitment, the amount of net-worth certificates that the institution will cancel or prepay to qualify, and a statement that the cancellation or prepayment is contingent upon Board approval of the conversion.

J. Expenses

The Board proposed to add new § 563b.32 to provide that expenses incurred by an insured institution in connection with a voluntary supervisory conversion shall be reasonable and, with respect to an FSLIC-insured institution, shall not be in an amount such that the payment of such expenses would render the proceeds to the institution from the sale of its conversion stock insufficient to satisfy the viability qualification criterion.

K. Employment Contracts

The Board proposes to add a new § 563b.33 in which to clarify its concerns regarding employment contracts incident to a voluntary supervisory conversion, particularly those to existing management of the applicant with a term in excess of one year. In addition, the Board proposes to confirm that an applicant for voluntary supervisory conversion must justify any employment contract incidental to the conversion, and otherwise demonstrate to the Board's satisfaction that the making of such an employment contract by an insured institution would not be an unsafe or unsound practice or represent a sale of control. Finally, new § 563b.33 would confirm that the Board, in its sole discretion, shall determine the permissibility of an employment contract based upon, at a minimum, the applicant's justification for the contract, the term, salary, and severance provisions of the contract, the identity and background of the officer or employee subject to the employment contract, and the amount of conversion stock to be purchased by such officer or employee or his affiliates or associates.

III. Proposed Revisions to Subpart D

The Board is also using this opportunity to propose several technical amendments and certain modifications to Subpart D in order to expedite the processing of modified-conversion applications, and thereby facilitate the modified-conversion procedure and encourage its use by insured institutions as a capitalization vehicle. First, the Board proposes to delete the requirement in current § 563b.38 that a modified conversion applicant must obtain prior written permission from the Corporation to file a modified-conversion application. The Board notes that such a requirement is not imposed on an applicant for supervisory conversion under Subpart C or standard conversion under Subpart A, and is of the view that the pre-filing approval requirement in the modified-conversion context has delayed the processing of modified-conversion applications. In connection with this proposed modification, the Board would delete the last sentence of § 563b.35, which refers to the pre-filing approval requirement of § 563b.38. In addition, the Board proposes to clarify in new paragraph (b) of § 563b.38 that an insured institution seeking to undergo a modified conversion shall file an application for approval in accordance with the requirements of § 563b.8 of Subpart A.

Finally, the Board is proposing to amend § 563b.34(a) to clarify the applicability of Subpart D to mutual-to-stock conversions under sections 5[i] (1) and (2) of the HOLA and 402(j) of the NHA, as well as to sections 5(o)(2)(F) and 5(p) of the HOLA, and to revise § 563b.36b) to clarify that both state-chartered and federally chartered FDIC-insured mutual savings banks may undergo modified conversions to federal stock form pursuant to section 5(o)(2)(F) of the HOLA.

The Board has determined that a 30-day public comment period is appropriate because prompt action is in the public interest in order to facilitate and enchance the availability of voluntary supervisory and modified

conversions and make the foregoing clarifications and expedited procedures available as soon as possible.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (Sept. 19, 1980), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rules would apply to all insured institutions.

3. *Impact of the proposed rules on small institutions.* To the extent that the rules would affect small institutions, this has been discussed elsewhere in the proposal.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the proposed rules.

5. *Alternatives to the proposed rule.* Other alternatives, such as the present rules, may tend to limit the utility of the voluntary supervisory conversion and modified-conversion procedures. More liberal provisions may raise questions of statutory authority.

List of Subjects in 12 CFR Part 563b

Saving and loan associations, Securities.

Accordingly, the Board hereby proposes to amend Part 563b of Subchapter D, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN CORPORATION

1. The statutory authority for Part 563b, Subparts C and D would read as follows:

Authority: Sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended (12 U.S.C. 1464); Secs. 402, 403, 407 of the National Housing Act, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726 and 1730); and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1071 (1943-48 Comp.)

PART 563b—CONVERSION FROM MUTUAL TO STOCK FORM

2. Revise the title to Subpart C to read as follows:

Subpart C—Voluntary Supervisory Conversions

3. Revise § 563b.20, as follows:

§ 563b.20 Scope of subpart.

(a) Except as the Board may otherwise determine, the provisions of this subpart shall govern the voluntary supervisory conversion from the mutual to stock form of FSLIC-insured institutions and FDIC-insured institutions converting to federal stock form as authorized or ordered by the Board pursuant to section 5(i) (1) and (2) and 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(i) (1), (2), (p), and, with respect to the former, section 402(j) of the National Housing Act, 12 U.S.C. 1725(j), and the voluntary supervisory conversion to federal stock form of FDIC-insured savings banks as certified by the FDIC and as concurred in by the Board pursuant to section 5(o)(2)(F) of the Home Owners' Loan Act, 12 U.S.C. 1464(o)(2)(F).

(b) The determination to authorize or order a voluntary supervisory conversion of an FSLIC-insured institution, to authorize a voluntary supervisory conversion of an FDIC-insured savings bank, or to concur in the certification of the FDIC regarding an FDIC-insured savings banks, shall be in the sole discretion of the Board.

(c) All of the provisions of Subpart A of this part shall apply to a supervisory conversion undertaken pursuant to this supart unless clearly inapplicable.

4. Revise § 563b.21, as follows:

§ 563b.21 Voluntary supervisory conversions.

A voluntary supervisory conversion of an FSLIC-insured institution or an FDIC-insured savings bank may be accomplished through the sale of the institution's or savings bank's securities issued in the conversion directly to a person or persons or through the merger of the institution or savings bank into a stock savings and loan association or stock savings bank newly chartered for the purpose of facilitating the conversion. At least a majority of the board of directors of the institution or savings bank shall adopt a plan of voluntary supervisory conversion that is in accordance with the provisions of this subpart. The members of the mutual institution or savings bank shall have no rights of approval or participation in the voluntary supervisory conversion, or to the continuance of any legal or beneficial ownership interest in the converted institution or savings bank.

5. Revise § 563b.22, as follows:

§ 563b.22 Qualification standards.

(a) *FSLIC-insured institutions.* The Board may, in its discretion, authorize a state-chartered FSLIC-insured institution, and authorize or require a Federally chartered FSLIC-insured institution, to undergo a voluntary supervisory conversion if the Board determines that the following conditions have been met: (1) As to a federally chartered FSLIC-insured institution, the Board has the power to appoint a receiver for the purpose of liquidation, or, as to a state-chartered FSLIC-insured institution, the conversion is authorized under state law and the Board would have the power to appoint a receiver for the purpose of liquidation were the institution Federally chartered; (2) upon liquidation there would be no equity value realizable by the mutual accountholders; (3) the Corporation has contracted to provide assistance to an FSLIC-insured institution under section 406 of the National Housing Act, 12 U.S.C. 1729, or the Board has determined that severe financial conditions exist that threaten the financial condition of an FSLIC-insured institution and that such authorization is likely to improve the financial condition of such institution; (4) an FSLIC-insured institution would be a viable entity under § 563b.24 of this subpart following the voluntary supervisory conversion; and (5) the transaction would be in the best interests of, and would not be present the potential for injury to, an FSLIC-insured institution, its depositors, or the Corporation.

(b) *FDIC-insured institutions.* (1) The Board may, in its discretion, concur with the determination of the Federal Deposit Insurance Corporation ("FDIC") that an FDIC-insured mutual savings bank qualifies for a voluntary supervisory conversion if the FDIC certifies to the Board in accordance with section 5(o)(2)(F) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(o)(2)(F), that severe financial conditions exist that threaten the stability of the savings bank and that the voluntary supervisory conversion is likely to improve the financial condition of the savings bank; or

(2) The Board may, in its discretion, authorize an FDIC-insured institution to undergo a voluntary supervisory conversion to Federal stock form if the following conditions have been met: (i) Based upon the capital requirements imposed by the FDIC, the institution is insolvent on either a book-value balance-sheet basis or a market-value balance-sheet basis, as defined in § 563b.23(b)(2) of this Subpart; (ii) the FDIC has indicated that upon liquidation, there would be no equity value realizable by the mutual accountholders; and (iii) (*a*) a sufficient amount of permanent capital stock is issued in connection with the voluntary supervisory conversion to allow the institution to meet its capital requirement as established by the FDIC

immediately upon completion of the conversion; or (*b*) the FDIC has indicated that, based upon the institution's proposed post-conversion operating plan, the institution would be a viable entity following the conversion and would achieve a capital level acceptable to the FDIC within a period satisfactory to the FDIC.

§ 563b.23 [Removed]

6. Remove § 563b.23.

§ 563b.24 [Redesignated as § 563b.23 and Amended]

7. Redesignate § 563b.24 as new § 563b.23 and amend newly designated § 563b.23 by changing all references to "insured institution" to read "FSLIC-insured institution"; by amending paragraph (a) to add "12 U.S.C. 1464(d)(6)(A)" after "section 5(d)(6)(A) of the Home Owners' Act of 1933" and to change the reference to "§ 563b.23(a)" to read "§ 563b.22(a)"; by amending paragraph (b)(1) to change the reference to "semi-annual report" to read "monthly report or quarterly report" and to change the reference "to the PSA" to read "pursuant to § 563b.26(p) of this subpart"; and by amending the last sentence of paragraph (b)(2) to change the word "must" to the word "shall" and to change the reference to "Quantitative Analysis Division of the Corporation" to read "Federal Home Loan Bank".

§ 563b.25 [Redesignated as § 563b.24 and Amended]

8. Redesignate § 563b.25 as new § 563b.24 and amend newly designated § 563b.24 by removing the phrase "insured institution" in the first sentence and substituting therefor "FSLIC-insured institution", and by removing "Quantitative Analysis Division" in the last sentence thereof and substituting therefor "Federal Home Loan Bank."

9. Redesignate § 563b.26 as new § 563b.25 and amend the text by revising paragraph (a) as set forth below; and by amending paragraph (b) thereof by removing the phrase "§ 563b.27(d) of this part" and substituting therefor "§ 563b.26(d) of this subpart".

§ 563b.25 Viability of converted FSLIC-insured institution.

(a) For the purposes of this subpart only, an FSLIC-insured institution may be deemed a viable entity if a sufficient amount of permanent capital stock is issued in connection with the voluntary supervisory conversion so that (1) the institution would meet its regulatory net-worth requirement immediately upon completion of the conversion, and (2) the net worth of the institution would absorb projected operating losses for a period of not less than three years after completion of the conversion. The effect of appraised equity capital, net-worth certificates, or any supervisory forbearances proposed to be granted in connection with the voluntary supervisory conversion on the institution's regulatory net worth shall not be considered for purposes of determining whether an institution will be a viable entity. All losses on sales or other dispositions of mortgage loans, redeemable ground-rent leases or other securities (as defined in § 563.17–4(a)(4) of this subchapter) previously deferred pursuant to § 563c.14 of this subchapter shall be recognized for purposes of determining whether an institution will be a viable entity. The determination regarding viability shall be based upon the conclusion of the PSA with the concurrence of the Director.

* * * * *

10. Redesignate § 563b.27 as new § 563b.26 and amend newly designated § 563b.26 by revising the title; by inserting the word "voluntary" before the phrase "supervisory conversion" wherever it appears; by changing the reference in the introductory statement to "§ 563b.28" to read "§ 563b.27"; by amending the second sentence of paragraph (a) to remove the word "and" before the reference to the word "addresses", to add the phrase "dates and places of birth, and social security numbers" after the reference to the word "addresses", to add the phrase "affiliates and" before the word "associates", and to remove the parenthetical phrase "(as defined in § 563b.2(a)(4) of this Part" and substituting therefor "(as defined in § 563b.2(a)(1), (4) of this part"); by amending paragraph (b) to change the reference to "all" to read "any"; by amending paragraph (c) to remove the phrase "unless the proposed conversion stock purchaser(s) guarantee to maintain the insured institution's net worth in the amount required by § 563.13 of this subchapter for a period of not less than three years from the date of completion of the conversion"; by amending paragraph (e) to add the phrase "for each proposed conversion stock purchaser" before the phrase "as required by § 563.18–2 of this Chapter", to add the words "whichever is" and remove the reference to "if" before the word "applicable", and to add immediately thereafter the phrase "and the certifications required by Memorandum SP–51 issued by the Board's Office of Examinations and Supervision"; by revising paragraph (i) as set forth below; by amending paragraph (j) to change the Federal Register citation "(48 FR 10684, March 14, 1983)" to "(50 FR 38839, September 25, 1985)"; and by adding new paragraphs (k) through (q), as follows:

§ 563b.26 Application for voluntary supervisory conversion.

* * * * *

(i) The applicable resolution of the board of directors of the insured institution regarding appraised equity capital, deferred loan losses, or net-worth certificates as required by §§ 563b.30 and 563b.31 of this Subpart.

* * * * *

(k) A subordinated debt application, if applicable.

(l) Applications for permission to organize a stock institution, Federal Home Loan Bank membership, insurance of accounts, and merger, if applicable.

(m) An opinion of an independent certified public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Memorandum No. R–55 of the Board's Office of Examinations and Supervision.

(n) Information to support the value of any non-cash assets to be contributed to the insured institution in connection with the voluntary supervisory conversion. Appraisals submitted in this connection must meet the standards of Memorandum No. R–41b of the Board's Office of Examinations and Supervision.

(o) A description of the estimated expenses of the voluntary supervisory conversion to the insured institution.

(p) The most current audited or unaudited financial information dated after the date of the FSLIC-insured institution's latest quarterly report.

(q) An opinion of independent counsel that the voluntary supervisory conversion of a state-chartered insured institution to state stock form is authorized under applicable state law.

(r) A specific description of any of the features of the insured institution's application that do not conform to the requirements of this Subpart and of any waivers or supervisory forbearances that are requested as part of the voluntary supervisory conversion.

11. Redesignate § 563b.28 as new § 563b.27 and amend newly designated § 563b.27 by inserting the word "voluntary" before the phrase "supervisory conversion" wherever it appears; by amending paragraph (a), as set forth below; by amending paragraph (b) to add the word "applicable" before the word "information" and to change

§ 563b.27" to "§ 563b.26 of this subpart"; and by removing paragraph (c).

§ 563b.27 Procedural requirements.

(a) *Filing of voluntary supervisory conversion application.* An insured institution seeking to convert pursuant to this subpart shall file an original and three copies of its supervisory conversion application containing the information and documents specified in § 563b.26 of this subpart with the Corporate and Securities Division of the Board's Office of General Counsel. The application shall be deemed to be filed on the date received by the Corporate and Securities Division.

* * * * * *

§ 563b.29 [Redesignated as § 563b.28]

12. Redesignate § 563b.29 as new § 563b.28.

§ 563b.30 [Redesignated as § 536b.29 and Amended]

13. Redesignate § 563b.30 as new § 563b.29 and amend newly designated § 563b.29 by removing "and sale of the conversion stock must constitute a non-public offering under those provisions".

§ 563b.31 [Removed]

14. Remove § 563b.31.

15. Redesignate § 563b.32 as new § 563b.30 and revise newly designated § 563b.30 to read as follows:

§ 563b.30 Treatment of appraised equity capital and deferred losses.

(a) In determining whether an FSLIC-insured institution is insolvent for purposes of satisfying the requirement of § 563b.22(a)(1), the institution may (1) revoke a prior election to include in its regulatory net-worth calculations for purposes of satisfying its regulatory net-worth requirement appraised equity capital pursuant to § 563.13(c) of this subchapter, provided that the exclusion of appraised equity capital is total and appraised equity capital is not included in the institution's reserve calculations after the voluntary supervisory conversion; and (2) elect to recognize all of its losses on the sales or other disposition of mortgage loans, redeemable ground-rent leases or other securities specified in § 563c.14 of this subchapter notwithstanding the exemption under § 563.13(e) of this Subchapter, provided that the recognition of such losses is total and that losses are not deferred and amortized by the institution after the voluntary supervisory conversion.

(b) An FSLIC-insured institution may make the revocation of a prior election to include appraised equity capital in its regulatory net-worth calculations or to defer and amortize losses pursuant to § 563b.30(a) contingent upon Board approval of its voluntary supervisory conversion.

(c) An FSLIC-insured institution that revokes a prior election to include appraised equity capital in its regulatory net-worth calculations or to defer and amortize losses pursuant to § 563b.30(a) shall submit as part of its voluntary supervisory conversion application a resolution of its board of directors evidencing approval of such action by at least a majority of the board of directors and containing the following applicable information:

(1) The amount of appraised equity capital that the institution has included in its regulatory net-worth calculations for purposes of satisfying its net-worth requirement, and the date of such inclusion;

(2) The amount of the losses that the institution has deferred and the date(s) of such deferral;

(3) An undertaking that the exclusion of appraised equity capital from the institution's regulatory net-worth calculations will be total and that appraised equity capital will not be included in the institution's regulatory net-worth calculations after the voluntary supervisory conversion;

(4) An undertaking that all of the institution's deferred losses will be recognized and will not be deferred and amortized after the voluntary supervisory conversion; and

(5) A statement that the exclusion of appraised equity capital or the recognition of losses is contingent upon Board approval of the institution's voluntary supervisory conversion.

(d) An FSLIC-insured institution that has not elected to include appraised equity capital as part of its regulatory net-worth calculations for purposes of satisfying regulatory net-worth requirements or to defer and amortize losses shall submit as part of its voluntary supervisory conversion application a resolution of its board of directors containing the following information:

(1) An estimate of the amount of appraised equity capital that may be included under § 563.13(c) of this chapter or the amount of loans that may be deferred and amortized by the institution under § 563c.14 of this chapter and the grounds upon which the estimate is based; and

(2) An undertaking not to elect to include the available amount of appraised equity capital in the institution's regulatory net-worth calculations or to defer and amortize the available amount of losses after the voluntary supervisory conversion if such inclusion or deferral prior to the conversion would have disqualified the institution for voluntary supervisory conversion.

16. Redesignate § 563b.33 as new § 563b.31 and revise newly designated § 563b.31 to read as follows:

§ 563b.31 Treatment of Net-Worth Certificates.

(a) In determining whether an FSLIC-insured institution is insolvent for purposes of satisfying the requirement of § 563b.22(a)(1), the institution may exclude from its regulatory net worth any Net-Worth Certificates ("NWCs") that have been issued or which the Corporation is committed to purchase pursuant to Part 572 of this subchapter by cancelling or prepaying such NWCs.

(b) An FSLIC-insured institution may make the cancellation or prepayment of NWCs pursuant to § 563b.31(a) contingent upon Board approval of its voluntary supervisory conversion.

(c) An FSLIC-insured institution that excludes NWCs from its regulatory net worth pursuant to § 563b.31(a) shall submit, as part of its voluntary supervisory conversion application, a resolution of its board of directors evidencing approval of such action by at least a majority of the board of directors and containing the following applicable information:

(1) The amount of NWCs that have been issued to the institution and that the Corporation is committed to purchase and the date of such issuance or commitment to purchase;

(2) The amount of NWCs that the institution will cancel or prepay or has cancelled or prepaid to qualify for voluntary supervisory conversion; and

(3) A statement that the cancellation or prepayment of NWCs is contingent upon Board approval of the institution's voluntary supervisory conversion.

17. Add a new § 563b.32, as follows:

§ 563b.32 Expenses.

Expenses incurred by an insured institution in connection with its voluntary supervisory conversion application shall be reasonable and, with respect to an FSLIC-insured institution, shall not be in an amount such that the payment of such expenses would render the proceeds to the institution from the sale of its conversion stock insufficient to satisfy the viability requirement of §563b.22(a)(4).

18. Add a new § 563b.33, as follows:

§ 563b.33 Employment contracts.

An applicant for voluntary supervisory conversion must justify any employment contract incidental to the conversion, and otherwise demonstrate, to the Board's satisfaction, that the making of such an employment contract by an insured institution would not be an unsafe or unsound practice or represent a sale of control. The Board, in its sole discretion, shall determine the permissibility of such contract based upon, at a minimum, the applicant's justification for the contract, the term, salary, and severance provisions of the contract, the identity and background of the officer or employee who is subject to the employment contract, and the amount of the conversion stock to be purchased by such officer or employee or his affiliates or associates. The Board generally will disfavor employment contracts incident to a voluntary supervisory conversion with a term in excess of one year granted to existing management of an insured institution.

Subpart D—Guidelines for Modified Conversions

§ 563b.34 [Amended]

19. Amend § 563b.34(a) by changing "section 5(p)" to "sections 5(i) (1) and (2) and 5(p)"; and by changing "12 U.S.C. 1464" to "12 U.S.C. 1464(i) (1) and (2), (p)", and inserting immediately thereafter the phrase "and section 402(j) of the National Housing Act, 12 U.S.C. 1725(j)".

§ 563b.35 [Amended]

20. Amend § 563b.35 by removing the last sentence thereof.

§ 563b.36 [Amended]

21. Amend § 563b.36 by removing the phrase "state-chartered" in paragraph (b) and by amending paragraph (c)(1)(i) by changing "§ 563b.32" to "§ 563b.30" and in paragraph (c)(1)(ii) by removing the phrase "notwithstanding a prior election under § 563b.32(a)".

§ 563b.38 [Removed]

22. Remove § 563b.38.

23. Redesignate § 563b.39 as new § 563b.38, and add a new paragraph (b), as follows:

§ 563b.38 Application for modified conversion.

* * * * *

(b) An insured institution seeking to convert pursuant to this subpart shall file an application for approval in accordance with the requirements of § 563b.8 of this part.

§ 563b.40 [Redesignated as § 563b.39]

24. Redesignate § 563b.40 as new § 563b.39.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-25643 Filed 10-30-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket No. 84-AWA-30]

Proposed Establishment of Restricted Areas; Lompoc and Santa Maria, CA

Correction

In FR Doc. 85-22833, beginning on page 38857 in the issue of Wednesday, September 25, 1985, make the following corrections:

1. On page 38858:

a. In the second column, in the fifth line preceding the heading **The Proposals**, "environmental" should read "environment".

b. In the third column, twentieth line, "curtailed of" should read "curtailed at".

c. In the third column, first complete paragraph, seventh line, "training to" should read "training at".

2. On page 38859:

a. In the first column, twelfth line, insert "Space" between "first" and "Shuttle".

b. In the third column, under the heading **R-2539D**, the third line should read:

120°25'00" W.; to lat. 34°36'20" N., long.

BILLING CODE 1505-01-M

Federal Highway Administration

23 CFR Part 12

[FHWA Docket No. 85-23]

Federal-Aid Highway Program; State Internal Audit Responsibilities

Correction

In FR Doc. 85-25405, beginning on page 43233 in the issue of Thursday, October 24, 1985, make the following correction:

On page 43233, second column, in the DATE paragraph, "November 25, 1986" should read "November 25, 1985".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 601

[LR-73-80]

Residential Energy Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 23 of the Internal Revenue Code relating to the residential energy credit. Changes to the applicable tax law were made by the Crude Oil Windfall Profit Tax Act of 1980. These regulations would provide the public with the guidance needed to comply with the law.

DATES: The proposed redesignations, revisions and amendments would be effective for taxable years beginning after December 31, 1983, except as noted under **SUPPLEMENTARY INFORMATION.**

Written comments and requests for a public hearing must be delivered or mailed by December 30, 1985.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-73-80), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T). Telephone 202-566-3297, (not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Proposed Effective Date

The proposed redesignations, revisions and amendments would be effective for taxable years beginning after December 31, 1983, except as follows:

Proposed Effective Date	
For expenditures made after April 19, 1977.	Revision of the second sentence in paragraph (d)(2)(i) of § 1.44C-1. Amendments to redesignated paragraph (d)(4)(ii) of § 1.44C-1.
For expenditures made after April 19, 1977, in taxable years beginning before January 1, 1980.	Revision within example (2) in paragraph (h)(4) of § 1.44C-3.
For expenditures made after December 31, 1979.	Addition of a new sentence at the beginning of the flush material in paragraph (b)(2) of § 1.44C-2. Amendment to the flush material in paragraph (e)(1)(ii) of § 1.44C-2. Amendment to the first sentence of paragraph (e)(2) of § 1.44C-2.

Proposed Effective Date	
	Amendment to paragraph (d)(4)(iv) of § 1.44C-2.
	Revisions in paragraph (f)(1) of § 1.44C-2.
	Revisions of paragraph (f)(3) (i) and (ii) of § 1.44C-2.
	Revision and addtion within paragraph (f)(4) of § 1.44C-2.
	Amendments to paragraphs (g) and (h) of § 1.44C-2.
	Revisions of the heading and text of paragraph (j)(1) of § 1.44C-3.
For taxable years beginning after December 31, 1979.	Revision of paragraph (c) of § 1.44C-1.
For taxable years beginning after December 31, 1980.	Redesignation of and within paragraph (d)(3) and addition of a new paragraph (d)(3) to § 1.44C-1.
	Amendment to the first sentence of paragraph (e) of § 1.44C-1, concerning the reference to paragraph (d)(3).
	Addition of a new paragraph (i) to § 1.44C-2.
	Revision of paragraph (c) of § 1.44C-3.
Upon publication in the **Federal Register** of final rules.	Amendment in paragraph (f)(2) of § 1.44 C-2.
	Addition of a new paragraph (f)(3)(iii) to § 1.44C-2.
	Addition of text to § 1.44C-4.
	Amendment to paragraph (b)(1) of § 1.44C-5.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 23 (former section 44C) of the Internal Revenue Code of 1954, as amended (under its former disignation) by sections 201(a), 202, and 203 of the Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. 96-223, 94 Stat. 256) and section 471 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 826).

Explanation of provisions

Under section 23 a credit against Federal income tax is allowed for "qualified energy conservation expenditures" and "qualified renewable energy source expenditures."

Proposed § 1.23-1(c) reflects the statutory increase of the credit for renewable energy expenditures to 40 percent of up to $10,000 of expenditures, for a maximum credit of $4,000. However, under proposed § 1.23-1(d)(3), expenditures financed with subsidized energy financing are not taken into account in computing the credit except to reduce the maximum amount of allowable expenditures.

Proposed § 1.23-2(b) expands the definition of the term "renewable energy source expenditures." Certain expenditures for an onsite well drilled for any geothermal deposit are treated as renewable energy source expenditures, but only if the taxpayer has not elected under section 263(c) to deduct any portion of such expenditures.

Proposed § 1.23-2(f) expands the definition of the term "solar energy property" (a category of "renewable energy source property") to include systems that use solar energy to produce electricity. Additionally, certain solar roof panels, although structural components of the buildings in which they are installed, are treated as renewable energy source property. Proposed § 1.23-2(f)(3) clarifies that certain systems utilizing thermal siphon principles are passive solar systems rather than active solar systems.

Proposed § 1.23-2(i) provides a definition for the term "subsidized energy financing." An example in the definition clarifies the fact that the term subsidized energy financing includes subsidized financing under a Federal, State, or local program having two or more principal purposes, provided that at least one of the principal purposes is to provide subsidized financing to projects designed to conserve or produce energy.

Proposed § 1.23-3(j) provides rules relating to jointly owned energy conservation property or renewable energy source property.

The proposed regulations would amend § 1.23-4, previously reserved, to provide the proformance and quality standards that must be met in order for certain items to quality for the residential energy credit.

The performance and quality standards listed in these regulations contain standards for energy conserving components which are identical to the Department of Energy's standards for the Residential Conservation Service Program appearing in 10 CFR Part 456, subpart H.

The solar energy property standards listed in these regulations meet the applicable specific criteria of the National Bureau of Standards Building Science Series 147, Preformance Criteria for Solar Energy Heating and Cooling Systems in Residential Buildings (September 1982).

Comments and Requests for a Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for pubic inspection and copying. A public hearing will be held on written request to the Commissioner by any person who has submitted written comments If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Special Analysis

The Commissioner of Internal Revenue has determined that these proposed rules are not subject to reveiw under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C chapter 6).

Drafting Information

The principal author of these regulations is Beverly A. Baughman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.0-1—1.58-8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Taxes.

Proposed amendments to the regulations

The proposed amendments to 26 CFR Parts 1 and 601 are as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. These regulations are issued under the authority of 26 U.S.C. 7805 and 26 U.S.C. 23. The authority citation for Part 1 is amened by adding at the end thereof "§ 1.23-1— § 1.23-6 also issued under 26 U.S.C. 23."

Par. 2. Section 1.44C-1 is redesignated as § 1.23-1 and is amended as follows:

A. Paragraph (a) is amended—

i. By removing from the first sentence "Section 44C" and adding in its place the words "Section 23 or former section 44C",

ii. By removing from the third sentence "§ 1.44C–3" and adding in its place "§ 1.23–3", and

iii. By removing from the seventh sentence "§ 1.44C–3(h)" and adding in its place "§ 1.23–3(h)".

B. Paragraph (b) is amended by removing from the last sentence "§ 1.44C–2 (a)" and adding in its place "§ 1.23–2(a)".

C. Paragraph (c) is revised to read as set forth below.

D. Paragraph (d) is amended—

i. By removing from the first sentence of paragraph (d)(2)(i) "§ 1.44C–3(h)" and adding in its place "§ 1.23–3(h)",

ii. By revising the second sentence of paragraph (d)(2)(i) to read as set forth below,

iii. By removing from the last sentence of paragraph (d)(2)(ii) "§ 1.44C–3(h)" and adding in its place "§ 1.23–3(h)",

iv. By redesignating paragraph (d)(3)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), and (x) as paragraph (d)(4)(ii) (A), (B), (C), (D), (E), (F), (G), (H), (I), and (J), respectively, and by inserting a new paragraph (d)(3) after paragraph (d)(2) to read as set forth below,

v. By inserting a new paragraph (d)(4)(i) after new paragraph (d)(3) to read as set forth below,

vi. By removing from the heading of redesignated paragraph (d)(4)(ii) the words "*Tax Liability Limitation.*" and adding in their place "*For taxable years beginning before January 1, 1984.*", and

vii. In redesignated paragraph (d)(4)(ii), by removing the first word, "The", and adding in its place the words "For taxable years beginning before January 1, 1984, the".

E. Paragraph (e) is amended—

i. By removing from the heading the word "Carryover" and adding in its place the word "Carryforward",

ii. By removing from the first sentence "section 44C (b) (5)" and adding in its place "section 23(b)(5) (or former section 44C (b) (5))",

iii. By removing from the sentence "paragraph (d) (3)" and adding in its place "paragraph (d)(4)", and

iv. By removing the words "carryover" and "carried over" wherever they appear and adding in their place the words "carryforward" and "carried forward", respectively.

§ 1.23–1 Residential energy credit.

* * * * *

(c) *Qualified renewable energy source expenditures.* In the case of any dwelling unit, the qualified renewable energy source expenditures for taxable years beginning after December 31, 1979, and before January 1, 1986, are 40 percent of the renewable energy source expenditures made by the taxpayer during the taxable year with respect to such units that do not exceed $10,000. In the case of taxable years beginning before January 1, 1980, the qualified renewable energy source expenditures are the renewable energy source expenditures made by the taxpayer with respect to the dwelling unit during the taxable year, but not in excess of—

(1) 30 percent of the expenditures up to $2,000 plus;

(2) 20 percent of the expenditures over $2,000, but not more than $10,000.

See § 1.23–2(b) for the definition of renewable energy source expenditures.

(d) *Limitation.* * * *

(2) *Prior expenditures taken into account*—(i) *In general.* * * * In the case of expenditures made during taxable years beginning before January 1, 1980, the reduction of the maximum amount under paragraph (c) must first be made with respect to the first $2,000 of expenditures (to which a 30 percent rate applies) and then with respect to the next $8,000 of expenditures (to which a 20 percent rate applies). * * *

* * * * *

(3) *Effects of grants and subsidized energy financing*—(i) *In general.* Qualified expenditures financed with Federal, State, or other grants shall be taken into account for purposes of computing the residential energy credit only if the amount of such grants is taxable as gross income to the taxpayer under section 61 (relating to the definition of gross income) and the regulations thereunder. In the case of taxable years beginning after December 31, 1980, qualified expenditures shall not be taken into account for purposes of computing the residential energy credit (except as provided in the following sentence) if made from subsidized energy financing (as defined in § 1.23–2(i)). In addition, the taxpayer must reduce the maximum amount of allowable expenditures (reduced as provided in paragraph (d)(2) of this section) with respect to the dwelling unit in computing qualified energy conservation expenditures (under paragraph (b) of this section) or qualified renewable energy source expenditures (under paragraph (c) of this section), whichever is appropriate, by an amount equal to the sum of—

(A) The amount of the expenditures from subsidized energy financing (as defined in § 1.23–2(i)) which were made by the taxpayer during the taxable year or any prior taxable year beginning after December 31, 1980, with respect to the same dwelling unit, and

(B) The amount of any funds received by the taxpayer during the taxable year or any prior taxable year as a Federal, State, or local government grant, made after December 31, 1980, which were used to make qualified expenditures with respect to the same dwelling unit and which were not included in the gross income of the taxpayer.

(ii) *Example.* The provisions of this paragraph (d)(3) may be illustrated by the following example:

Example. A had in 1979 made a renewable energy source expenditure of $2,000 in connection with A's residence for which he took the then allowed credit of $600. In 1981 A made additional renewable energy source expenditures of $9,000 with respect to which he received a loan of $5,000 from the Federal Solar-Energy and Energy Conservation Bank. Assume that the loan is subsidized energy financing. A computes the credit as follows: The initial maximum allowable dollar limit is $10,000 which is reduced by the sum of the prior year expenditures of $2,000 and the subsidized energy financing loan of $5,000 leaving a dollar limit of $3,000 ($10,000—($2,000 + 5,000)). The $5,000 portion of the $9,000 funded by the subsidized energy financing loan is not allowed as a renewable energy source expenditure. The remaining expenditures in 1981 are $4,000 ($9,000—$5,000). However, this amount exceeds the allowed maximum dollar limit of $3,000. Therefore, A's creditable expenses for 1981 are only $3,000 on which the credit is $1,200 (40 percent of $3,000).

(4) *Tax liability limitation*—(i) *For taxable years beginning after December 31, 1983.* For taxable years beginning after December 31, 1983, the credit allowed by this section shall not exceed the amount of tax imposed by chapter 1 of the Internal Revenue Code of 1954 for the taxable year, reduced by the sum of credits allowable under—

(A) Section 21 (relating to expenses for household and dependent care services necessary for gainful employment),

(B) Section 22 (relating to credit for the elderly and the permanently and totally disabled), and

(C) Section 24 (relating to contributions to candidates for public office).

See section 26 (b) and (c) for certain taxes that are not treated as imposed by chapter 1.

* * * * *

Par 3. Section 1.44C–2 is redesignated as § 1.23–2 and is amended as follows:

A. In the introductory text, the language "section 44C" is removed and the language "section 23 or former section 44C" is added in its place.

B. Paragraph (a) thereof is amended—

i. By removing from the last sentence of paragraph (a)(1)(i) "§ 1.44C–3(e)" and adding in its place "§ 1.23–3(e)", and

ii. By removing from the second sentence of paragraph (a)(1)(iii) "§ 1.44 C–3(f)" and adding in its place "§ 1.23–3(f)".

C. Paragraph (b) is amended—

i. By removing from the last sentence of paragraph (b)(1) "§ 1.44C–3(e)" and adding in its place "§ 1.23–3(e)", and

ii. By adding a new sentence as flush material immediately before the flush material that follows paragraph (b)(2), to read as set forth below.

D. Paragraph (c)(4) is amended by removing from the first sentence "§ 1.44C–4" and adding in its place "§ 1.23–4".

E. Paragraph (d) is amended—

i. By removing from paragraph (d)(3) "§ 1.44C–4" and adding in its place "§ 1.23–4",

ii. By removing from the first sentence of paragraph (d)(4)(iv) the word "include" and adding in its place the word "mean", and

iii. By removing from the last sentence of paragraph (d)(4)(viii) "§ 1.44C–6" and adding in its place "§ 1.23–6".

F. Paragraph (e) is amended—

i. By removing from paragraph (e)(1)(iii) "§ 1.44C–4" and adding in its place "§ 1.23–4",

ii. By removing the first sentence from the flush material immediately following paragraph (e)(1)(iii) and adding in its place a new sentence to read as set forth below,

iii. By removing "§ 1.44C–3 (l)" from the last sentence in the flush material following paragraph (e)(1)(iii) and adding in its place "§ 1.23–3 (l)",

iv. By adding in paragraph (e)(2) the words "or (in the case of expenditures made after December 31, 1979) electricity" immediately following the words "or providing hot water" in the first sentence, and

v. By removing from the last sentence of paragraph (e)(2) "§ 1.44C–6" and adding in its place "§ 1.23–6".

G. Paragraph (f) is amended—

i. By revising the first and third sentences of paragraph (f)(1) to read as set forth below,

ii. By removing the first sentence of paragraph (f)(2) and adding in its place a new sentence to read as set forth below,

iii. By revising paragraph (f)(3) to read as set forth below, and

iv. By revising the third sentence of paragraph (f)(4) and adding two new sentences immediately after that sentence, to read as set forth below.

H. Paragraph (g) is amended by removing from the beginning of the first sentence the word "includes" and adding in its place the word "means".

I. Paragraph (h) is amended by removing from the first sentence the word "includes" and adding in its place the word "means" and by adding a new sentence immediately after the first sentence to read as set forth below.

J. A new paragraph (i) is added immediately after paragraph (h) to read as set forth below.

§ 1.23–2 Definitions.

* * * * *

(b) *Renewable energy source expenditures.* * * *

Additionally, the term "renewable energy source expenditures" includes expenditures made after December 31, 1979, and before January 1, 1986, for an onsite well drilled for any geothermal deposit (as defined in paragraph (h)), or for labor costs properly allocable to onsite preparation, assembly, or original installation of such well, but only if the requirements of paragraph (b) (1) and (2) of this section are met and the taxpayer has not elected under section 263(c) to deduct any portion of such expenditures or allocable labor costs. * * *

* * * * *

(e) *Renewable energy source property*—(1) *In general.* * * *

(iii) * * * Renewable energy source property does not include heating or cooling systems, nor systems to provide hot water or electricity, which serve to supplement renewable energy source equipment in heating, cooling, or providing hot water or electricity to a dwelling unit, and which employ a form of energy (such as oil or gas) other than solar, wind, or geothermal energy (or other forms of renewable energy provided in paragraph (e)(2) of this section). * * *

(f) *Solar energy property*—(1) *In general.* The term" solar energy property" means equipment and materials of a solar energy system as defined in this paragraph (and parts solely related to the functioning of such equipment) which, when installed in connection with a dwelling, transmits or uses solar energy to heat or cool the dwelling or to provide hot water or (in the case of expenditures made after December 31, 1979) electricity for use within the dwelling. * * * Property which uses, as an energy source, fuel or energy which is indirectly derived from sunlight (solar radiation), such as fossil fuel or wood or heat in underground water, is not considered solar energy property. * * *

(2) *Active solar system.* With respect to solar energy property acquired after the date of publication in the **Federal Register** of a Treasury decision promulgating this amended paragraph (f)(2) as a final regulation, an active solar system is based on the use of mechanically forced energy transfer, such as the use of fans or pumps to circulate solar generated energy. * * *

(3) *Passive solar system*—(i) *In general.* A passive solar system is based on the use of conductive, convective, or radiant energy transfer.

(ii) *Passive solar space heating system.* In order to qualify as a passive solar system, a solar system used for space heating purposes must contain all of the following: A solar collection area, an absorber, a storage mass, a heat distribution method, and heat regulation devices. The term "solar collection area" means an expanse of transparent or translucent material, such as glass which is positioned in such a manner that the rays of the sun directly strike an absorber. The term "absorber" means a surface, such as a floor, that is exposed to the rays of the sun admitted through the solar collection area, which converts solar radiation into heat, and then transfers the heat to a storage mass. The term "storage mass" means material, such as masonry, that receives and holds heat from the absorber and later releases the heat to the interior of the dwelling. The storage mass must be of sufficient volume, depth, and thermal energy capacity to store and deliver adequate amounts of solar heat for the relative size of the dwelling. In addition, the storage mass must be located so that it is capable of distributing the stored heat directly to the habitable areas of the dwelling through a heat distribution method. The term "heat distribution method" means the release of radiant heating from the storage mass within the habitable areas of the dwelling, or convective heating from the storage mass through airflow paths provided by openings or by ducts in the storage mass, to habitable areas of the dwelling. The term "heat regulation devices" means shading or venting mechanisms (such as awnings or insulated drapes) to control the amount of solar heat admitted through the solar collection areas and nighttime insulation or its equivalent to control the amount of heat permitted to escape from the interior of the dwelling.

(iii) *Passive solar hot water system.* With respect to solar energy property acquired after the date of publication in the Federal Register of a Treasury decision promulgating this paragraph (f)(3)(iii) as a final regulation, the term "passive solar system" includes a system used to provide hot water for a dwelling which uses passive thermal energy transfer such as systems utilizing thermal siphon principles. Such a system is not required to have all of the components described in paragraph (f)(3)(ii) of this section.

(4) *Components with dual functions.* * * * For example, roof ponds that form part of a roof (including additional structural components to support the roof), windows (including clerestories and skylights), and greenhouses do not qualify as solar energy property. However, with respect to expenditures made after December 31, 1979, a solar collector panel installed as a roof or portion thereof (including additional structural components to support the roof attributable to the collector) does not fail to qualify as solar energy property solely because it constitutes a structural component of the dwelling on which it is installed. For this purpose, the term "solar collector panel" does not include a skylight or other type of window. * * *

* * * * *

(h) *Geothermal energy property.* * * * With respect to expenditures made after December 31, 1979, the term "geothermal energy property" also means equipment (and parts solely related to the functioning of such equipment) necessary to transmit or use energy from a geothermal deposit to produce electricity for use within the dwelling. * * *

(i) *Subsidized energy financing*—(1) *In general.* The term "subsidized energy financing" means financing (*e.g.*, a loan) made directly or indirectly (such as in association with, or through the facilities of, a bank or other lender) during a taxable year beginning after December 31, 1980, under a Federal, State, or local program, a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy. For purposes of this paragraph (i), financing is made when funds that constitute subsidized energy financing are disbursed. Subsidized energy financing includes financing under a Federal, State, or local program having two or more principal purposes (provided that at least one of the principal purposes is to provide subsidized financing for projects designed to conserve or produce energy), but only to the extent that the financing—

(i) Is to be used for energy production or conservation purposes, or

(ii) Is provided out of funds designated specifically for energy production or conservation.

Loan proceeds meet the use test of paragraph (i)(1)(i) of this section only to the extent that the loan application, the loan instrument, or any other loan-related documents indicate that the funds are intended for such use. However, loan proceeds designated for the purchase either of property that contains "insulation" or any "other energy conserving component" or of "renewable energy source property" as defined in paragraphs (c), (d), and (e), respectively, of this section meet the test of paragraph (i)(1)(i) of this section. Financing is subsidized if the interest rate or other terms of the financing (including any special tax treatment) provided to the taxpayer in connection with the program or used to raise funds for the program are more favorable than the terms generally available commercially. Additionally, financing is subsidized if the principal obligation of the financing provided to the taxpayer is reduced by funds provided under the program. Except as otherwise provided for in this paragraph (i)(1) with respect to a publicly or privately owned utility, the source from which the funds for the program are derived is not a factor to be taken into account in determining whether the financing is subsidized. If a publicly or privately owned utility disburses funds for the financing of renewable energy source property, and the source of the funds is sales to the utility's ratepayers, then the funds are not considered subsidized energy financing, even though the utility is a governmental agency. Subsidized energy financing does not include a grant includible in gross income under section 61, nontaxable grants, a credit against State or local taxes made directly to the taxpayer claiming the credit provided for in section 23, or a loan guarantee made directly to the taxpayer claiming the credit provided for in section 23.

(2) *Examples.* The provisions of this paragraph (i) may be illustrated by the following examples:

Example (1). State A has a farm and home loan program. The program is used to provide low interest mortgage loans. In 1984 State A's legislature enacted statutory amendments to its farm and home loan program in an effort to encourage energy conservation-type measures. Low interst loans for such improvements were made available to qualified purchasers and owners under the farm and home loan program. The energy conservation measures subsidized by the program include energy conserving components and renewable energy source devices. State A's tax exempt bonds are the source of funds for loans under the program. Although the 1984 legislation authorizing loans for energy conserving components and renewable energy source improvements did not diminish the original purpose of the farm and home loan program, the 1984 legislation added another principal purpose to the program. Therefore, State A's program which has two principal purposes, one of which is the conservation or production of energy, is considered as providing subsidized energy financing for purposes of section 23(c)(10) of the Code, to the extent that financing is provided by State A out of funds designated specifically for energy production or conservation. State A's program will also be considered as providing subsidized energy financing to the extent that the loan proceeds are to be used for energy production or conservation purposes. Loan proceeds meet the use test of the preceding sentence only to the extent that the loan application, the loan instruments, or any other loan-related documents indicate that the funds are intended for such use.

Example (2). The United States Department of Energy disburses funds to State B that the Department received from settlements from alleged petroleum pricing and allocation violations. State B establishes a program under which B will use the funds to make loans at below market interest rates directly to qualified applicants for the purpose of renewable energy source property. B's loans are subsidized energy financing.

Example (3). State C establishes a program under which C will make loans at below market interest rates directly to qualified applicants for the purpose of renewable energy source property. The program is funded with money that State C was able to borrow after it obtained a loan guarantee from a Federal agency. C's loans provided under the program are subsidized energy financing.

Example (4). Company D is electric utility that is a federal agency. D purchases its electricity from another federal agency, transmits the electricity over its own distribution system, and sells the electricity to numerous local public utilities that in turn sell the electricity to their customers. D wishes to start a program under which D will make loans at below market interest rates directly to customers of the local utilities for the purchase of renewable energy source property from D. The local public utility will act as the collection agent for repayment of the loans. The loans will be repayment over a period of time not in excess of 15 years. Under law, D must cover its full costs through its own revenues derived from the sale of power and other services. While D may borrow by sale of bonds to the United States Treasury, D must borrow at rates comparable to the rates prevailing in the market for similar bonds. Thus, the subsidized loans made under D's program will be financed by the profits from the sale of electricity to consumers and not by the federal government. D's program, which is substantially the same as that carried out by private (investor-owned) utilities, is not a tax-supported subsidy for renewable energy source property because the source of the funds for the loan program is solely D's revenue from the sale of electricity or D's unsubsidized borrowing from the United States Treasury at rates comparable to the rates prevailing in the market. Therefore, D's loans are not subsidized energy financing.

Example (5). The Solar Energy and Energy Conservation Bank (Bank) disburses funds to State E. E disburses a portion of the funds to Financial Institution F. Both the Bank and State E make these disbursements under a program the principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy. F

uses the funds to reduce a portion of the principal obligation on loans it issues to finance energy conservation or solar energy expenditures. Taxpayer G borrows $3,000 from F in order to purchase a solar water heating system. F uses $500 of the funds it received from the Bank to reduce the principal obligation of the loan to G to $2,500. The amout of subsidized energy financing to G is $3,000.

Example (6). State H allows a tax credit to Financial Institution J under a program the principal purpose of which is to provide loans at below market interest rates directly to qualified applicants for the purchase of renewable energy source property. J receives a credit each year in the amount of the excess of the interest that would have been paid at private market rates over the actual interest paid on such loans. The State H tax credit arrangement is an interest subsidy. Thus, any low-interest loans made pursuant to this credit arrangements are subsidized energy financing.

Par. 4. Section 1.44C–3 is redesignated as § 1.23–3 and is amended as follows:

A. Paragraph (a)(1) is amended by removing from the first sentence "section 44C" and adding in its place "section 23 or former section 44C".

B. Paragraph (b) is amended by removing "section 44C" in the first and second sentences and adding in place thereof "section 23 or former section 44C".

C. Paragraph (c) is revised to read as set forth below.

D. Paragraph (d) is amended by removing "§ 1.44C–2(a)", "§ 1.44C–2(b)", "§ 1.44C–1(b)", and "§ 1.44C–1(c)" and adding in their places "§ 1.23–2(a)", "§ 1.23–2(b)", "§ 1.23–1(b)" and "§ 1.23–1(c)", respectively.

E. Paragraph (e) is amended by removing from the first sentence "section 44C" and adding in its place "section 23 or former section 44C".

F. Paragraph (h) is amended—

i. By removing from the first sentences of paragraph (h)(1) (i) and (ii) "section 44C" and adding in place thereof "section 23 or former section 44C",

ii. By removing from paragraph (h)(2) "section 44C" and adding in its place "section 23 or former section 44C",

iii. By removing from paragraph (h)(2) "§ 1.44C–1" and adding in its place "§ 1.23–1",

iv. By removing from the second sentence of paragraph (h)(3) "section 44C" and adding in its place thereof "section 23 or former section 44C", and

v. By revising the first sentence of example (2) in paragraph (h)(4) to read as set forth below.

G. Paragraph (j) is amended—

i. By revising the heading and text of paragraph (j)(1) to read as set forth below, and

ii. By removing from the last sentence of the example in paragraph (j)(2) "§ 1.44C–1(d)(1)" and "§ 1.44C–1(d)(2)" and adding in their places "§ 1.23–1(d)(1)" and "§ 1.23–1(d)(2)", respectively.

H. Paragraph (k) is amended by removing "section 44C" and adding in its place "section 23 or former section 44C".

§ 1.23–3 Special rules.

* * * * *

(c) *Cross reference.* For rules relating to expenditures financed with Federal, State, or local government grants or subsidized financing see paragraph (d)(3) of § 1.23–1 and paragraph (i) of § 1.23–2.

* * * * * *

(h) *Joint occupancy.* * * *

(4) * * *

* * * * * *

Example (2). In 1978, spouses C and D make $10,000 of renewable energy source expenditures with respect to their principal residence, half of which is paid by each spouse. * * *

* * * * * *

(j) *Joint ownership of energy conservation property or renewable energy source property*—(1) *In general.* Energy conservation property and renewable energy source property include property which is jointly owned by the taxpayer and another person (or persons) and installed in connection with two or more dwelling units. For example, the fact that a windmill, solar collector, or geothermal well and distribution system is owned by two or more individuals does not preclude its qualification as renewable energy source property. The amount of the credit allowable under section 23 shall be computed separately with respect to the amount of the expenditures made by each individual, subject to the limitations of $2,000 imposed by section 23(b)(1) and $10,000 imposed by section 23(b)(2), per dwelling unit of jointly owned property. For example, in 1982, A, B, and C purchased as joint owners renewable energy source property that serviced two houses. One of the houses is jointly owned and occupied by A and B and the other is owned and occupied by C alone. The renewable energy source property cost $30,000 of which A paid $9,000, B paid $6,000, and C paid $15,000. A and B must share the $4,000 credit (40% of $10,000 maximum) with respect to the expenditures for the jointly owned house. Therefore, A is allowed a $2,400 credit

$$\left(\$4{,}000 \times \frac{\$9{,}000}{\$9{,}000 + \$6{,}000}\right)$$

and B is allowed a $1,600

$$\left(\$4{,}000 \times \frac{\$6{,}000}{\$9{,}000 + \$6{,}000}\right)$$

with respect to the expenditures attributable to jointly owned house. C is entitled to a credit of $4,000 with respect to the expenditures attributable to the other house.

Par. 5. Reserved § 1.44C–4 is redesignated § 1.23–4 and the text is added to read as follows:

§ 1.23–4 Performance and quality standards.

(a) *In general.* This section contains performance and quality standards with respect to energy-conserving components and solar energy property. Such an item acquired after the date of publication of this section in a Treasury decision must meet the standards, as in effect when the item is acquired, to qualify for the residential energy credit.

(b) *Energy-conserving components standards*—(1) *In general.* This paragraph provides standards with respect to insulation and certain other energy-conserving components. The standards are identical to the Department of Energy's standards for the Residential Conservation Service Program appearing in 10 CFR Part 456, Subpart H. Paragraph (b)(2) of this section incorporates the applicable provisions of subpart H into this section by reference.

(2) *Incorporation by reference.* (i) Insulation (as defined in § 1.23–2(c)) shall meet the applicable standards contained in § 456.803–812.

(ii) A furnace replacement burner (as defined in § 1.23–2(d)(4)(i)) for oil-fired furnaces shall meet the standards contained in § 456.814(d).

(iii) A device for modifying flue openings (as defined in § 1.23–2(d)(4)(ii)) for gas-fired heating systems shall meet the standards contained in § 456.814(g).

(iv) A furnace ignition system (as defined in § 1.23–2(d)(4)(iii)) for gas-fired heating systems shall meet the standards contained in § 456.814(f).

(v) A storm or thermal window or door (as defined in § 1.23–2(d)(4)(iv)) shall meet the applicable standards contained in § 456.813. Multi-glazing used in connection with a window or door shall meet the standards contained in § 456.813(d).

(vi) Caulking (as defined in § 1.23-2(d)(4)(vi)) shall meet the standards contained in § 456.812.

(c) *Solar energy property standards.* Solar energy property shall meet the applicable specific criteria of the National Bureau of Standards Building Science Series 147, Performance Criteria for Solar Energy Heating and Cooling Systems in Residential Buildings (September 1982) as indicated in the table set forth below. In that table "A" refers to active solar systems for space heating or domestic hot water described in paragraph (f)(2) of § 1.23-2. "P (ii)" refers to passive solar space heating systems and combined systems described in paragraph (f)(3)(ii) of § 1.23-2. "P (iii)" refers to passive solar hot water systems utilizing thermal siphon principles. Manufacturers of equipment that meets the standards referred to in the table may apply for certification in accordance with the provisions of § 1.23-5. If so certified, manufacturers may attach a decal, nameplate, or other marking to their equipment so identifying their equipment.

Criteria	Paragraph	A	System type	
			P(ii)	P(iii)
Net solar contribution	2.1.1		X	
Thermal Storage	2.1.2		X	
Building overheating	2.1.3		X	
Technical cooling energy	2.1.4		X	
Thermal environment contribution.	2.1.5		X	
Mechanical heating system size.	2.2.1	X		
Temperature	2.3.1	X		X
Daily water use	2.3.2	X		X
Hourly recovery use	2.3.3	X		X
Array manifold, energy loss	2.4.3	X		X
Heat loss during noncollection periods.	2.4.4	X		
Thermal energy loss	2.5.1	X	X	
Thermal energy loss	2.6.1	X	X	X
Operating energy	2.5.2	X	X	
Energy transfer to load	2.6.4	X		X
Collector fluid circulation	2.7.2	X		
Priority of energy use	2.7.3	X	X	X
System balancing	3.1.2	X		
Liquid quality	3.2.3	X		X
Thermal expansion of fluids	3.2.4	X		X
Draining and filling	3.2.5	X		X
Entrapped air	3.2.6	X		X
Vacuum relief	3.2.7	X		X
Duct design	3.3.1	X	X	X
Sealing of air system	3.3.2	X	X	
Movable insulation	3.4.2	X	X	
Inhabited space temperature Control	3.5.1	X	X	
Power operated protection	3.6.3	X		
Freeze tolerant designs	3.6.4	X		X
Protection of potable water	4.1.1	X		X
Separation of circulation loops.	4.1.2	X		X
Contamination of air	4.1.4	X	X	
Growth of fungi	4.1.5	X	X	X
Pressure and/or temperature relief devices.	4.3.1	X		X
System failure prevention	4.3.2	X	X	X
Surface temperature	4.3.5	X	X	X
Liquid flash point	4.4.1	X		X
Fire resistance requirements	4.4.5	X	X	X
Roof covering fire performances.	4.4.6	X		X
Structural resistence of systems.	4.6.1	X	X	X
Solar degradation	5.1.1	X	X	X
Thermal degradation	5.2.1	X	X	X
Installation instructions	6.1.1	X	X	X
Operation and Maintenance instructions.	6.1.2	X	X	X
Normal operation by occupant.	6.1.7	X	X	X
Minimum operating information.	6.3.2	X		X

Par. 6. Section 1.44C-5 is redesignated as § 1.23-5 and is amended as follows:

A. Paragraph (a) is amended—

i. By removing from paragraph (a)(1) "§ 1.44C-2(c)(1)" and adding in its place "§ 1.23-2(c)(1)",

ii. By removing from paragraph (a)(2) "section 44C(c)(4)" and adding in its place "section 23(c)(4) or former section 44C(c)(4)",

iii. By removing from paragraph (a)(2) "§ 1.44C-2(d)(4)" and adding in its place "§ 1.23-2(d)(4)",

iv. By removing from paragraph (a)(3) "§ 1.44C-2(f)", "1.44C-2(g)" and "§ 1.44C-2(h)" and adding in their places "§ 1.23-2(f)", "§ 1.23-2(g)", and "§ 1.23-2(h)", respectively,

v. By removing from paragraph (a)(4) "§ 1.44C-2" and adding in its place "§ 1.23-2", and

vi. By removing from paragraph (a)(5) "§ 1.44C-2" and adding in its place "§ 1.23-2".

B. Paragraph (b)(1) is amended by removing from the first sentence the words "Assistant Commissioner (Technical), T:C:E, 111 Constitution Avenue, NW.," and adding in their place the words "Associate Chief Counsel (Technical) CC:C:E, 1111 Constitution Avenue, NW.,".

C. Paragraph (c) is amended—

i. By removing from the third sentence "§ 1.44C-2" and adding in its place "§ 1.23-2", and

ii. By removing from the last sentence "§ 1.44C-4" and adding in its place "§ 1.23-4".

Par. 7. Section 1.44C-6 is redesignated as § 1.23-6 and is amended as follows:

A. Paragraph (a)(1) is amended by removing from the first sentence "§ 1.44C-2" and adding in its place "§ 1.23-2".

B. Paragraph (e) is amended—

i. By removing from the first sentence "§ 1.44C-1" and adding in its place "§ 1.23-1", and

ii. By removing from the third sentence "§ 1.44C-4" and adding in its place "§ 1.23-4".

Par. 8. Paragraph (t) of § 1.1016-5 is revised to read as follow:

§ 1.1016-5 Miscellaneous adjustments to basis.

* * * * *

(t) *Section 23 credit.* In the case of property with respect to which a credit has been allowed under section 23 or former section 44C (relating to residential energy credit), basis shall be adjusted as provided in pragraph (k) of § 1.23-3.

Statement of Procedural Rules

PART 601—[AMENDED]

Par. 9. The authority citation for Part 601 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Paragraph (c) of § 601.601 is amended by revising the last sentence to read as follows:

§ 601.601 Rules and regulations.

* * * * *

(c) *Petition to change rules.* * * * However, in the case of petitions to amend the regulations pursuant to subsection (c)(4)(A) (viii) or (5)(A)(i) of section 23 or former section 44C, follow the procedure outlined in paragraph (a) of § 1.23-6.

Roscoe L. Egger, Jr.,

Commissioner.

[FR Doc. 85-26057 Filed 10-30-85; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 48

[LR-119-83]

Excise Taxes on Gasohol and Other Alcohol Mixture Fuels, Tires, Tread Rubber, and Inner Tubes; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the excise tax on gasohol and other alcohol mixture fuels and relating to the rate of excise tax on tires, tread rubber, and inner tubes.

DATES: The public hearing will be held on Tuesday, January 14, 1986, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Thursday, January 2, 1986.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The request to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn:

CC:LR:T (LR–119–83), Washington, DC 20224.

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

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 4041, 4071, 4081, 6420, and 6427 of the Internal Revenue Code of 1954. The proposed regulations appeared in the Federal Register for Thursday, August 22, 1985 (50 FR 33977).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601)shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Thursday, January 2, 1986, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85–26056 Filed 10–30–85; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Permanent State Regulatory Program of Colorado

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

ACTION: Proposed rule.

SUMMARY: OSM is proposing to again modify the deadline for Colorado (1) to promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for use of explosives in a surface coal mining operation.

OSM has received a letter from the Colorado Department of Natural Resources, Mined Land Reclamation Division (MLRD) requesting that the time allotted for the development and implementation of a blaster certification program be extended until January 31, 1986. Colorado has twice previously requested and been granted extensions of time for the development of the blaster certification program. Those extensions have not been adequate for the State to develop and adopt its program.

DATE: Comments not received by December 2, 1985 at the address below, no later than 5:00 p.m. will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Bob Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, NW, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, NW, Albuquerque, New Mexico 87102; Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Part 850 (48 FR 9492). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule, whichever is later. In the case of Colorado's program, the applicable date is 12 months after publication of OSM's rule, or March 4, 1984.

On February 6, 1984, Colorado advised OSM that it would be unable to meet the March 4, 1984 deadline and requested an additional six months to develop and adopt a blaster certification program. On April 30, 1984, the Director granted the State's request and the deadline was set for September 4, 1984 (49 FR 18296).

The Director of the Colorado Department of Natural Resources, Mined Land Reclamation Division, the regulatory authority for Colorado's program, advised OSM that the State would require the additional time in order to work out an agreement with another State agency that would handle the blaster certification program. He also stated that Colorado would like to promulgate regulations governing a blaster training program concurrently with the promulgation of other modifications to the program which the State intended to make as a result of modifications in the Federal regulations under SMCRA.

On August 10, 1984, the State requested another extension for an additional six months. This request was granted by OSM on September 24, 1984 (49 FR 37426).

OSM has now received a third request from Colorado for an extension of time to submit a blaster training and certification program (OSM Admin. Record No. CO–245). In its letter to OSM requesting the extension Colorado indicated that additional time was needed to work with a contractor on development of a program. The State advised OSM that it intended to initiate rulemaking in July. The rulemaking process will take approximately six to seven months to complete. Therefore, the State is requesting an extension of the current deadline until January 31, 1986.

OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director of OSM may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. Compliance With the National Environmental Policy Act

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

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

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

Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

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

List of Subjects is 30 CFR Part 906

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

Dated: October 25, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85-25988 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 917

Public Comment and Opportunity for Public Hearing on a Modification to the Kentucky Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky as a modification to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments pertain to experimental practices, permitting requirements, diversions, backfilling and grading, subsidence and prime farmland.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before December 2, 1985 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on November 25, 1985 beginning at 10:00 a.m. at the location shown below under "ADDRESSES.

ADDRESSES: Written comments should be mailed or hand delivered to: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

If a public hearing is held its location will be at: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, 340 Legion Drive, Suit 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining, Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, D.C. 20240.

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Pursuant to 30 CFR 732.17(h)(2)(ii), each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSM's Lexington Field Office listed under "**ADDRESSES.**"

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business ten working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber. Submissions of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in **ADDRESSES** by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404-21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice.

III. Submission of Program Amendments

On August 30, 1985, Kentucky submitted program amendments to modify requirements pertaining to experiemental practices, permitting, diversions, backfilling and grading, subsidence, and prime farmland. The amendments were submitted in part in response to a letter from the Director, OSM, which identified areas of the Kentucky program needing revision. Briefly, the proposed modifications and cities are:

1. Kentucky is revising general requirements, approval procedures, monitoring requirements and periodic review procedures for experimental practices rules. 405 KAR 7:060.

2. Kentucky proposes to amend it permitting rules pertaining to: prime farmland for surface and underground mines; subsidence control; and underground mines near surface operations. 405 KAR 8:030 and 405 KAR 8:040.

3. Kentucky proposes to amend its requirements for permits for special categories of mining, pertaining to prime farmland and variances for delay in contemporaneous reclamation in combined surface and underground mining; and to repeal 405 KAR 20:020, concurrent surface and underground mining. 405 KAR 8:050.

4. Kentucky proposes to amend its general provisions relating to protection of underground mining. 405 KAR 16:010.

5. Kentucky proposes to amend its provisions on diversions, including general requirements, diversions of perennial and intermittent streams, and applicability of amendments to the regulation. 405 KAR 16:080 and 405 KAR 18:080.

6. Kentucky proposes to amend its provisions for backfilling and grading including: general requirements; requirements for disposal of acid forming, toxic forming, and combustible materials and coverage of coal seams; and requirements for remining previously mined areas. 405 KAR 16:190 and 405 KAR 18:190. For underground mining, the requirements for timing of backfilling and grading are also to be amended and a section on temporary storage of materials will be added. 405 KAR 18:190 Sections 1 and 6.

7. Kentucky proposes to add a section on protection of underground mining to its general provisions for underground mining. 405 KAR 18:010 Section 6.

8. Kentucky proposes to amend its rules on subsidence control including general requirements, public notice of the mining schedule, correction of material damage, buffer zones, and maps. 405 KAR 18:210.

9. Kentucky proposes to amend its prime farmland rules including applicability requirements, and requirements for soil removal, stockpiling, soil replacement and reconstruction, and revegetation and restoration of soil productivity. 405 KAR 20:040. Kentucky has also submitted a document titled "Kentucky Prime Farmland Revegetation and Crop Production Restoration After Mining" as part of its amendment.

10. Various editorial changes are proposed.

Therefore, the Director, OSM is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. Compliance with the National Environmental Policy Act

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

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

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

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

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 917

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

Dated: October 25, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85-25989 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 43 and 276

[DoD Directive 1344.7]

Personal Commercial Solicitation on DoD Installations

AGENCY: Department of Defense.

ACTION: Proposed revision of final rule.

SUMMARY: This proposed rule is being revised to provide in a single document Department of Defense policies governing the conduct of personal commercial solicitation and insurance sales which are currently reflected in Parts 43 and 276. The proposed rule clarifies the criteria and procedures for dealers and their agents seeking to transact personal commercial business on DoD installations.

DATE: Written comments must be received by December 2, 1985.

ADDRESS: Assistant Secretary of Defense (Force Management and Personnel), ODASD(MM&PP), PA&S, Room 3C975, Pentagon, Washington, D.C. 20301-4000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara E. Schoenberger, (202) 697-9525.

SUPPLEMENTARY INFORMATION: In the **Federal Register** on August 1, 1969 (34 FR 12580) the Department of Defense published a final rule reissuing Part 43. On November 15, 1977, Part 276 was reissued in the **Federal Register** (42 FR 3810-70) as a final rule. A consolidated revision of 32 CFR Part 43 and 32 CFR Part 276 follows:

List of Subjects in 32 CFR Part 43

Consumer protection, Military personnel, Federal buildings and facilities.

PART 276—[REMOVED]

Title 32 CFR Part 276 (Solicitation and Sale of Insurance on Department of Defense Installations) is proposed to be removed in its entirety.

Title 32 CFR Part 43 is proposed to be revised to read as follows:

PART 43—PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS

Sec.
43.1 Purpose.
43.2 Applicability.
43.3 Definitions.
43.4 Policy.
43.5 Procedures.
43.6 Responsibilities.
Appendix A—Life Insurance Policies and Securities.
Appendix B—The Overseas Life Insurance Accreditation Program.
Authority: 5 U.S.C. 301.

§ 43.1 Purpose.

This Part:

(a) Consolidates into a single document 32 CFR Part 43 and 32 CFR Part 276 and updates Department of Defense policies and procedures governing personal commercial solicitation and insurance sales on DoD installations.

(b) Continues the established annual DoD accreditation requirements for life insurance companies operating in overseas areas where neither Federal nor State consumer protection regulations apply.

§ 43.2 Applicability.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Orgnization of the Joint Chiefs of Staff, and the Unified Commands (hereinafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) Its provisions do not apply to services furnished by commercial companies, such as deliveries of milk, laundry, and related residence services when such services are authorized by the DoD installation commander.

(c) Nothing in this part should be construed to preclude private, non-profit, tax-exempt organizations composed of active and retired members of the Military Services from holding meetings for its membership on DoD installations. Attendance at these meetings will be voluntary. The time and place of such meetings are subject to the discretion of the installation commander or his or her designated representative.

§ 43.3 Definitions.

Agent. An individual who receives remuneration as a salesperson or whose remuneration is dependent on volume of sales of a product or the making of sales.

Association. Any organization which has been established, whether or not the word "Association" appears in its title, and which is composed of and serving exclusively, members of the Military Services on active duty, in a Reserve status, in a retired status, or individuals who entered into such association while on active duty, and their dependents. Offers its members life insurance coverage, either as part of the membership dues, or as a separately purchased plan made available through an insurance carrier or the association as a self-insurer, or a combination of both.

DoD Personnel. All active duty officers and enlisted members of the Military Services (officers include commissioned and warrant) and all civilian employees, including special Government employees of all offices, agencies, and departments carrying on functions on a Defense installation, including nonappropriated fund instrumentalities.

General Agent. A person with whom a company has a legal contract to solely and exclusively represent that company.

Insurance Carrier. An insurance company issuing insurance through an association or reinsuring or coinsuring such insurance.

Insurance Policy. A policy or certificate of insurance issued by an insurer or evidence of insurance coverage issued by a self-insured association.

Insurer. Any company or association engaged in the business of selling insurance policies to DoD personnel.

Normal Home Enterprises. Activities involving sales or services which are customarily conducted in a domestic setting and do not compete with an installation's officially sanctioned commerce.

Securities. Mutual funds, stocks, bonds or any product registered with the Securities and Exchange Commission.

Solicitation. The conduct of any private business, including the offering and sale of insurance on a military installation. Solicitation on installations is a privilege as distinguished from a right, and its control is a responsibility vested in the DoD installation commander.

§ 43.4 Policy.

It is the policy of the Department of Defense to safeguard and promote the welfare of DoD personnel as consumers by setting forth a uniform approach to the conduct of all personal commercial solicitation and sales to DoD personnel by dealers and their agents.

§ 43.5 Procedures.

(a) *General.* (1) No person has authority to enter upon a DoD installation and transact Personal commercial solicitation as a matter of right. Personal commercial solicitation will be permitted only if the following requirements are met:

(i) The solicitor is duly licensed under applicable Federal, State, or municipal laws and has complied with installation regulations regarding registration and pass control procedures as provided for in section (c), below.

(ii) Personal commercial solicitation is permitted by the local installation commander.

(iii) A specific appointment has been made with the individual concerned and conducted in family quarters or in other areas designated by the installation commander.

(2) Those seeking to transact personal commercial solicitation on overseas installations will be required to observe, in addition to the above requirements, the applicable laws of the host country and, upon demand, present documentary evidence to the installation commander, or his designee, that the company and its agents meet the licensing requirements of the host country.

(3) Organizations involved in sales are permitted to display its literature on DoD installations in locations selected by the commander.

(b) *Life Insurance.* (1) Life insurance policies offered and sold to DoD personnel must meet the prerequisites described in Appendix A.

(2) Insurers and their agents are authorized to solicit on DoD installations provided they are licensed under the insurance laws of the State in which the installation is located. In overseas areas, DoD Components shall limit this authorization to those insurers accredited under the provisions of Appendix B.

(3) The conduct of all insurance business on DoD installations shall be by specific appointment. When establishing the appointment insurance agents must identify themselves to the prospective purchaser as an agent for a specific company. Disinterested third-party counseling shall be provided, interviewing hours set aside and facilities supplied, if feasible.

(4) Interviews by appointment at the designated areas shall be extended to all agents on an equitable basis. Where space and other considerations dictate the limiting of the number of agents using the designated interviewing area, the installation commander may develop and publish local policy consistent with this concept.

(5) In addition to the solicitation prohibitions contained in section (d), below, DoD Components shall prohibit:

(i) DoD personnel from representing any insurer, or dealing either directly or

indirectly with any insurer or any recognized representative of any insurer, as an agent or in any official or business capacity with or without compensation.

(ii) The use of an agent as a participant in any military-sponsored insurance education or orientation program.

(iii) The designation of any agent or the use by any agent of titles such as "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant," etc.

(iv) The assignment of desk space for interviews for other than a specific prearranged appointment. During such appointment, the agent shall not be permitted to display desk or other signs announcing name or company affiliation.

(v) The use of the "Daily Bulletin" or any other notice, official or unofficial, announcing the presence of an agent and his availability.

(c) *Supervision of On-Base Commercial Activities.* (1) A conspicuous notice of pertinent installation implementing regulations shall be posted in a place easily accessible to give notice to all those conducting personal commercial solicitation activities of its provisions.

(2) When practicable, as determined by the installation commander, a copy of the applicable installation regulations will be given to those conducting on-base commercial activities and they will be advised that any disregard of the regulations will result in the withdrawal of solicitation privileges.

(d) *Prohibited Practices.* (1) Solicitation of recruits, trainees and transient personnel in a "mass" or "captive" audience.

(2) Making appointments with or soliciting military personnel who are in an "on-duty" status.

(3) Soliciting without appointment in areas utlized for the housing or processing of transient personnel, in barracks areas used as quarters, in unit areas, in family quarters areas, and in areas provided by installation commanders for interviews by appointment.

(4) The use of official identification cards by retired or reserve members of the Military Services to gain access to DoD installations for the purpose of soliciting.

(5) Procuring, or attempting to procure, or supplying roster listings of DoD personnel for purposes of commercial solicitation.

(6) The offering of unfair, improper and deceptive inducements to purchase or trade.

(7) Practices involving rebates to facilitate transactions or to eliminate competition. Credit union interest refunds to borrowers are not considered a prohibited rebate.

(8) The use of any manipulative, deceptive or fraudulent device, scheme or artifice, including misleading advertising and sales literature.

(9) Any oral or written representations which suggest or give rise to the appearance that the Department of Defense sponsors or endorses the company, its agents, or the goods, services and commodities it sells.

(10) Commercial solicitation by an active duty member of the Military Services of another member who is junior in rank or grade as provided in DoD Directive 5500.7.[1]

(11) The entry into any unauthorized or restricted area.

(12) The use of any portion of installation facilities to include quarters, as a showroom or store for the sale of goods or services, except as specifically authorized by DoD Directives 1330.9[2] and 1330.17[3] and DoD Instructions 1330.18[4] and 1000.15.[5] This is not intended to preclude normal home enterprises, providing applicable State and local laws are complied with.

(13) Door-to-door solicitation.

(14) Advertisements citing addresses or telephone numbers of commercial sales activities conducted on the installation.

(e) *Denial and Revocation of On-Base Solicitation.* (1) The installation commander shall deny or revoke permission to a company and its agents to conduct commercial activities on the base if such action is in the best interests of the command. The grounds for taking this action shall include, but not be limited to, the following:

(i) Failure to meet the licensing and other regulatory requirements prescribed in § 43.5(a) and (b) above.

(ii) Commission of any of the practices prohibited in § 43.5(b)(5) and § 43.5(d) above.

(iii) Substantiated adverse complaints or reports regarding quality of goods, services, and commodities and the manner in which they are offered for sale.

(iv) Knowing and willful violations of Pub. L. 90-321.

(v) Personal misconduct by a company's agent or representative while on the installation.

(vi) The possession of or any attempt to obtain supplies of allotment forms prescribed by the Military Departments, or possession or use of facsimilies thereof.

(vii) Failure to incorporate and abide by the Standards of Fairness policies contained in DoD Directive 1344.9.[6]

(2) In withdrawing solicitation privileges, the commander shall determine whether to limit it to the agent alone or extend it to the company the agent represents. This decision shall be based on the circumstances of the particular case, including among others, the nature of the violations, frequency of violations, the extent to which other agents of the company have engaged in such practices, and any other matters tending to show the company's culpability

(i) Upon withdrawing solicitation privileges, the commander will promptly inform the individual orally or in writing.

(ii) If the grounds for the action bear significantly on the eligibility of the agent or company to hold a state license or to meet other regulatory requirements, the appropriate authorities will be notified.

(iii) The commander will afford the individual or company an opportunity to show cause why the action should not be taken. "Show cause" is meant an opportunity for the grieved party to present facts on his or her behalf on an informal basis for the consideration of the installation commander.

(iv) If warranted, the commander will make a recommendation to the Military Department concerned that the action be extended to additional DoD installations. If so approved, and when appropriate, the order may be extended to other Military Departments by the Assistant Secretary of Defense (Force Management and Personnel), following consultation with the Military Department concerned.

(v) All denials or withdrawals of privileges will be for a set period of time, at the end of which the individual may reapply for permission to solicit through the Military Department originally imposing the restriction. Denial or withdrawal of soliciting privileges may be continued, where warranted.

(vi) When such denials or withdrawals are lifted, the office of the Assistant Secretary of Defense (Force Management and Personnel) will be

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[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, ATTN: Code 301, Philadelphia PA 19120.

[2] See footnote 1 to § (d)(10).

[3] See footnote 1 to § 43.5(d)(10).

[4] See footnote 1 to § 43.5(d)(10).

[5] See footnote 1 to § 43.5(d)(10).

[6] See footnote 1 to § 43.5(d)(10).

notified for parallel action if the same denial or withdrawal has been extended to other Military Departments.

(vii) The commanding officer may, if circumstances dictate, make immediate suspensions of solicitation privileges for a period of 30 days while an investigation is conducted. Exception to this timeframe must be approved by the Military Department concerned.

(3) Upon receipt of information outlined above, the Secretaries of the Military Departments may direct the Armed Forces Disciplinary Control Boards in all geographical areas in which the practices have occurred to consider the charges and take appropriate action.

(f) *Advertising Policies.* (1) The Department of Defense expects commercial enterprises soliciting DoD personnel through advertisements appearing in unofficial military publications to voluntarily observe, or the publisher of the military publication will request the advertiser to observe, the highest business ethics in describing goods, services, and commodities and the terms of the sale (including guarantees, warrantees, and the like).

(2) The advertising of credit terms shall conform to the provisions of Pub. L. 90–321 as implemented by 12 CFR Part 226.

(g) *Educational Programs.* (1) The Military Departments will develop and disseminate information and education programs for the purpose of providing members of the Military Services with information pertaining to the conduct of their personal commercial affairs, such as the protection and remedies offered consumers under the Truth-in-Lending Act, insurance, Government benefits, savings, and budgeting. The services of representatives of credit unions, banks, and those nonprofit military associations (provided such associations are not underwritten by a commercial insurance company) approved by the Military Departments may be used for this purpose. Under no circumstance will the service of commercial agents, including loan, finance, insurance or investment companies, be used for this purpose. Educational materials prepared or presented by outside organizations expert in this field may, with appropriate disclaimers and permission, be adapted or used provided such material is approved by the Military Department concerned. Presentations by those approved organizations will only be conducted at the express request of the installation commander concerned.

(2) The Military Departments will also make qualified personnel and facilities available for individual counseling on loans and consumer credit transactions in order to encourage thrift and financial responsibility and promote a better understanding of the wise use of credit, as prescribed in DoD Directives 1344.9, 1000.10[7] and 1000.11[8].

(3) Military members will be encouraged to seek advice from a legal assistance officer or their own lawyer before making a substantial loan or credit commitment.

(4) Each Military Department will provide advice and guidance to military personnel who have a complaint under Pub. L. 90–321 or who allege a criminal violation of its provisions, including referral to the appropriate regulatory agency for processing of the complaint.

§ 43.6 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel)* shall be responsible for developing policies and procedures governing personal commercial solicitation activities conducted on Department of Defense installations.

(b) *Heads of DoD Components,* or their designees, shall assure implementation of this Directive and compliance with its provisions.

Appendix A—Life Insurance Policies and Securities

A. Life Insurance Policy Content Prerequisites

1. Insurance policies, other than certificates or other evidence of insurance issued by a self-insured association, offered and sold to personnel on a DoD installation worldwide must:

a. Comply with the insurance laws of the State or country in which the installation is located and the procedural requirements of this part.

b. Contain no restrictions by reason of military service or military occupational specialty of the insured, unless such restrictions are clearly indicated on the face of the policy.

c. Plainly indicate any extra premium charges imposed by reason of military service or military occupational specialty.

d. Not provide for a variation in the amount of death benefit or premium based upon the length of time the policy has been in force, unless any variations are clearly described therein.

For purposes of this paragraph, an appropriate reference stamped on the face of the policy shall be utilized to draw the attention of the policyholder to any extra premium charges imposed and to any variations in the amount of death benefit or premium based upon the length of time the policy has been in force.

2. Variable life insurance policies may be offered provided they meet the criteria of the appropriate insurance regulatory agency and the Securities and Exchange Commission.

3. Premiums shall reflect only the actual premiums payable for life insurance coverage.

B. Sale of Securities

1. All securities must be registered with the Securities and Exchange Commission.

2. All sales of securities must comply with existing and appropriate Securities and Exchange Commission regulations.

3. All securities representatives must apply directly to the command or installation on which they desire to solicit the sale of securities.

4. Where the accredited insurer's policy permits, an overseas accredited life insurance agent—if duly qualified to engage in security activities either as a registered representative of the National Association of Securities Dealers or an associated person of a broker/dealer registered with the Securities and Exchange Commission only—may offer life insurance and securities for sale simultaneously. In cases of commingled sales, the allotment of pay for the purchase of securities cannot be made to the insurer.

C. Use of the Allotment of Pay System

1. Allotments of military pay for life insurance premiums shall be made in accordance with DoD Directive 7330.1.[9]

2. For personnel in pay grades E1, E2, and E3, at least 7 days shall elapse for counseling between the signing of a life insurance application and the certification of an allotment. The purchaser's commanding officer may grant a waiver of this requirement for good cause, such as the purchaser's imminent permanent change of station.

D. Associations—General

The recent growth and general acceptability of quasimilitary associations offering various insurance plans to military personnel are acknowledged. Some associations are not organized within the supervision of insurance laws of either the Federal or State Governments. While some are organized for profit others function as nonprofit associations under Internal Revenue Service reguations. Regardless of the manner in which insurance plans are offered to members, the management of the association is responsible for complying fully with the instructions contained herein and the spirit of this part.

Appendix B—The Overseas Life Insurance Accreditation Program

A. Accreditation Criteria

1. *Initial Accreditation.* a. Insurers must demonstrate continous successful operation in the life insurance business of a period of not less then 5 years on December 31 of the year preceding the date of filing the application.

b. Insurers must be listed in Best's Life-Health Insurance Reports and be assigned a rating of B+ (Very Good) or better for the

[7] See footnote 1 to § 43.5(d)(10).

[8] See footnote 1 to § 43.5(d)(10).

[9] See footnote 1 to § 43.5(d)(10).

business year preceding the Government's fiscal year for which accreditation is sought.

2. *Reaccreditation.* a. Insurers must demonstrate continuous successful operation in the life insurance business, as described above.

b. Insurers must retain a Best's rating of B+ or better, as described above.

c. Insurers must establish an agency sales force in one of the overseas commands within 2 years after initial accreditation.

3. *Waiver Provisions.* Waivers of the initial accreditation and reaccreditation provisions will be considered for those insurers demonstrating substantial compliance with the aforementioned criteria.

B. Application Instructions

1. *Applications Filed Annually.* During the months of May and June of each year insurers may apply for solicitation privileges for personnel assigned to U.S. military installations in foreign areas for the fiscal year beginning the following October 1.

2. *Application Prerequisites.* A letter of application, signed by the President, Vice-President, or designated official shall be forwarded to the Assistant Secretary of Defense (Force Management and Personnel), Attention: Directorate, Personnel Administration and Services, ODASD (MM&PP), Pentagon, Washington, D.C. 20301–4000. The letter will contain information set forth below, submitted in the order listed. Where not applicable so state.

a. Overseas commands (e.g., European, Pacific, Atlantic, Southern) where presently soliciting, or planning to solicit on U.S. military installations.

b. A statement that the insurer has complied with, or will comply with, the applicable laws of the country or countries wherein it proposes to solicit. "Laws of the country" means all national, provincial, city or country laws or ordinances of any country, as applicable.

c. A statement that the policies to be offered for sale conform to the standards prescribed in Appendix A and contain only the standard provisions such as those prescribed by the laws of the state of domicile.

d. A statement that the insurer will assume full responsibility for the acts of its agents with respect to solicitation. Sales personnel will be limited in numbers to one General Agent and no more than 50 sales personnel for each overseas area. If warranted, the number of agents may be further limited by the overseas command concerned.

e. A statement that the insurer will not utilize agents who have not been accredited by the appropriate overseas command for sale to DoD personnel on or off DoD installations overseas.

f. Any explanatory or supplemental comments that will assist in evaluating the application.

g. Where the Department of Defense requires detailed facts or statistics beyond those normally involved in accreditation processing, it will be incumbent upon the applicant to provide the necessary information by separate arrangements.

h. A statement that the General Agent and other accredited agents are appointed consistent with the prerequisites established in section C., below.

3. If a company is a life insurance company subsidiary, it must be accredited separately on its own merits.

C. General Agent and Agent Requirements

Unified commanders shall apply the following principles:

1. An agent must possess a current State license. The overseas commander may waive this requirement on behalf of an accredited agent who has been continuously residing and successfully selling life insurance in foreign areas and forfeits eligibility for a State license, through no fault of his or her own, due to the operation of State law (or regulation) governing domicile requirements, or requiring that the agent's company be licensed to do business in that State. The request for a waiver shall contain the name of the State or jurisdiction which would not renew the agent's license.

2. General Agents and agents will represent only one accredited commercial insurance company. This requirement may be waived by the overseas commander if multiple representation can be proven to be in the best interest of DoD personnel.

3. An agent must have at least 1 year of successful life insurance underwriting in the United States or its territories, generally within the 5 years preceding the date of application, in order to be initially employed for overseas solicitation and designated as an accredited agent.

4. Appropriate overseas commanders shall exercise further agent control procedures as deemed necessary.

5. An agent, once accredited in an overseas area, may not change affiliation from the staff of one General Agent to another, unless the losing company certifies in writing that the release is without justifiable prejudice. Unified commanders will have final authority to determine justifiable prejudice.

D. Announcement of Findings

1. Accreditation by the DoD upon annual applications of insurers shall be announced as soon as practicable by a notice to each applicant and by a listing released annually in September to the appropriate overseas commander. This approval does not constitute DoD endorsement of the insurer. Any advertising by insurers which suggests such endorsement is prohibited.

2. In the event accreditation is denied, specific reasons for such findings shall be submitted to the applicant.

a. Upon receipt of notification of an unfavorable finding, the insurer shall have 30 days from the receipt of such notification (forwarded certified mail, return receipt requested) in which to request reconsideration of the original decision. Such request must be accompanied by substantiating data or information in rebuttal of the specific reasons upon which the adverse findings are based.

b. Action by the Assistant Secretary of Defense (Force Management and Personnel) on appeal is final.

c. If the applicant is presently accredited as an insurer, up to 90 days from final action on an unfavorable finding shall be granted in which to close out operations.

3. Upon receiving the annual letter of accreditation, each insurer shall send to the applicable unified commander a verified list of agents currently accredited for overseas solicitation. Where applicable, the insurer shall also include the names of new agents for whom original accreditation and permission to solicit on base is requested. Insurers initially accredited will be furnished instructions by the DoD for agent accreditation procedures in overseas areas.

4. Material changes affecting the corporate status and financial conditions of the insurer which may occur during the fiscal year of accreditation must be reported at the time of occurrence.

a. The Department of Defense reserves the right to terminate accreditation if such material changes appear to substantially affect the financial and operational criteria described in section A., above, on which accreditation was based.

b. Failure to report such material changes can result in termination of accreditation regardless of its effect on the criteria.

5. If an analysis of information furnished by the insurer indicates that unfavorable trends are developing which may possibly adversely affect its future operations, the Department of Defense may, at its option, bring such matters to the attention of the insurer and request a statement as to what action, if any, is contemplated to deal with such unfavorable trends.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 25, 1985.

[FR Doc. 85–25840 Filed 10–30–85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 84–35]

Drawbridge Operation Regulations; Cheesequake Creek, NJ

Correction

FR Doc. 85–25431 was published on page 43134 in the issue of Thursday, October 24, 1985. It was published in the Rules sections of the **Federal Register**. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-02-M

33 CFR Part 167

[CGD 84–011]

Port Access Route, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: This notice publishes the results of the Port Access Route Study announced on March 22, 1984, in the **Federal Register** (49 FR 10679). The study was conducted to determine whether a safety fairway is needed to overlay the traffic separation scheme (TSS) in the approach to Boston, Massachusetts, and the precautionary area located between that TSS and the TSS off New York (Eastern Approach Off Nantucket). The First Coast Guard District performed the study and concluded that the lack of present or anticipated offshore oil exploration or exploitation activities in the area indicates that a safety fairway is not needed at this time. It is recommended that the existing TSS and precautionary areas at both ends of the TSS in the approach to Boston be incorporated into Part 167 of Title 33 Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: LTJG. Reese, Project Manager, Office of Navigation, Room 1606, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, Telephone (202) 245–0108.

SUPPLEMENTARY INFORMATION: Information is also available from LCDR Michael B. Slack at the following address: Commander (mps), First Coast Guard District, 150 Causeway Street, Boston, Massachusetts, 02114 or telephone (617) 223–6915.

Background

Under the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223, the Coast Guard is authorized to designate necessary fairways and traffic separation schemes (TSS's) to allow vessels an unobstructed, safe access to U.S. ports. A safety fairway is an area in which no fixed structures are permitted, and therefore may inhibit exploitation and exploration of mineral resources in the designated area. Fairways may be viewed as a necessary compromise between convenient mineral exploitation and concern for navigation safety. A TSS is a routing measure which separates opposing vessel traffic into directional lanes. Once a designation of a TSS or fairway is made under the authority of the PWSA, the paramount right of navigation is recognized within the area.

In order to isure international applicability and uniform enforcement of the rules of a TSS (Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972), a TSS is submitted to the International Maritime Organization (IMO) for approval, and is designed to met IMO guidelines. TSS's established under the PWSA are incorporated into Part 167 of Title 33 Code of Federal Regulations.

Before a new TSS or fairway can be designated, the PWSA requires that the Coast Guard conduct a study of potential vessel traffic and consider the conflicts with other users of the area. When the study results indicate that no new routing measures are necessary in an area, notice of this conclusion is published in the **Federal Register.** Although study results may have concluded that no new routing measures were necessary, areas for which results have been published may be studied again in the future as changes in conditions warrant re-evaluation.

Port access routing needs in the Boston Approach area were previously studies in 1980; and the results were published on January 7, 1982, in 47 FR 879. It was announced that a new precautionary area was needed at the junction of the New York and Boston TSS's Nantucket. This precautionary area was adopted by IMO as a TSS amendment in June 1983. It became effective on January 1, 1984.

Because of anticipated interest in leasing tracts, the Minerals Management Service announced North Atlantic lease sale 82, a sale on the North Atlantic Outer Continental Shelf in the area of offshare approaches to Boston. The potential for significant impact on navigation as a result of this sale caused the First Coast Guard District to initiate the present study. Notice of this study was published on March 22, 1984 (49 FR 10679) and the public was invited to submit information and comments by June 30, 1984.

A similar study of the Nantucket to Ambrose approach to New York is being conducted by the Third Coast Guard District as announced on February 9, 1984 in 49 FR 5017 and corrected at 49 FR 6593.

Discussion of Comments

During the study, comments were solicited from federal, state, and local agencies as well as segments of the maritime industry who have an interest in navigation in the traffic separation scheme in the approach to Boston, Massachusetts. Nine comments were received. Most were from federal agencies offering assistance in preparing the study and expressing interest in the results. Two comments were on the specific proposal. The Minerals Management (MMS) recommended the present system be maintained with no changes. A marine safety specialist made a recommendation concerning the geographical position of the existing traffic separation scheme.

Since so few comments were received and since a general analysis of available information did not uncover any conflict with navigation, a comprehensive study was not conducted.

Facts and Findings

a. According to the Massachusetts Port Authority, traffic density in the port of Boston has been declining each year since 1978. Overall there has been a 38% decline in the use of the port of Boston by commercial vessels from 1978 to 1984. In 1984, an estimated 18 vessels per day used the TSS including fishing and merchant vessels.

b. The North Atlantic lease sale 82 scheduled for May 9, 1984, was to have included tracts within the New York Eastern Approach TSS off Nantucket, the Boston approach TSS and the precautionary area joining these TSS's. The Boston approach TSS has a one mile wide seperation zone and two mile wide lanes. The precautionary area joining the TSS's has a 15.5 mile radius.

c. Because of the narrow width of the traffic lanes, the proximity of fishing grounds, the concentrations of fishing vessels, traditional weather patterns of fog and storms, and tanker traffic using the TSS, the proposed lease sale and development of lease sites had the potential for significant impact on navigational safety in the First Coast Guard District.

d. The Minerals Management Service later deleted 55% of the May 9, 1984 proposed lease area and rescheduled lease sale 82 for September 26, 1984. MMS later deleted 32 affected tracts within the Third Coast Guard District study area from the rescheduled sale at the request of the Coast Guard, pending completion of the study of the area off Nantucket. A Congressional moratorium for fiscal year 1984 prevented MMS from leasing any tracts within the First Coast Guard District.

e. The Minerals Management Service (MMS) has postponed leasing in the North Atlantic until lease sale 96 scheduled for November 1987. MMS has not yet announced a list of the tracts available for leasing.

f. Congress placed a moratorium on leasing tracts on the North Atlantic Outer Continential Shelf for fiscal year 1985; there are no leases being actively exploited in the North Atlantic; and lease sale 82 was cancelled for lack of industry interest. This is the fourth year that the moratorium has been in effect. It is anticipated that the moratorium will remain in place for fiscal year 1986.

g. The U.S. Army Corps of Engineers' (COE) Nationwide Permit for authorized activities (33 CFR 330.5(a)(8)), protects

fairways and TSS's by providing that structures may not be placed within the limits of any designated shipping safety fairway or TSS under a general permit and by requiring an individual permit application for an exemption from this rule on a case by case basis.

h. The First Coast Guard District and the New England division of the COE have been discussing how best to reconcile, to the extent practicable, the competitive uses of the area by developing a regional condition on the Nationwide Permit to give the First Coast Guard District Commander the opportunity for consultation when a structure is proposed to be positioned within 1000 meters of a TSS or a fairway. Whereas a wide fairway around lanes would prohibit structures, a 1000 meters case by case evaluation would allow for flexibility in siting structures near lanes where structures can directly interfere with navigation safety.

i. IMO approved traffic separation schemes and precautionary areas established after the PWSA are contained in 33 CFR Part 167. The existing TSS and precautionary areas at both ends of the TSS in the approach to Boston have been adopted by IMO but the TSS was established prior to the PWSA. For consistency among TSS's, the Boston TSS as well as all other pre-PWSA TSS's should be designated under the authority of the PWSA and incorporated into 33 CFR Part 167.

Conclusions

Based on the above findings, the First Coast Guard District has reached the following conclusions:

a. Leasing and subsequent development of tracts in the existing Boston Approach TSS's would make safe access to and from the port of Boston difficult. TSS lanes must remain free of structures to avoid hazards to navigation. If the area is leased, case by case evaluations must be given to structures proposed for separation zones, precautionary areas and 1000 meters on either side of traffic lanes to determine whether such structures would adversely interfere with navigation or whether mitigation measures would be appropriate.

b. On the assumption that the New England Division COE proposed regional conditioning of the Nationwide Permit (as described in findings (h)) is put into effect, a safety fairway is not necessary at this time.

c. There is no present need for rulemaking concerning the establishment of a safety fairway. If the moratorium on leasing off of Massachusetts is lifted and there is a lease sale proposed in the North Atlantic which contains tracts partially or wholly within a TSS or its immediate boundaries, or if the COE alters its present policy of requiring individual permit applications for structures in TSS's, or fails to implement the proposed regional conditioning of the Nationwide Permit, the First Coast Guard District will consider opening a new study within the area.

d. As part of the plan to consolidate all TSS's under the authority of the PWSA, the approach to Boston, Massachusetts TSS and the precautionary area associated with it and the precautionary area between the Eastern Approach Off Nantucket and the Approach to Boston TSS's will be incorporated into 33 CFR Part 167 in further rulemaking.

Dated: October 25, 1985.

W.J. Brogdon,

CAPT, USCG, Acting Chief, Office of Navigation.

[FR Doc. 85-26013 Filed 10-30-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2917-1]

Approval and Promulgation of Implementation Plans; Ohio; Extension of Comment Period

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for the notice of proposed rulemaking, published September 9, 1985, (50 FR 36633), regarding the disapproval of a revision to the Ohio State Implementation Plan for ozone for Champion International Corporation's DairyPak Division in Olmstead Falls, is being extended an additional 30 days to November 8, 1985. USEPA is taking this action in response to a request for such an extension.

DATE: Comments are now due on or before November 8, 1985.

FOR FURTHER INFORMATION PLEASE CONTACT: Debra Marcantonio, Regulatory Specialist (5AR-26), Air and Radiation Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6088.

Dated: October 11, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-26011 Filed 10-30-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to propose rulemaking.

SUMMARY: The Bureau of Reclamation is planning to revise provisions of 43 CFR Part 426 which were added by a final rulemaking published in the **Federal Register** on December 6, 1983. These provisions, which became effective on January 5, 1984, implement the Reclamation Reform Act of 1982, Pub. L. 97-293. The rules are being revised primarily for the purpose of including provisions to implement section 203(b) of the act. Section 203(b), commonly known as the "hammer clause," requires that as of April 12, 1987, landholders who remain under prior Reclamation law must pay the full cost on irrigation water delivered to land leased in excess of a landholding of 160 acres.

FOR FURTHER INFORMATION CONTACT: Phillip T. Doe, Chief, Acreage Limitation Branch, Bureau of Reclamation, E&R Center, D-410, P.O. Box 25007, Denver, Colorado 80225, (303) 236-8065, FTS 776-8065.

SUPPLEMENTARY INFORMATION: Section 203(b) of the Reclamation Reform Act of 1982 provides that water districts have 4½ years from the date of enactment to amend their existing repayment or water service contracts to come under the new provisions of law. After April 12, 1987, individuals in nonamending districts who do not execute irrevocable elections may receive Reclamation project irrigation water for lands leased in excess of 160 irrigable acres in a single ownership only if the full-cost rate for water is paid. The current rules for implementing the Reclamation Reform Act do not contain provisions for implementing this section.

Thus, the regulations must be revised to incorporate this provision of law. The rules will also be revised to clarify and expand upon other specific provisions. These latter revisions will be based primarily on feedback which has been received from both inside and outside

Government since the current rules became effective.

Dated: October 29, 1985.

Clifford I. Barrett,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 85-26121 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-09-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-313; RM-5037; FCC 85-569]

Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the Commission's Rules to permit modification of an FM station radio license to upgrade its facilities where the new channel is adjacent to or the same as the existing channel. The proposed action is in response to a petition for rule making filed by the Fuller-Jeffrey Group.

DATES: Comments must be filed on or before December 2, 1985, and reply comments must be filed on or before December 17, 1985.

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

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of Amendment of the Commission's Rules Regarding Modification of FM Broadcasting Licenses to Higher Class Co-channel or Adjacent Channels; MM Docket No. 85-313, Rm-5037, FCC 85-569.

Adopted: October 17, 1985.

Released: October 24, 1985.

By the Commission.

Introduction

1. The Commission has before it the petition for rule making filed by Fuller-Jeffrey Group ("petitioner") requesting an amendment to the Commission's Rules to permit FM stations to upgrade to adjacent superior classes of channel in their communities. Under the proposal, the Commission would amend the FM Table of Allotments and modify the licenses of existing stations to specify operation on the new channels in order to expedite enhanced service to the public. Under current Commission procedures, modification at the rule making stage takes place only where there is no other expression of interest in the proposed allotment or where another equivalent channel is available to accommodate other expressions of interest.

Background

2. The petitioner's requested action is premised on the recent Commission action in MM Docket No. 83-1148, *Amendment of the Commission's Rules Regarding the Modification of FM and Television Station Licenses*, 98 F.C.C. 2d 916 (1984). In that proceeding the Commission's Rules were amended to provide a procedure whereby the Commission can modify the license of an FM or TV station seeking to upgrade to a newly assigned superior class of channel, provided at least one additional equivalent channel is available to accommodate other parties expressing an interest in the new channel.[1] The petitioner's proposal would apply to situations where an additional equivalent channel was not available for allotment. This situation generally arises where a Class A licensee requests the substitution of an adjacent higher class channel (e.g. Channel 241C2 for 240A) or co-channel (e.g. Channel 277C2 for channel 277A) and modification of its license to specify the superior class of channel. The Notice of Proposed Rule Making would elicit comment, including expressions of interest from other parties in applying for the superior class of channel. Usually, where there is no additional equivalent channel, the Class A licensee then chooses to withdraw its request rather than risk losing its Class A station.[2] Under petitioner's proposal, the higher class allotment would be made and the modification of license would also be granted notwithstanding the expression of interest.

3. The petitioner argues that the requested action is in the public interest, because it would encourage licensees to upgrade their facilities. In this regard, the petitioner maintains that the Commission has determined facility improvements to be in the public interest, citing the Commission's action in Docket 83-1148 as well as Docket No. 80-90.[3] According to the petitioner, under current Commission policy, a licensee seeking to upgrade to an adjacent channel either risks its existing license by having to compete in an expensive, time-consuming comparative hearing or withdraws its allotment request and continues operating without the facility improvements. The petitioner asserts that in the case of withdrawal, neither the public nor the applicant is well served, no choice of applicants for a new channel is promoted, and Commission resources are wasted. The petitioner suggests that the current policy is subject to abuse, inasmuch as a competing station could cause the filing of the expression of interest to block the upgrading station from improving its service.

4. The petitioner recognizes that the Commission's position on this matter has been guided by the *Ashbacker* decision.[4] However, the petitioner argues that the Supreme Court did not hold in *Ashbacker* that anyone wanting a license is entitled to a comparative hearing—rather, that such a Congressionally mandated hearing for an available frequency must be meaningful. According to the petitioner, the Commission is not required to follow any specific procedure in determining when a frequency is available for application, and *Ashbacker* does not dictate Commission action when no *bona fide* and mutually exclusive applications are actually before it. The petitioner argues that because an adjacent channel in an upgrade situation is not available for application in the *Ashbacker* sense, the Commission's Cheyenne [5] policy need not apply.

Discussion

5. The Commission proposes to amend § 1.420(g) of its Rules as set forth in the attached Appendix. This amendment would permit FM licensees seeking to upgrade to petition the Commission to amend the FM Table of Allotments and to modify their licenses. This new procedure would apply where stations seek to move to adjacent superior

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[1] *See:* Section 1.420(g) of the Commission's Rules.

[2] This loss of the station would occur, because the Class A channel must be deleted in order to allot the adjacent higher class channel. For example, 1st, 2nd, and 3rd adjacent plus co-channels require the deletion of the current channel.

[3] *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Assignments*, 94 F.C.C. 2d 152 (1983), *recon. denied*, 97 F.C.C. 2d 279 (1984). In that proceeding a buffer zone has been provided to Class C stations operating below the minimum height to provide them more flexibility in improving their facilities.

[4] *Ashbacker Radio Corp. v. F.C.C.*, 326 U.S. 327 (1945). We believe the current Commission policy is correctly expressed in *Statesboro, Georgia*, 40 R.R. 2d 1021 (Broadcast Bureau 1977); *Morgan City, Louisiana*, 48 FR 4845, published February 3, 1983; and *Bonita Springs, Florida*, 45 R.R. 2d 1585 (Mass Media Bureau 1983).

[5] *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).

classes of channels. Although petitioner's proposal is limited to adjacent channel situations, the Commission believes that the benefits are equally applicable to situations where the stations desire to make a higher class use of their existing channels.[6] In both situations, it would be possible to expedite enhanced community service, as opposed to the existing situation where the realization of this public benefit is unlikely.

6. The Commission believes the proposed amendment to be in the public interest. First, it will encourage FM stations to upgrade their facilities. As illustrated by recent Commission actions in Dockets 80-90 and 83-1148, the Commission's policy is to encourage its broadcast licensees to upgrade in order to provide enhanced service to their audiences. Under existing policies and procedures, an FM station seeking to upgrade to an adjacent channel may have to elect to face a comparative hearing with its inherent risk and expense or to withdraw its request for rule making and continue operating on facilities inferior to those possible on the proposed channel. Since no other party could apply for the proposed channel in that community without deleting existing operations, and since in such cases the licensee almost universally withdraws the proposal, the Commission's current procedures operate in such a way as to prevent improved service. Second, Commission resource are wasted as a consequence of the withdrawal of the licensee for rule making in the face of other expressions of interest. Further, as the petitioner notes, in many cases it appears that an expression of interest has been motivated by the desire to block competition or to obtain recompense in exchange for withdrawal. Finally, modification in the course of rule makings to allot higher class channels will enable the provision of upgraded service to the public at an earlier date.

7. Section 316 of the Communications Act of 1934, as amended, provides the Commission with authority to modify station licenses where such action is determined to serve the public interest, convenience, and necessity. Here, modification of FM licenses to permit stations to upgrade in the context of rule making proceedings amending the FM Table of Allotments [7] would serve the public interest by making possible the expeditious provision of expanded service. The benefits of increased coverage, although technically feasible, would remain unrealized if licensees have to face competing applications as existing Commission procedures require. We believe that *Ashbacker* does not present an obstacle to adoption of the proposed rule. The proposed channel is unavailable for application in petitioners' communities unless the petitioners sacrifice their existing frequencies. Further, the Commission has the authority to define eligibility to apply for a new channel under the Storer case.[8] By exercising this authority, the Commission would enable incumbent FM licensees to upgrade on channels which are otherwise unavailable for application by others. Since those channels are not available, there would be no comparative hearing rights accuring to third parties under section 309 of the Act. The Commission remains generally disposed to allot additional channels to accommodate other interests where additional channels are available and will continue to consider arguments made concerning the merits of any particular allotment.

8. There are a number of rule making petitions currently of file with the Commission that could be affected by favorable action on the instant proposal. Accordingly, the Commission will delay final action on those petitions pending the outcome of this proceeding. The Commission will reference this proceeding in those pending cases by issuing Notices of Proposed Rule Making conditioned on the outcome of this general proceeding. This would enable interested parties to file appropriate comments in those pending cases. In the few instances where the coment period has expired, the Commission will entertain appropriate late-filed comments.

9. Commenters are invited to address the proposed amendment. Specifically, the Commission asks whether adoption of the proposed rule will result in the realization of the benefits discussed herein, such as encouraging licensees to provide enhanced service to the public, providing a more economical use of Commission resources, and making it more efficient for licensees to upgrade.

10. *Regulatory Flexibility Act Initial Analysis.*

I. *Reason for Action.* This action derives from a petition for rule making filed by Fuller Jeffrey Group, noted above. In this proceeding the Commission seeks to develop a record and to elicit comments on a proposed rule. The proposed rule is part of the Commission's ongoing review and evaluation of its rules and policies.

II. (a) *Objective.* This proceeding will elicit comments on the public interest benefits and costs of the proposed rule change in accordance with fulfilling the mandate of section 309(a) of the Communications Act of 1934, as amended.

(b) *Legal Basis.* The legal basis for eliciting comments on this proposed rule is found in sections 4(i) and 303(r) of the Communications Act.

III. *Description, Potential Impact and Number of Small Facilities Affected.* The time and costs involved in proceedings concerning parties seeking to upgrade their FM facilities would be reduced. Small entities could benefit from not having to expend the time and incur the costs involved in the application stage where their licenses could be modified to specify operation on higher classes of channels to their existing or to adjacent frequencies in the rule making stage.

IV. *Recording, Record Keeping and other Compliance Requirements.* [There is no additional impact.]

V. *Federal Rules which Overlap, Duplicate or Conflict with the Proposed Rules.* There is no overlap, duplication, or conflict.

VI. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives.* There is no significant alternative.

Paperwork Reduction Act Statement

11. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Filing Responses to this Notice

12. Authority for this proposed rule making is contained in sections 1, 3, 4 (i) and (j), 303, 307(b), 309 and 403 of the Communications Act of 1934, as amended. 47 U.S.C. sections 151-609.

13. Pursuant to §§ 1.410 and 1.415 of the Commission's Rules, interested parties may file comments on or before December 2, 1985, and reply comments on or before December 17, 1985. All relevant and timely comments will be considered. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing

[6] Not all Class A channels can be upgraded to higher classes. See: 73.206 of the Commission's Rules, which reserves 20 channels for Class A use exclusively. The other 60 commercial channels, however, can be used for all classes.

[7] Section 73.202(b) of the Rules.

[8] See: *U.S. v. Storer*, 351 U.S. 192 (1956).

indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Report and Order*.

14. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, Whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who makes an *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covererd in any previously-filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation, and that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served and must also state by docket number the proceeding to which it relates. *See* 47 CFR 1.1231.

15. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of the proposed rule on small entities. Written public comments are requested on the IRFA. The comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. section 601 *ex seq.* (1981).

16. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554. For further information on this proceeding, contact Joel Rosenberg, Mass Media Bureau (202) 634-6530.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 1—[AMENDED]

It is proposed to revise 47 CFR 1.420(g) to read as follows:

§ 1.420 Additional Procedures in Proceedings for Amendment of the FM, Television or Air Ground Table of Assignments.

* * * * *

(g) The Commission may modify the license or permit of an FM station to an equal or superior class of channel or of a UHF TV station to a VHF channel in the same community in the course of the rule making proceeding to amend § 73.202(b), § 73.504(a) or § 73.606(b) if any of the following conditions are met:

(1) There is no other timely filed expression of interest, or

(2) if another interest in the proposed channel is timely filed an additional equivalent class of channel is also allotted or available for application, or

(3) with respect to FM, the modification of license or permit would occur on a matually exclusive higher class adjacent or co-channel.

[FR Doc. 85-25885 Filed 10-30-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-318; RM-5096]

TV Broadcast Station in Richland Center, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF Television Channel 45 to Richland Center, Wisconsin, as that community's first local television broadcast service, at the request of Kaul-Tronics, Inc.

DATES: Comments must be filed on or before December 17, 1985, and reply comments on or before January 2, 1986

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.

Notice of Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Richland Center, Wisconsin) MM Docket No. 85-318; RM-5096.

Adopted: October 15, 1985.

Released: October 24, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Kaul-Tronics, Inc. ("petitioner"), seeking the assignment of UHF Television Channel 45 to Richland Center, Wisconsin, as that community's first commercial television facility. Petitioner has stated an intention to apply for the channel, if assigned.

2. Richland Center (population 4,997),[1] seat of Richland County (population 17,476) is located in southwestern Wisconsin, approximately 120 miles west of Milwaukee.

3. The assignment of UHF TV Channel 45 to Richland Center can be made in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules, with a site restriction of 2.7 miles northeast of the community. The site restriction is necessary to avoid short spacing to Station WHLA-TV, Channel 31, La Crosse, Wisconsin, and unused Channel 46 at Kieler, Wisconsin.

[1] Population figures are taken from the 1980 U.S. Census.

PART 73—[AMENDED]

4. In view of the fact that the proposed assignment could provide a first commercial television service to Richland Center, we believe it is in the public interest to seek comments on the proposal to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Richland Center, Wisconsin		45+

5. The Commission's authority to institute rule making proceedings showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before December 17, 1985, and reply comments on or before January 2, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John C. Quale, Antoinette D. Cook, Wiley & Rein, 1776 K Street, NW., Washington, DC 20006 (Counsel to petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 302 (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 proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85–25942 Filed 10–30–85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 27 and 52

Federal Acquisition Regulation (FAR); Validation of Restrictive Markings on Technical Data

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule [Extension of comment period].

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision of the Federal Acquisition Regulation (FAR) to add sections 27.409, 27.410, and 52.227–24 concerning Validation of Restrictive

Markings. FAR coverage was published as a proposed rule for public comment on October 3, 1985 (50 FR 40416), with corrections published on October 8, 1985 (50 FR 40984). The original date for submission of comments was November 4, 1985. The Councils have decided to extend the period for public comment on FAR coverage for Validation of Restrictive Markings on Technical Data to coincide with the comment period offered by the Department of Defense for related coverage in the DoD FAR Supplement.

COMMENT DATE: Written comments on the proposed FAR coverage for Validation of Restrictive Markings on Technical Data should be submitted to the FAR Secretariat by January 9, 1986, for consideration in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW. Room 4041, Washington, DC 20405.

Please cite FAR Case 85–47 in all correspondence related to this issue.

FOR FUTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

Dated: October 25, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 85–25922 Filed 10–30–85; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for Bruneau Hot Spring Snail (Family Hydrobiidae)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that a public hearing will be held on the proposed determination of endangered status for the Bruneau hot spring snail and that the comment period on this proposal is reopened. This species occurs only in two small hot springs and their immediate outflows in Owyhee County, Idaho. The major threat to this species is the drastic and continuing reduction in spring flows. The hearing and the reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened October 31, 1985. The public hearing will be held at 1:00 p.m., on Monday, December 10, 1985, in Boise, Idaho. The comment period, which originally closes on October 21, 1985, now closes December 31, 1985.

ADDRESSES: The public hearing will be held in the Gold Room of the State Capitol, 4th Floor, Boise, Idaho. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah St., Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Jay Gore, Division of Endangered Species, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705 (503/334–1806 or FTS 554–1806).

SUPPLEMENTARY INFORMATION:

Background

The first collections of this species were made in 1952 and 1953. Dr. Dwight W. Taylor of Tiburon, California, has studied the anatomy of the species and determined that it represents a previously unknown genus and species of the snail family Hydrobiidae. The adults of this species reach only about 5 millimeters in length of the shell. The species occurs in only two small thermal springs or seep areas and their immediate outflows. The snails have been found in these habitats on rocks, gravel, mud, and algal film. The springs and proximal outflows, which constitute the most important habitat, are on land administered by the Bureau of Land Management (BLM). Downstream habitat is on private land.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On October 7, 1985, a request for a public hearing was received from the Department of Water Resources, Boise State Office. The Service has scheduled this hearing for December 10, 1985 at 1:00 p.m. in the Gold Room of the State Capitol, 4th Floor, Boise, Idaho. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present that evening necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment period on the proposal originally closed on October 21, 1985. In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may now be submitted for all proposals until December 31, 1985, to the Service office in the Addresses section.

Author

The primary author of this notice is Ms. Carolyn Bohan, U.S. Fish and Wildlife Service, 500 N.E. Multonomah St., Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

Authority: The authority for this section is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884, Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: October 24, 1985.

Joseph R. Blum,

Acting Regional Director.

[FR Doc. 85–26014 Filed 10–30–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Period for Public Hearing Requests for Eriogonum Ovalifolium var. Williamsiae (Steamboat Buckwheat) and Cupressus Abramsiana (Santa Cruz Cypress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period for public hearing requests.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the comment period for receiving public hearing requests on the proposed determination of endangered status for *Eriogonum ovalifolium* var. *williamsiae* (Steamboat buckwheat) and *Cupressus abramsiana* (Santa Cruz cypress) is extended. The extension is due to an unavoidable administrative problem in receiving the **Federal Register** issues containing the proposal. All interested parties will now

receive the maximum time period to request a hearing.

DATES: Public hearing requests, originally accepted through October 28, 1985, will now be accepted through the close of the comment period, November 12, 1985.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah St., Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at above address or (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Eriogonum ovalifolium var. *williamsiae* (Steamboat buckwheat) is only known from one site at Steamboat Hot Springs, Washoe County, Nevada, where it grows in several colonies scattered over approximately 100 acres. This species is vulnerable to habitat alteration that may be caused by the potential threats of drilling for geothermal development, recreational and commercial development, and mining activities near where it occurs. It is presently detrimentally affected by off-road vehicle use, dumping of refuse, and alterations to moisture patterns.

Cupressus abramsiana (Santa Cruz cypress) occurs in groves on private and county land in the Santa Cruz Mountains, Santa Cruz and San Mateo Counties, California. Portions of each have been destroyed or are threatened by residential development, agricultural conversion, logging, and/or alteration of the natural frequency of fires that maintains the cypress groves. One population also faces a potential threat from oil and gas drilling.

Public hearing requests, originally accepted through October 28, 1985, will now be accepted through the close of the comment period, November 12, 1985.

Author

The primary author of this notice is Ms. Carolyn Bohan, U.S. Fish and Wildlife Service, 500 N.E. Multnomah St., Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: October 24, 1985.

Joseph R. Blum,

Acting Regional Director.

[FR Doc. 85–26015 Filed 10–30–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 211
Thursday, October 31, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Intermountain Region Noxious Weed and Poisonous Plant Control; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement for the Intermountain Region Noxious Weed and Poisonous Plant Control Program.

The Intermountain Region encompasses approximately 31 million acres of National Forest System lands in Utah, Nevada, southern Idaho, western Wyoming, and portions of California (near Lake Tahoe), and Colorado (Mesa and Montrose Counties). This acreage is divided into 18 National Forests and one National Grassland, administered by 16 Forest Supervisors.

The Region's Noxious Weed and Poisonous Plant Program typically ranges from 2,500–3,000 acres treated per year. The program is aimed at control of those plants that reduce public rangeland productivity, might spread to nearby noninfested lands, and increase the economic burden on private landowners and state and federal taxpayers.

The Forest Service will analyze alternative methods of noxious weed and poisonous plant control and the cumulative impacts on the human environment. Possible alternatives will include: (1) No action; (2) aerial herbicide application; (3) integrated control (chemical, biological, mechanical, manual); and (4) control without herbicides. The no-action alternative will analyze the impacts of uncontrolled weed spread.

Federal, state, and local agencies, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. Each National Forest in the Intermountain Region will advertise public meetings in local newspapers which will be held between November 8–22, 1985. The meetings will be to:

1. Identify potential issues.
2. Identify issues to be analyzed in depth.
3. Determine potential cooperating agencies.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in potential weed control areas.

J. S. Tixier, Regional Forester, Intermountain Region, Ogden, Utah, is the responsible official.

The analysis is expected to take about 10 months. The Draft Environmental Impact Statement should be available for public review in January 1986. The Final Environmental Impact Statement is scheduled to be completed during May 1985.

Written comments and suggestions concerning the public meetings or analyses should be sent to J. S. Tixier, Regional Forester, Intermountain Region, 324 25th Street, Odgen, Utah 84401.

Questions about the proposed action, public meetings and the Draft and Final Environmental Impact Statements should be directed to Garth Baxter, Regional Pesticide Coordinator, Intermountain Region, 324 25th Street, Ogden, Utah 84401, Phone (801) 625–5258.

Dated: October 25, 1985.

T.A. Roederer,

Deputy Regional Forester, Resources.

[FR Doc. 85–26055 Filed 10–30–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRILCULTURE

Soil Conservation Service

Environmental Impact; South Harrison Park Critical Area Treatment RC&D Measure, IN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Indianapolis, Indiana, 46224, telephone 317–248–4350.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the South Harrison Park Critical Area Treatment RC&D Measure, Harrison County, Indiana.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation of and review of an environmental impact statement are not needed for this project.

The project concerns a plan for critical area treatment (erosion control). The planned works of improvement include grading and spaing then fully into a waterway, seeding with adapted grasses and legumes and mulching with straw and/or excelsior matting.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation is on file and may be reviewed by contacting Robert L. Eddleman, State Conservationist. The FNSI has been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901–Resource Conservation and Development–and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: October 22, 1985.

Robert L. Eddleman,

State Conservationist.

[FR Doc. 85–25964 Filed 10–30–85; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Maine Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on November 25, 1985, at the Holiday Inn, Western Avenue, Augusta, Maine. The purpose of the meeting is to develop plans to carry out a study of the condition of Maine's Indians including a discussion of its scope and methodology.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard Morgan, or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/233-0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 25, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-25954 Filed 10-30-85; 8:45 am]

BILLING CODE 6335-01-M

Montana Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:30 p.m. on November 16, 1985, at the Sheraton Great Falls, 400 10th Avenue, South, Great Falls, Montana. The purpose of the meeting is to discuss Fort Belknap forum, Indian incarceration in Montana county jails research project, Grove City case, select vice-chair, and plan program for biennium.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Lawrence Huss or William Muldrow, Acting Director of the Rocky Mountain Regional office at (303) 844-2211, (TDD 303/844-3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 23, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-25955 Filed 10-30-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 38-85]

Foreign-Trade Zone 27—Boston, MA; Application for Subzone; General Motors Auto Plant, Framingham

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Massachusetts Port Authority, grantee of Foreign-Trade Zone 27, requesting special-purpose subzone status for the auto manufacturing plant of General Motors Corporation in Framingham, Massachusetts, within the Boston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 21, 1985.

The plant is located at 63 Western Avenue, Framingham. The 166-acre facility is used to produce Chevrolet Celebrity and Oldsmobile Cutlass model automobiles. About 7 percent of the parts used at the plant are dutiable, including engines, seat covers, solenoids, and wiring harnesses. Some 14 percent of the finished autos are exported.

Zone procedures would allow GM to avoid duty payments on the foreign parts used in its exports. On its domestic sales, the company would be able to take advantage of the same duty rate available to importers of finished autos, which is 2.6 percent, whereas the duty rate for the components used at the plant averaged 4.2 percent. These savings would contribute to the company's overall cost reduction program, helping it to become more competitive with auto plants abroad.

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, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02110; and Colonel Carl B. Sciple, Division Engineer, U.S. Army Engineer Division New England, 424 Trapelo Rd., Waltham, MA 02254.

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 on or before December 2, 1985.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 441 Stuart St., 10th Floor, Boston, MA 02116

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: October 28, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-25994 Filed 10-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 39-85]

Foreign-Trade Zone 114, Peoria, IL; Application for Subzone; Chrysler Auto Plant, Belvidere, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Economic Development Council of the Peoria Area, grantee of Foreign-Trade Zone 114, requesting special-purpose subzone status for the automobile manufacturing plant of Chrysler Corporation in Belvidere, Illinois, some 60 miles west of Chicago. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulation of the Board (15 CFR Part 400). It was formally filed on October 21, 1985. The issue of adjacency will be reviewed during the proceeding.

The plant is located at 3000 W. Chrysler Drive, Belvidere, some 14 miles east of Rockford. The 249-acre facility is used to produce compact automobiles, employing some 4400 persons. Certain components are sourced abroad such as engines, fuel injector systems and radios. Some of the automobiles are exported.

Zone procedures will allow Chrysler to avoid duties on foreign parts used in its exports. On it domestic sales, the company would be able to take advantage of the same duty rate available to importers of complete automobiles. The duty rate for the foreign components used at the plant ranges from 3.3 to 8.6 percent, whereas the rate for complete autos is 2.6 percent. These savings would contribute to the company's overall cost reduction program, helping its U.S. plants to become more competitive with auto plants abroad.

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, D.C. 20230; Richard Roster, District Director, U.S. Customs Service, North Central Region, 610 S. Canal St., Chicago, IL 60607; and Lt. Colonel Frank R. Finch, District Engineer, U.S. Army Engineer District Chicago, 219 S. Dearborn St., Chicago, IL 60604.

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 on or before December 2, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 1406 Mid Continental Plaza Bldg., 55 E. Monroe Street, Chicago, IL 60603

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, N.W., Washington, D.C. 20230

Dated: October 28, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-25993 Filed 10-30-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-405]

Cellular Mobile Telephones and Subassemblies From Japan; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. Those firms which are subject to the suspension of liquidation are indicated in the "Suspension of Liquidation" section this notice.

EFFECTIVE DATE: October 31, 1985.

FOR FURTHER INFORMATION CONTACT: John R. Brinkmann, Jr., Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation we have determined that cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) (19 U.S.C. 1673d(a)) of the Tariff Act of 1930, as amended (the Act). The margins found for all companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On November 5, 1984, we received a petition from Motorola, Inc. (Motorola) on behalf of the United States cellular mobile telephone and subassembly industry. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping duty investigation. We notified the U.S. International Trade Commission (ITC) of our action and initiated such an investigation on November 26, 1984 (49 FR 47076). The ITC subsequently found, on December 20, 1984, that there is a reasonable indication that imports of cellular mobile telephones and subassemblies for Japan are materially injuring, or threatening material injury to, a United States industry. The petitioner alleged that at least nine Japanese companies produce the subject merchandise for export to the United States. We identified six producers and exporters which account for at least 60 percent of the subject merchandise exported to the United States from Japan during the period of investigation. These companies are: Hitachi, Ltd. of Japan (Hitachi); Mitsubishi Electric Corporation (MELCO); OKI Electric Industry Company, Ltd. (OKI); Toshiba Corporation (Toshiba); NEC Corporation (NEC); and Matsushita Communication Industrial Co., Ltd. (Matsushita). We presented a questionnaire to counsel for Hitachi, MELCO, OKI, Toshiba and Matsushita on February 1, 1985, and to counsel for NEC on February 13, 1985. We subsequently received responses from all companies except Matsushita, which on March 18 advised the Department of Commerce (the Department that it had decided not to file a response to the February 1 questionnaire.

On March 14, 1985, the petitioner requested the Department to extend the preliminary determination until not later than June 4, 1985. On March 21, 1985, we granted the request (50 FR 12599).

On June 4, 1985, we made an affirmative preliminary determination (50 FR 24554).

On June 19 and July 2, 1985, three of the six respondents in this investigation requested that we extend the period for the final determination until the 135th day after publication of our preliminary determination. On July 15, 1985, we granted these requests and extended our final determination to October 25, 1985 (50 FR 29713).

We verified the questionnaire responses in April, May and June.

A hearing was held on September 9, 1985.

Scope of Investigation

The products covered by this investigation are cellular mobile telephones (CMTs), CMT transceivers, CMT control units, and certain subassemblies thereof, which meet the tests set forth below. CMTs are radio-telephone equipment designed to operate in a cellular radio-telephone system, i.e., a system that permits mobile telephones to communicate with traditional land-line telephones via a base station, and that permits multiple simultaneous use of particular radio frequencies through the division of the system into independent cells, each of which has its own transceiving base station. Each CMT generally consists of (1) a transceiver, i.e., a box of electronic

subassemblies which receives and transmits calls; and (2) a control unit, i.e., a handset and cradle resembling a modern telephone, which permits a motor-vehicle driver or passenger to dial, speak, and hear a call. They are designed to use motor vehicle power sources. Cellular transportable telephones, which are designed to use either motor vehicle power sources or, alternatively, portable power sources, are included in this investigation.

Subassemblies are any completed or partially completed circuit modules, the value of which is equal to or greater than five dollars, and which are dedicated exclusively for use in CMT transceivers or control units. The term "dedicated exclusively for use" only encompasses those subassemblies that are specifically designed for use in CMTs, and could not used, absent alteration, in a non-CMT device. The Department selected the five dollar value for defining the scope since this is a value that it has determined is equivalent to a "major" subassembly. The Department feels that a dollar cut-off point is a more workable standard than a subjective determination such as whether a circuit module is "substantially complete." Examples of subassemblies which may fall within this definition are circuit modules containing any of the following circuitry or combinations thereof: audio processing, signal processing (logic), RF, IF, synthesizer, duplexer, power supply, power amplification, transmitter, and exciter. The presumption is that CMT subassemblies are covered by the order unless an importer can prove otherwise. An importer will have to file a declaration with the Customs Service to the effect that a particular CMT subassembly is not dedicated exclusively for use in CMTs or that the dollar value is less than $5, if he wishes it to be excluded from the order.

The following merchandise has been excluded from this investigation: Pocket-size self-contained portable cellular telephones, cellular base stations or base station apparatus, cellular switches, and mobile telephones designed for operation on other, non-cellular, mobile telephone systems.

As noted in our notice of extension of the final determination, cellular mobile telephones and subassemblies are no longer classified under item numbers 685.23, 685.24 and 685.29 of the *Tariff Schedules of the United States (TSUS)*. They are currently classified under TSUS item numbers 685.28 and 685.32.

We investigated sales of the cellular mobile telephones and subassemblies during the period June 1 through November 30, 1984.

Scope of Investigation Issues

We have defined the products covered by this investigation as CMTs, CMT transceivers, CMT control units and major subassemblies dedicated exclusively for use in CMTs. The determination to include subassemblies within the scope of the investigation was based on the need to prevent circumvention of any antidumping order on CMTs through the importation of major CMT subassemblies, and the Department's broader conclusion that the investigation properly should include subassemblies. In this regard, Motorola's petition requested that we include "kits of components and subassemblies" in the investigation.

Two of the companies investigated export CMT subassemblies to the United States to related companies which subsequently perform some form of further manufacture or assembly before selling the completed CMTs to unrelated parties. If the investigation were limited to completed CMTs alone, none of these importations would be subject to an antidumping order, even if all of the subassemblies were of Japanese origin and were being sold at less than fair value, and the complete CMT was "substantially" of Japanese origin.

A number of the respondents have argued that the Department has no authority to include discrete subassemblies (that is, subassemblies that are imported separately rather than in kits) within the scope of this investigation. The crux of their argument is (1) that discrete CMT subassemblies are not the same "class or kind" of merchandise as complete CMTs or CMT kits, (2) that Motorola's petition only included complete CMTs and CMT kits, defined as sets of CMT subassemblies, and (3) that antidumping investigations may only encompass products that are the same "class or kind of merchandise" as those covered in the petition. We address each of respondents' arguments in turn.

I. The Department takes the position that CMT subassemblies that are "dedicated exclusively for use" in CMTs are the same "class or kind" of merchandise as complete CMTs. This determination is based on a consideration of the following factors: (1) General physical characteristics, (2) the expectations of the ultimate purchasers, (3) the channels of trade in which the product is sold, (4) the manner in which the product is advertised and displayed, and (5) the ultimate use of the merchandise in question. These factors have been recognized and utilized by the Court of International Trade as appropriate criteria in determining whether a new product was within the "class or kind" of merchandise described in a prior antidumping finding, and they are likewise instructive where, as here, the question is the initial formulation of the scope of the order. See *Diversified Products Corp. v. U.S.*, 572 F. Supp. 883 (C.I.T. 1983), *Kyowa Gas Chemical Industry Co., Ltd., v. U.S.*, 5 ITRD 2131 (1984). Since the scope of this investigation only includes those subassemblies that are "dedicated exclusively for use" in complete CMTs, both the ultimate use and the ultimate purchaser of the CMT subassemblies are the same as for the complete CMTs, since by definition, the CMT subassemblies could not be used in any other device. Thus, the second and the fifth criteria outlined above are met.

Similarly, based on the evidence in the record, the Department determines that CMT subassemblies, as defined in this investigation, and complete CMTs move in the same channel of trade. Indeed, this is the very reason the Department feels it necessary to include CMT subassemblies within the scope of this investigation since otherwise any resulting order could easily be circumvented. Those subassemblies manufactured in-house by CMT producers move in the same channels of trade as the CMT of which they are a part because such subassemblies are not "traded" except to the extent they are sold after they have been used in CMT production. While some CMT components may be purchased by CMT manufacturers from unrelated parties, the Department has reason to believe that such separately traded items may not meet the "dedicated exclusively for use" criteria, and therefore would not be covered by the scope of any order.

Similarly, since there is no separate channel of trade for CMT subassemblies, the only respect in which they are advertised and displayed is in the form of complete CMT units. Thus, the fourth criterion is met.

Finally, with respect to the first criterion, the Department does not think that the fact that CMT subassemblies have, in some respect, different physical characteristics from complete CMTs should be controlling in this instance. The only difference between the two is that complete CMTs are, essentially, assembled CMT subassemblies. As a result, the Department concludes that CMT subassemblies which are dedicated exclusively for use in CMTs are within the same "class or kind" of merchandise as complete CMTs. *See, Antidumping Order; Cell Site*

Transceivers from Japan, 50 FR 307 (1985).

II. The Department's view is that respondents are taking an unduly narrow reading of the petition and that the Department's definition of scope is simply a clarification of what was set forth in the petition. Petitioner's definition of kits referred to collections of "key" components, which we have taken to mean "major" subassemblies. The primary purpose of including subassemblies in this investigation is to prevent evasion of the antidumping law. It would be illogical to make a distinction between those subassemblies that are shipped discretely in separate containers and those that are shipped together in one box. Limitations as to packaging would simply be an invitation to evade the antidumping law through changes in packaging.

III. Whether or not Motorola's petitions explicitly covers discrete subassemblies is not dispositive, since the Department has an inherent power to establish the parameters of the investigation so as to carry out its mandate to administer the law effectively and in accordance with its intent. The Court of International Trade has recognized that the ITA has the authority to define the scope of an antidumping duty investigation. *Diversified Products Corp. v. U.S.*, 572 F. Supp. 883, 887 (C.I.T. 1983), citing *Royal Business Machines v. United States*, 507 F. Supp. 1007 (1980), *aff'd* 663 F.2d 692 (C.C.P.A. 1982). Without this inherent authority, the Department would be tied to an initial scope definition that is based on whatever information the petitioner may have had available to it at the time of initiating the case, and which may not make sense in light of the information available to the Department or subsequently obtained in the investigation. Nor do any of the legal decisions the respondents cite support their argument that the Department is bound by the petition in initially defining the scope of the investigation. The issue in *Royal Business Machines, Inc. v. United States, supra* was whether the Department could modify the scope of the investigation in the order, after the final antidumping determination was issued. Contrary to respondents' assertions, the decision does not in any way limit the Department's discretion to define the scope of a petition. Indeed the court acknowledged that "[w]ithin the context of an antidumping proceeding the [Commerce Department], at the proper time, can define the class in its terms." 507 F. Supp., at, 1014, note 18, (CIT 1980). *Tapered Roller Bearings and Certain Components Thereof from Japan* (46 FR 40550), is equally irrelevant since, in the case, the only reason the Department concluded that "unfinished" tapered roller bearings were not the same "class or kind" of merchandise as "finished" roller bearings was that "[n]either the petition nor the fair value investigation was directed at transactions involving partially manufactured merchandise." (46 FR 40551). Here, by contrast, at the outset the Department has defined the investigation as including subassemblies.

Respondents' contention that the petition does not contain sufficient allegations or evidence of dumping with respect to subassemblies is equally without merit. Since complete CMTs and subassemblies are of the same "class or kind" of merchandise, there was no need for the petitioner to present evidence of dumping with respect to subassemblies. As the Department has previously recognized, there is no need to conduct price comparisons on all types of merchandise within the class that is subject to an investigation. See, e.g. *Large Power Transformers from France* (47 FR 10268).

Furthermore, Motorola did provide sufficient evidence of dumping with respect to CMT subassemblies. Motorola's petition contains allegations of dumping by Japanese companies that export CMT subassemblies for further assembly and processing by related companies in the United States. Where a related company is the importer, the basis for determining U.S. sales price is the first sale to an unrelated customer, rather than any transfer prices between related parties (section 772 of the Act). This is true even where some final finishing or assembly steps are performed on the merchandise by the U.S. affiliate. Thus, since ther were no sales of subassemblies, as defined in this investigation, to unrelated parties, the best information regarding dumping of subassemblies is the price at which the complete CMTs were sold to unrelated purchasers. This is exactly the evidence Motorola provided.

Finally, the Department has considered respondents' (principally Matsushita's and OKI's) suggestion that the order be designed so as to exclude importations of subassemblies that are incorporated into CMTs by U.S. facilities that add more than a nominal value. It was proposed, for example, that each respondent be given an opportunity to make an affirmative showing that the value it adds in the United States to imported CMT subassemblies is so substantial that it ought to be removed from the scope of the order. Based on the information currently available, we are not convinced that this proposal is sound as a matter of policy or that is it administratively feasible. However, we will reexamine this issue if it is raised in any subsequent administrative review.

Accordingly, the Department has included CMT subassemblies as defined above within the scope of the investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

As required by section 776(b) of the Act, in making our fair value comparisons we used the best information available in calculating both United States price and foreign market value for Matsushita and NEC and foreign market value for MELCO. We used information in the petition as the best information available for Matsushita because it did not submit a response to our antidumping duty questionnaire.

We also used the best information available for NEC because it did not provide a full and complete response to our antidumping duty questionnaire. While NEC did respond to selected sections of the questionnaire, it did not provide the home market sales data requested by the Department. NEC refused to provide the requested data on the grounds that these data were not relevant because its CMTs sold in the home market were not "such or similar" merchandise to the CMTs it sold in the United States, as defined in section 771(16) of the Act. Thus, NEC argued, the Department must calculate foreign market value based on third country sales as provided for in section 773(a)(1)(B) of the Act.

During the course of this investigation, the Department repeatedly advised NEC that if NEC failed to provide home market sales data and the Department determined that NEC's home market sales were of "such or similar merchandise" the Department would have to use best information available. Based on information presented by NEC and an analysis of the data submitted by a technical consultant retained by the Department, we have determined that the CMT sold by NEC in the home market is such or similar merchandise within the meaning of section 771(16) of the Act. As a result, the Department calculated both United States price and foreign market value for NEC using

information in the petition as the best information available.

For MELCO, the Department based United States price on purchase price using MELCO's sales of complete CMTs to unrelated purchasers prior to their importation into the United States, and foreign market value on the best information available. Although the Department used MELCO's third country sales to calculate its foreign market value in the preliminary determination, the Department's subsequent verification revealed that MELCO did have a viable home market of such or similar merchandise (See DOC Position to Petitioner's—MELCO Comment 1). Accordingly, we are required by section 773 of the Act to use home market prices as the basis of foreign market value. Since MELCO did not provide a questionnaire response with respect to its home market sales, we used the best information available, as required by section 776(b) of the Act. The best information available for calculating foreign market value for MELCO's CMT was information obtained during verification. Since MELCO only sold CMT transceivers in the home market, we calculated foreign market value by adjusting MELCO's home market selling price for the CMT transceiver in accordance with § 353.16 of the Commerce regulations to account for the difference between the transceiver and the complete CMT unit (i.e., to account for the lack of a control unit). The adjustment was made by increasing MELCO's home market transceiver price by the ratio of MELCO's third country transceiver price to its third country control unit price.

United States Price

As provided in section 772 of the Act, we used both the purchase price and exporter's sales price of the subject merchandise to represent the United States price for sales by the Japanese producers.

Purchase price was used for Toshiba, Hitachi and MELCO since the merchandise was sold to unrelated purchasers prior to its importation into the United States or sold to a purchaser outside the United States when it was known at the time of sale that the merchandise was destined for the United States. We calculated the purchase price based on either the f.o.b. or c.i.f., duty paid, packed price to unrelated purchasers for sale in the United States. We made deductions, where appropriate, for foreign inland freight and handling charges, air or ocean freight, marine insurance, U.S. customs duties, and U.S. inland freight and brokerage.

For OKI, we used exporter's sales price (ESP) to represent the United States price because the merchandise was sold to unrelated purchasers after importation into the United States. For these sales, we made deductions, where appropriate, for foreign inland freight and handling charges, air or ocean freight, U.S. customs duties, U.S. inland freight and brokerage, indirect selling expenses incurred in the United States and other direct selling expenses incurred in the United States such as credit, advertising reserve, warranties and post-sale warehousing. In calculating the ESP for OKI, we also deducted the value added to the imported units through further manufacture prior to sale in the United States.

Foreign Market Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value for OKI, Hitachi and Toshiba as there were not sufficient home market or third country sales of such or similar merchandise for the purpose of comparison. In determining constructed value, we calculated the cost of materials, fabrication, general expenses, profit, and the cost of packing. The specific methodology used to calculate constructed value for each company is listed below:

1. *OKI Constructed Value.* For OKI, the cost of manufacturing was based on weighted-average costs for the months of April through November, 1984. These costs were based on standard costs adjusted to actual costs by the variances reflected in OKI's accounting system. The Department did not use special adjustments to the cost of manufacturing claimed by OKI because the adjustments were either theoretically inappropriate or not quantified and adequately verified. (See "Comment" section of the notice). Product-specified R&D expenses, which are necessary expenses incurred in manufacturing, were included as part of the "fabrication" expenses and were amortized over the market-life of the product. For the cellular R&D expenses, the Department used six years based on the foreseeable usefulness of the cellular technology and the estimated life of two generations of the product.

For the general expenses, the Department used the general administrative expenses and the general R&D as provided by OKI and verified by the Department. The interest expense was based on the approximated percentage of interest expense to "cost of goods" of the consolidated corporation. The interest expense and interest income reflected on the financial statements were adjusted to include only those items which directly or indirectly benefited the production of CMTs. Direct and indirect selling expenses and profit based on verified expense and profit data reported by OKI for the same class or kind of merchandise. As the profit reported by OKI exceeded 8 percent of material, fabrication and general expenses, the Department used the actual profit experience of OKI.

2. *Hitachi Constructed Value.* For Hitachi, the cost of manufacturing was based on the weighted-average costs for the months of April through November, 1984. These costs were based on the actual costs for production completed during this period. The Department adjusted the transfer value of certain parts used in the manufacture of CMTs when it appeared such values did not fairly reflect the usual value for such "sales." The Department did not consider Hitachi's product-specific R&D to be adequately verified. Therefore, we used the corporate average R&D and deducted an amount claimed by Hitachi to be general R&D.

For the general expenses, the Department used a proportional amount of general and administrative expenses of Hitachi Denshi, the subsidiary which manufactures the CMT, and Hitachi, Ltd., the parent corporation. Hitachi, Ltd. performs R&D and other general and administrative functions for Hitachi Denshi.

The Department included interest expense based on the percentage of interest expense to the cost of goods of the consolidated corporation. The direct and indirect selling expenses and profit were based on verified expense and profit data reported by Hitachi for the same class or kind of merchandise. As the profit reported by Hitachi exceeded 8 percent of materials, fabrication and general expense, the Department used the actual profit experience of Hitachi.

3. *Toshiba Constructed Value.* For Toshiba the cost of manufacturing was based on the weighted-average of the actual costs of the production during the months of April through November, 1984. The Department adjusted the transfer value of certain parts when it appeared such values did not fairly reflect the usual value for such "sales".

The Department used the anticipated market-life for the product under investigation to amortize the start-up expense and product specific R&D, which was determined to be three years.

For general expenses, the general and administrative expenses, including general R&D expenses, which were

provided by the company and verified by the Department were used. The Department did not accept Toshiba's claim for "negative financing" and used the percentage of interest expense to cost of goods of the consolidated corporation. The direct and indirect selling expenses and profit were based on verified expense and profit data reported by Toshiba for the same class or kind of merchandise. Since the profit reported by Toshiba did not exceed 8 percent of materials, fabrication and general expenses, the Department used the statutory minimum of 8 percent.

Adjustments. We made adjustments under § 353.15 of the Commerce Regulations for differences in circumstances of sale between the two markets. For Hitachi these adjustments were for differences in credit and warranty expenses. For OKI these adjustments were for differences in credit, warranty and advertising expenses. In the case of Toshiba adjustments were made for differences in credit expenses, advertising and warranty expenses.

Since OKI's United States price was based on exporter's sales price, adjustments were made to foreign market value for OKI under § 353.15(c) to account for indirect selling expenses incurred in the home market sales of the "same class or kind of merchandise," up to the amount of indirect selling expenses incurred by OKI on its United States sales. OKI, however, was unable to demonstrate that the home market expenses which it claimed to be direct selling expenses were in actuality direct selling expenses or that they were directly related to home market sales of the same general class or kind of merchandise. Therefore, we have treated those expenses, as well as those identified as indirect selling expenses, as indirect.

Verification

In accordance with section 776(a) of the Act, we verified all information provided by the respondents by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents.

Respondent Comments

MELCO Comment 1: MELCO makes several arguments concerning adjustments to third country sales for purposes of determining foreign market value.

DOC Position: Since we did not use the third country sales in our comparisons, these issues are moot.

MELCO Comment 2: MELCO argues that, during the period of investigation, MELCO's home market sales were so small in relation to its third country sales as to be an inadequate basis for determining foreign market value, within the meaning of § 353.4(a) of the Department's regulations. In support of this assertion, MELCO states: 1. That MELCO's shipment of a small quantity of test samples to Nippon Telephone and Telegraph (NTT) were not sales made in the ordinary course of trade; 2. that the informal and unwritten agreement between MELCO and NTT could not constitute a sale; and 3. that NTT's written purchase orders did not constitute "sales" since MELCO did not "confirm" these purchase order, nor did title to the goods pass at that point, and therefore no sales occurred until MELCO actually delivered the CMTs. MELCO also argues that its home market sales of CMTs were not "such or similar" to its U.S. sales within the meaning of 771(16)(C) of the Act.

DOC Position: The Department has determined that, based on 3 NTT purchase orders, MELCO made sufficient commercial sales in the home market during the period of investigation so as to constitute a "viable" home market within the meaning of 19 CFR 353.4. In reaching this determination the Department did not have to determine whether the sale of test samples to NTT were sales made in the ordinary course of trade since its finding would be the same regardless. The Department has determined that the date purchase orders were issued by NTT is the appropriate date for determining date of sale. As the Department stated in its questionnaire in this case, "sales are dated from the point in the transaction where the basic terms of the contract are known and price to be paid is determined. . . . The date of sale is thus the date on which the agreed-upon price is confirmed." All of these conditions were met when NTT issued purchase orders to MELCO. Under the Department's definition, there is no requirement that title to the goods pass. Furthermore, the fact MELCO did not "confirm" the purchase orders is irrelevant since it does not appear that there was any requirement or understanding that it would do so. The fact that subsequent shipping and invoicing by MELCO (absent confirmation) was done in accordance with the terms of each purchase order is further indication that these orders were an accurate confirmation of the parties' understanding.

Furthermore, the Department has determined that MELCO's home market sales of CMT transceivers were "such or similar" to its U.S. CMT sales. (See DOC Position to Petitioner—MELCO Comment 1.) Thus, under the Department's analysis, MELCO's home market CMT sales during the period of investigation were in excess of five percent of its third country sale and therefore its home market was "viable" within the meaning of 19 CFR 353.4.

OKI Comment 1: OKI argues that the rationale for the Department's inclusion of subassemblies in the scope of investigation does not apply to imports of duplexers and VCOs because these are bought from unrelated parties.

DOC Position: While some CMT subassemblies such as duplexers or VCOs may be purchased by CMT manufacturers from unrelated parties, the Department has reason to believe that such separately traded items may not meet the "dedicated exclusively for use" criterion, and therefore might not be covered by the scope of any order. See discussion in the "Scope of Investigation Issues" section of this notice.

OKI Comment 2: The Department improperly deducted intracorporate interest charges in calculating ESP. The Department included OKI's financing costs in its calculation of constructed value. Since interest costs are incurred by OKI and passed through to OKI America Inc. (OAI), these expenses were accounted for in the foreign market value side of the analysis. The deduction of intra-company interest charges from ESP double-counts OKI's interest expense.

DOC Position: The Department did not deduct intracorporate interest in calculating the ESP since the sales division of OKI America Corporation (OAC) did not incur intracorporate debt.

OKI Comment 3: The Department overstated the deduction from ESP for OKI's warranty expenses.

DOC Position: The Department used the warranty reserve established by OKI to account for its contingent liabilities for the CMT warranty. Since the CMTs were only marketed recently and the warranty guarantee is for two years, actual expenses as presented would not accurately reflect the costs that could occur for a two year warranty. Therefore, we used the warranty reserve for CMTs to represent warranty costs for OKI since this reserve reflected the anticipated costs, based on past experience which should have been considered by OKI in establishing its price for CMTs.

OKI Comment 4: OKI's questionnaire response (and the Department's preliminary determination) mistakenly

attributed all of OAC's SG&A expenses to products subject to the investigation. However, a portion of these expenses are borne by products that are sold separately from the CMTs and are not subject to this investigation. The deduction for OAC's expenses should be reduced accordingly.

DOC Position: For the preliminary determination the Department used the OKI response which represented that such costs were for the CMT. For the final determination, the Department has adjusted OKI's submission and used only those expenses attributable to CMTs.

OKI Comment 5: In calculating ESP, the Department made a deduction for certain warehousing expenses for post-sale storage relating to sales of CMTs to certain customers. Since OKI reported all warehousing costs as part of OAC's SG&A, the Department must either make an offsetting downward adjustment to overall warehousing expenses reported by OKI or eliminate the deduction from ESP.

DOC Position: We agree. The post-sale warehousing expense for certain CMTs sold in the United States has been accounted for only in OAC's SG&A and has not been deducted separately from ESP.

OKI Comment 6: Given the significant decline in production costs that occurred during the period and the significant weakening of the yen, the Department should take into account quarterly production data in calculating constructed value, or alternatively, for the entire period use a single constructed-value figure that is the weighted-average (based on production volume) of the quarterly figures.

DOC Position: The Department used the weighted-average cost of production, based on verified data for the period April through November, 1984. The costs of manufacturing (material and fabrication) were based on those expenses incurred for these months because these expenses represent costs incurred in the ordinary course of manufacturing which are identified with the CMT at a time preceding the date of exportation. General expenses were based on a pro rata portion of the annual expenses since these costs are considered "period" expenses. These period expenses may be incurred at any time during the year but provide benefits to the company throughout the year. From the facts and circumstances of the case, the Department considered the weighted-average costs of production to be the most appropriate basis for the constructed value to be compared with the United States sales during the period of investigation. The Department notes that OKI's costs did not decline during the entire period of the investigation but reflected a significant upturn in the last two months of the period. Additionally, the exchange rate fluctuations during the period are accounted for by the Department since sales and the constructed value are converted as of one date, the date of sale.

OKI Comment 7: In the absence of home market sales of a like product, the antidumping duty law requires use of SG&A associated with home market sales of the "same general class or kind" of merchandise in determining constructed value. In doing so, the Department must make appropriate adjustments for differences in circumstances of sale. Since significant selling expenses have been treated as deductions from OKI's selling price of CMTs in the United States, the Department must deduct from the constructed value the direct and indirect selling expenses incurred in the home market sales of the "same class or kind of merchandise".

DOC Position: We agree in principle that circumstance of sale adjustments should be made to constructed value. (See DOC Position to Petitioner's General Comment 2.) In OKI's case, because United States price was based on exporter's sales price, this would mean deducting all direct selling expenses incurred on the same general class or kind of merchandise in the home market and indirect selling expenses for that same merchandise up to the amount of indirect selling expenses incurred by OKI's U.S. subsidiary. OKI, however, was unable to demonstrate that the expenses which it claimed to be direct selling expenses were in actuality direct selling expenses or that they were directly related to home market sales of the same general class or kind of merchandise. Therefore, we have treated those expenses, as well as those identified as indirect selling expenses, as indirect and deducted the capped amount from foreign market value.

OKI Comment 8: In its preliminary determination, the Department used the statutory 8 percent profit margin for every product group except OKI's briefcase model, in which case it used a higher profit margin. The final determination for all product groups should reflect either the statutory minimum 8 percent profit margin or the profit margin reported by OKI for the same general class or kind of merchandise.

DOC Position: The profit margin used by the Department in the final determination for all of OKI's product groups is the profit margin reported by OKI for the same general class or kind of merchandise since this profit rate was higher than the 8 percent statutory minimum.

OKI Comment 9: The Department should use the verified profit and GS&A rates of the "same general class or kind of merchandise" in the home market, provided that the proper circumstances of sale adjustments are made. Motorola's suggestion that the Department use industry-wide profit data, such as the 15.64 percent profit figure used for the Japanese telecommunications industry in *Cell Site Transceivers from Japan* (49 FR 43080), is inappropriate because that was a case where profit was based on "best information available."

DOC Position: We agree. (See DOC Response to Petitioner's General Comment 1.)

OKI Comment 10: OKI claims that the Department should make adjustments for start-up capital and advertising costs incurred in the production of CMTs and that the Department should account for these start-up expenses by changing the depreciation method from an accelerated to a straight-line basis and by amortizing the advertising expenses over a period of time.

DOC Position: The Department did not accept these claims. The Department accounts for start-up expenses when such expenses are appropriately justified, supported and quantified. Such expenses which result from the start-up of production usually relate to "learning-curve" and other production flow expenses and are amortized over a reasonable amounts of production. OKI did not provide or claim amortization for expenses resulting from start-up. OKI started production of the CMT during the fiscal year preceding the investigative period but did not attribute any of the start-up expenses incurred during this time to the production of the CMT during the period of investigation.

The depreciation method is a means of accounting for the economic value of the equipment over its useful life and is not a means of accounting for the differences in unit costs which may result from the maturity of the production cycle. Thus, a change of the depreciation method would not be considered an appropriate means of accounting for expenses which result from start-up.

For OAI, advertising costs are accounted for when paid. However, advertising expenses could not be identified with advertising placed prior, during, or subsequent to the period of investigation. Additionally, the company did not present a basis, acceptable to

the Department, on which to determine if such advertising expenses were unusual expenses because of start-up nor did it provide an adequate basis for allocating such expenses. Therefore, the Department did not take OAI's advertising expenses into account.

OKI Comment 11: OKI claims that the Department should use the R&D costs incurred during the period of investigation and not costs for developing the product which were incurred before the product was marketed. OKI argues that this approach is mandated by law and by generally accepted accounting principles.

DOC Position: We disagree. We have amortized all costs of developing the product incurred prior to its marketing over a period of three years, the period which we have determined to be the average life of the current product. For those R&D costs associated with cellular technology, the Department used six years, thus amortizing the basic technology over two generations of the product.

The Department notes that the constructed value of provisions of the Act (section 773(e)) specifies that the costs shall be those incurred "in producing such or similar merchandise at a time preceding the date of exportation." This definition does not preclude the inclusion of costs, like those for equipment and R&D, which were incurred prior to exportation, but which are allocated to and are necessary for the manufacture of the product under investigation.

The Department's position is in accord with International Generally Accepted Accounting Standard #9 which provides that R&D associated with specific marketable products and production processes shall be capitalized and amortized over a reasonable basis.

OKI Comment 12: The Department should normalize OKI's bond financing expense by amortizing it over the full term of the bond rather than treating it as a one-time expense as it did for the preliminary determination. OKI usually amortized such expenses over the full term of the bond but altered that policy in September, 1984, because of a change in the tax law.

DOC Position: The Department applied its policy of accounting for "extradordinary" expenses and accepted OKI's one-time write off of the bond financing expense over the full term of the bond, which is the method recommended by "generally accepted accounting principles."

OKI Comment 13: The Department should include OKI's foreign exchange "gain" in its constructed value calculation. The "gain" reflected the difference between the established yen/dollar rate and the actual rate during a specific period.

DOC Position: Since the Department is using the actual dollar-denominated value for sales as of a specific date and converting yen—denominated costs as of the same date, the entery in OKI's records which reflects the differences between the recorded yen/dollar rate and the actual value was not used in determining the constructed value.

OKI Comment 14: The respondent contends that all material costs were appropriately included in its material costs, including indirect materials, material spoilage and rework.

DOC Position: The Department verified the actual material costs associated with the production for the period April-November 1984 and used the costs of materials associated with production during this period of time.

OKI Comment 15: The respondent argues that material costs should not include: (1) Pre-April (i.e., pre-investigative period) materal costs, and (2) costs associated with work-in-process at the end of the period.

DOC Position: We agree. During verification, the Department reviewed the work-in-process balances at the beginning and end of the investigative period to determine if appropriate accounting for costs was being observed and found the material costs to be accurately stated.

OKI Comment 16: OKI claims that the Department should accept certain substantial claimed adjustments to its materials costs due to the fact that certain components which were assigned to the cost center for CMTs were subsequently transferred to and used by another cost center.

DOC Position: The Department did not consider this adjustment to be verified or adequately quantified. OKI could not provide any official accounting records or other company documentation to support the claims. The Department notes that other materials transferred to the CMT cost center and materials transferred into and out of other cost centers were appropriately accounted for by the accounting system and were recorded. Although the company provided a statement from a company worker which indicated that certain materials may have been used by another cost center, there was no evidence what amount may have been used by the other cost center, if any.

OKI Comment 17: OKI contends that the Department should accept an adjustment to the labor and factory overhead expense based on a company study of certain departments. This study indicated that the actual time for processes used in the manufacturing of the CMT was less than the standard time assigned to such processes.

DOC Position: The Department did not accept the study as indicative of actual labor time incurred in these departments for the CMTs during the period of investigation. The Department notes that the company did not revise its standard labor hours for the CMT processes in these departments to correspond to the results of the study. If the company had accepted such hours as representative of the actual hours without changing the standard time accounting system, the variances resulting from the accounting system pertaining to the CMT would be inaccurate. No revisions to these variances were made by the company on its books or in its submission.

OKI Comment 18: OKI argues that the Department should adjust the transfer prices of components from related suppliers by reducing or increasing these prices by the average profit margin of the corporation which manufactures these components. This, the respondent claims, is necessary to arrive at the cost of the components and to avoid the double counting of profit. Additionally, the respondent argues that the actual costs should be used for the TCXO and IF block, which costs were included in the verification.

DOC Position: The Department used the actual costs of the TCXO and the IF block. The Department did not accept the respondent's method of adjusting the transfer prices of the other components by deducting or adding the overall profit or loss margin of the corporation manufacturing the component.

The Department notes that the profit margin of the corporation is an aggregation of losses and profits from all products manufactured by the corporation and is not representative of individual components manufactured by the company.

When the Department uses the actual costs of production for the components, profit is not double counted. However, when transfer or market values are used, there is no basis to determine profit, if any, included in these amounts.

OKI Comment 19: The respondent states that the handling expenses of OAC should be allocated based on transfer prices.

DOC Position: The Department disagrees. These transfer prices are not necessarily arms-length prices nor do they necessarily reflect the actual cost of the products. Therefore, they should not be used as a basis for allocation.

OKI Comment 20: OKI contends that allocating the expenses of all indirect departments by the total number of employees from all indirect departments assigned to a specific cost center is a sensible method of allocation.

DOC Position: The Department does not agree. The method used by the company of allocating all expenses of the indirect departments by the aggregate number of employees assigned to a cost center could improperly distribute such cost among the cost centers. However, from an analysis of the information received during verification, it appears that any misallocation of costs was insignificant.

OKI Comment 21: OKI alleges that the preliminary margin was not justified because of errors in methodology and in the bases used to calculate the margin.

DOC Position: For the preliminary determination the Department used the respondent's submission as the basis for its calculations. The information had not been verified except to data pertaining to the U.S. operation.

Our analysis of OKI's response led us to question seriously the methodologies used to develop the data and the omission of certain specific costs. For example, there was little, if any, explanation of the methodologies used to develop the interest expenses, SG&A expenses and general R&D incurred in the operations in Japan. From the brief explanation, it appeared that interest expenses, SG&A and general R&D had been allocated among products on the basis of sales revenue and attributed to CMTs on the basis of units produced. This methodology is unacceptable to the Department. In other areas, the response lacked certain data. For example, there was no information on costs related to warranty expenses included in the response.

To correct for these apparent shortcomings in the unverified data, the Department used the most reasonable information presented in the response. The SG&A was calculated on the data represented in the response to be SG&A for CMTs and components. There was no indication in the response nor was the Department aware that OKI had included in this amount of SG&A for products which were outside the scope of the investigation. The calculations for the final determination reflect the additional information that the Department received in the course of this investigation. Based on additional information received from OKI, our calculations have been revised, where appropriate. See Department response to OKI Comment 4.

NEC Comment 1: NEC argues that the foreign market value of its CMTs sold in the United States should be based on NEC's sales of CMTs in the United Kingdom, not on its sales of CMTs in Japan. NEC maintains that the CMTs sold in Japan are not "such or similar merchandise" to those sold in the U.S. within the meaning of section 771(16) (B) or (C) and consequently sales of these CMTs cannot be used as the basis for determining foreign market value. With regard to subsection B, NEC states that the home market CMT is not "like in component materials" and that it is not "approximately equal in commercial value". To support its position, NEC describes in detail differences between its home market and U.S. models with respect to size, reliability, economy of operation, and transmission output power and quality. With respect to subsection C, NEC argues that this subsection was not intended to eliminate the concept of similarity: rather, it allows the DOC to consider products with minor dissimilarities in component materials or commercial value. Further more, NEC believes that it would be unfair and administratively impractical to compare its U.S. and Japanese models, given the numerous differences in technical specifications and physical characteristics.

DOC Position: During the course of this investigation, the Department retained the services of a product expert to assist the Department in its deliberations on the issue of such or similar merchandise. Actual CMTs manufactured by NEC and sold in Japan, the U.K. and the U.S., as well as the technical specifications of these CMTs, were given to the product expert for his examination along with a list of questions prepared by the Department. The product expert prepared a report responding to these questions. Based in part on this report and on the statutory provisions as interpreted in past cases, we have determined that the home market CMT is "such or similar" within the meaning of section 771(16)(C). Because we have decided that NEC's U.S. and Japanese CMTs are similar under section 771(16)(C) there is no need to determine whether they are similar under section 771(16)(B). Although there are differences in the actual basic electronic components used and in the specifications of the two CMTs, we have determined that they are like in the purposes for which used and may be reasonably compared in the sense that it is both fair and administratively feasible to do so.

Consequently they are "such or similar" mechandise. Since we have determined that the home market CMT is such or similar to the U.S. CMT and that there is a viable home market, the statute requires us to use the price of the home market merchandise as the basis for determining foreign market value regardless of the existence of third country sales of merchandise which may also be such or similar.

NEC Comment 2: NEC states that if the Department uses the home market sales of NEC's CMTs as the basis for foreign market value, then DOC is required to make adjustments for differences in physical characteristics as provided for in 19 CFR 353.16. NEC maintains that it has provided the Department with adequate, verifiable data upon which to base such adjustments.

DOC Position: The Department has taken the position that it could not consider the difference in merchandise adjustments presented by NEC. The bases for this decision were twofold. First, the information provided by NEC with respect to differences in physical characteristics was incomplete and unsubstantiated, and, as such, was not verfiable. The Department has repeatedly advised NEC of the numerous deficiencies in the home market section of its response. Second, we noted that the information proffered is only a portion of the information requested in our questionnaire. The adjustment is designed to provide a basis for an equitable comparison between prices reported in a response when there are significant differences in the products sold in the respective markets. As such, we would not use information relating to such a claim in an instance where a respondent has refused to give us sales data relating to a specific market.

NEC Comment 3: NEC takes the position that the inclusion of subassembiles in the scope of the investigation is unlawful and beyond the scope of the Department's discretionary authority to prevent evasion of an antidumping duty order. Furthermore NEC believes that the current definition of the term "subassembly" is contrary to sound public policy and would create administrative problems.

DOC Position: See discussion in the "Scope of Investigation Issues" section of this notice.

NEC Comment 4: NEC states that its current portable cellular telephone Model No: TR5E800-8A, is not within the scope of this investigation.

DOC Position: We disagree. Our scope of investigation section states, "cellular transportable telephones, which are designed to use either motor vehicle power sources or, alternatively, portable power sources, are included in this investigation." The NEC model

referred to above fits this classification. While the scope section also excludes pocket-size self-contained portable cellular telephones, the NEC model in question does not fall within this category. Pocket-size portable cellular telephones are relatively small units that can be carried in a normal size pocket. Typically the entire unit can be held by one hand while in use. The NEC model has three sections, a control unit, a transceiver, and a battery pack, that can be mechanically connected or disconnected. A large bracket is provided to carry the three sections as a unit. It would not be possible to operate this unit in one hand, nor would it be possible to carry it in a pocket. Accordingly, it is not deemed to be a pocket-size self-contained portable cellular telephone.

Toshiba Comment 1: Toshiba maintains that the Department should continue its practice of making adjustments for differences in circumstances of sale when foreign market value is based on constructed value. Toshiba requests adjustments for differences in credit terms, warranty terms and advertising expenses.

DOC Position: We agree. See DOC Position on Petitioner's General Comment 2. We have made the adjustments claimed by Toshiba where Toshiba was able to demonstrate that the selling expenses were directly related to home market sales of the same general class or kind or merchandise.

Toshiba Comment 2: Toshiba maintains that a level of trade adjustment under 19 CFR 353.19 should be made when comparing the U.S. price of its CMT to the constructed value of the CMT. Toshiba's sales of CMTs in the U.S. market are all to a single purchaser who resells the merchandise to distributors. Home market sales of multi-channel access radios (MCAs), used as the same general class or kind of merchandise as CMTs for the purpose of determining constructed value, are made directly to dealers. Toshiba argues that a level of trade adjustment is quantifiable because "the indirect selling expenses incurred by Toshiba on its sales to the United States were all incurred in Japan, and are therefore, precisely the same as those that would have been incurred by Toshiba on sales to original equipment manufacturers in Japan had it made such sales there."

DOC Position: Level of trade adjustments may be made under certain circumstances when comparing the United States price with actual sales prices in the home or third country markets. Toshiba has not supplied information on what the price of CMTs sold in the home market to a single unrelated distributor would have been nor has it quantified what the selling expenses involved in such a transaction would have been. The Department can not assume that the selling expenses incurred in the U.S. would be the same as those incurred in a hypothetical sale in Japan of the same merchandise at the same level of trade.

Toshiba Comment 3: The Department improperly calculated financing expenses by failing to taken into account interest earned by the company in calculating financing expenses.

DOC Position: There was no interest income reported on Toshiba's consolidated financial statements.

Toshiba Comment 4: Toshiba argues that the cost of materials presented in the responses should be used to calculate the constructed value. These costs include the cost of producing parts in other divisions and the transfer prices from related companies, which were at or above arms-length prices.

DOC Position: The Department reviewed all relevant available information to determine if the transfer values of components obtained from related companies fairly reflected the amount usually reflected for these "sales". The Department used the actual costs of production for components which were manufactured by other divisions of the company.

While some of the CMT components from related companies are off-the-shelf items for which there are negotiated prices, many of the components were specifically designed for the CMT and, therefore, there were no market prices for identical merchandise. Therefore, the Department considered a number of transaction prices for the identical product or for a similar product to determine the fairness of the transfer value. In this case, the Department reviewed the sales prices during the period of investigation which were documented in the record for other components which could reasonably be considered "similar" components and used the "market" value for such parts when the transfer value was significantly different from such prices.

Toshiba Comment 5: Toshiba claims that the constructed value provisions require that start-up costs be amortized and that it used a conservative basis for doing so.

DOC Position: The Department recognizes that start-up costs are necessary costs for production of a product, and that such expenses, like those incurred for the purchase of capital equipment, should not be fully allocated to the initial production. Therefore, to develop the full costs of the product under investigation, the Department amortized the expenses identified with start-up over a reasonable period. For the CMT, the Department used the anticipated market-life of the product under investigation, which it has determined to be three years.

Toshiba Comment 6: Toshiba argues that under its methodology, it allocated interest expenses to the sales of all products manufactured by the company and, therefore, the Department should use the negative "financial expenses" reflected in its submission.

DOC Position: The Department analyzed Toshiba's theoretical methodology for calculating the "interest expense" included in its submission. This theoretical construct attributed all short-and long-term debt to the accounts receivable outstanding. Toshiba then off-set the interest payable on the balance of such debt with the total interest receivable of the company. The Department did not accept this methodology because the assumptions made for this construct did not reflect the fungibility of the debt funds, account for the financing of all other assets, nor did it recognize the complexities of a corporation's permanent capital structure. Therefore, the Department allocated the interest expense on the basis of cost-of-goods of the consolidated financial statements.

Toshiba Comment 7: Toshiba argues that in the preliminary determination the Department's calculation of SG&A was incorrect since the method of deriving the G&A expenses from the total SG&A expenses reflected on the financial statements was not sound. Additionally, certain expenses, such as R&D, were double counted.

DOC Position: For the preliminary determination the Department used the respondent's submission as the basis for the calculation. The information had not been verified. An analysis of the submission revealed that the reported SG&A expenses were substantially below the company's average. The Department, therefore, adjusted these expenses on the basis of the most reasonable information available. For the final determination the Department used the G&A expenses as submitted by the respondent and verified by the Department.

Toshiba Comment 8: Toshiba claims that its costs of producing CMTs can not be compared to those of Hitachi and OKI because f different efficiencies and accounting methodologies.

DOC Position: The Department used the actual verified costs incurred by

each company to determine its constructed value. However, the Department notes that while there may be differences in efficiencies and accounting methodologies among companies producing the same product, there would still be a range of reasonable costs to produce the same product.

Toshiba Comment 9: Toshiba contends that, contrary to the petitioner's allegations, cost of accessories, all material costs, amortization of equipment and all R&D costs were included in the constructed value of the company's submission.

DOC Position: The Department verified Toshiba's constructed value data and concluded the above items were included as part of the costs reported in the submission.

Hitachi Comment 1: Hitachi contends that the Department erred in ignoring the date that Hitachi entered into a requirements contract with customer "A" and instead used the dates of purchase orders issued pursuant to that contract as the appropriate dates for determining United States price.

DOC Position: We have carefully examined the terms of Hitachi's requirements contract and have determined that the date was executed should be used as the appropriate date of sale for purposes of determining when a U.S. sale was made. This decision is based on three factors. First, the requirements contract was a binding agreement as of the date it was entered into (see, e.g., 1 Williston on Contracts, Third Edition, section 104A (1957); 67 Am Jur 2d, Sales and 138 (1973); 77 C.J.S., Sales and 20(b) (1952)). Second, by the terms of the contract, the price of the CMT was agreed to irrevocably. Third, while the number of CMTs to be sold was not precisely set at the date the contract was executed, the quantity was established at that time in the sense that the customer agreed to purchase all of the CMTs that it may "require" for a specified period of time. Thus, there is nothing more that the parties to the contract needed to agree to. The actual quantity purchased was to determined by factors outside their control, such as marked forces (See, *Voss International Corp.* v. *United States*, 628 F. 2d 1328 (CCPA, 1980)).

Since the requirements contract was entered into prior to our period of investigation, we have excluded all shipments that were made pursuant to this agreement from our calculation of United States price.

Hitachi Comment 2: Hitachi argues that circumstance of sale adjustments under 19 CFR 353.15 are improper when value is based on constructed value and in the absence of home market sales or third country sales of such or similar merchandise.

DOC Position: We disagree. (See DOC Position to Petitioner's General Comment 2.)

Hitachi Comment 3: Assuming circumstance of sale adjustments will be made, Hitachi argues that there should be no warranty expense attributable to sales of CMTs in the U.S. because none of the units sold during the period of investigation have incurred actual warranty expenses.

DOC Position: In view of our position with respect to the sales under the requirements contract, the issue of warranty expenses is moot. Regarding sales to two other customers, warranty liability was limited to defects at time of delivery and no claims were made. For other customers, the one year warranty expense was estimated based upon warrantly expenses experienced by Hitachi on CMTs in Calendar year 1984.

Hitachi Comment 4: Assuming circumstance of sale adjustments will be made, Hitachi argues that credit adjustments should be calculated on the basis of Japanese interest rates, not U.S. rates, in the situations where Hitachi has so indicated.

DOC Position: In view of the DOC position with respect to the sale under the requirements contract, the issue of the proper credit rate on these sales is moot. Regarding two other customers, the credit rate applied is the Japanese rate as indicated by Hitachi. Regarding another customer, the credit rate applied to all shipments is the U.S. rate since credit was extended by Hitachi America Ltd. and payment was received by Hitachi America Ltd. The inter-company credit extension and payments do not represent the actual credit expense of the sale to the corporate entity.

Hitachi Comment 5: Hitachi argues that the R&D, the SG&A, and the finance expenses presented in its submission to the Department should be used, not the average of such costs based on the consolidated financial statements.

DOC Position: The Department's review of Hitachi's submissions revealed that product-line and general research and development expenses had not been included and that the amounts reflected for the above mentioned costs were significantly below the consolidated corporate averages. Therefore, the Department used the averages of the consolidated corporation as best information available for the preliminary determination.

For the final determination, the Department has included the cost of general research and development, general and administrative charges incurred by the Hitachi headquarters' operations which are relevant to the CMTs and financial expenses based on the interest expense of the consolidated corporation.

Hitachi Comment 6: Hitachi contends that the product-specific research and development expenses reflected in the submission should be used and that the company provided adequate time and personnel to verify these expenses.

DOC Position: The Department did not consider Hitachi's product specific research and development to be verified. The methodology used by the company did not provide adequate justification for its basis of allocation nor sufficient documentation for verification.

Hitachi Comment 7: The respondent argues that the expenses incurred by Hitachi Ltd. should not be included in the CMT costs because the CMT is manufactured by another corporation, Hitachi Denshi.

DOC Position: The Department disagrees. Hitachi Ltd. owns 65% of Hitachi Denshi. Although the production of the CMTs occurs at Hitachi Denshi, some selling, product-specific and general research and development and other overall administrative functions related to the ownership and operations of Hitachi Denshi are performed by Hitachi Ltd. Therefore, the Department has included a proportional share of the relevant expenses; general R&D and general and administrative expenses.

Matsushita Comment 1: Matsushita argues that to the extent that CMT subassemblies are subject to this investigation, only "major" subassemblies which when taken together constitute a substantially complete CMT from Japan may properly be encompassed herein.

DOC Response: See "Scope of Investigations Issues" section of this notice.

Matsushita Comment 2: Matsushita argues that CMI subassemblies from Japan that are dedicated for use in the after-sale repair of complete CMTs ("replacement subassemblies") are not within the scope of this investigation. Matsushita notes that the repair and service of its CMTs is performed by a separate division, MESCO, as well as independent authorized service shops, and that those subassemblies which are being imported by MESCO for replacement purposes are for a previous CMT model, and are physically different from the subassemblies of the new model. Matsushita also argues that replacement subassemblies are not

within the same "class or kind" of merchandise as CMTs.

DOC Response: We agree that replacement subassemblies are not within the scope of the investigation. Where an importer such as MESCO can establish to the satisfaction of the Customs officers that CMT subassemblies are being imported for replacement purposes only such "replacement subassemblies" should be excluded from the order.

Other Respondents Comment 1: Counsel for respondents who were not required to respond to the antidumping duty questionnaire oppose the Department's method of calculating the estimated dumping margin for "all other manufacturers" in this investigation. The Department included in its weighted-average calculation of the "all other manufacturer" rate those values which have been estimated for certain manufacturers based on the "best available information." First, they argue that section 776(b) of the Act restricts the use of "best available information" to a party which "refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation." Companies in the "all other manufacturer" category do not fall into this category since they were not asked by the Department to complete questionnaire responses. Second, they argue that it is contrary to the statutory intent of the antidumping duty law, which "stresses the need for intelligent approximations" (*Atlantic Sugar, Ltd.* v. *United States*, 744 F. 2d 1556 (Fed. Cir. 1984)) to use as "best available information" the data contained in the Motorola, petition. The preliminary margins for the four responding companies which responded to the questionnaire showed the petition data to be substantially excessive.

DOC Response: In accordance with § 353.38(a) of the Commerce Regulations, the Department requested questionnaire responses from the six Japanese producers who accounted for at least 60 percent of the dollar volume of exports of CMTs to the United States from Japan. Although Fujitsu Limited, Japan Radio Company, and Kokusai Electric Company were not served with questionnaires, none of the companies was prevented by the Department from submitting voluntary questionnaire responses. It has consistently been the practice of the Department that in an affirmative determination, producers/exporters for whom a separate weighted-average dumping margin has not been calculated will fall into the "all other manufacturers category." The "all other manufacturer" dumping margin is the weighted-average margin of the companies investigated from whom margins were found to exist.

Although two of the companies investigated chose not to respond or did not file a proper response to the Department's questionnaire, section 776(b) of the Act provides the Department with a basis for making a sales at less than fair value determination through the use of the best information available, in this case petitioner's data. Absent responses by these companies, it is reasonable for the Department to assume that the best information available is an "intelligent approximation" of the respondents' actual dumping margins.

Petitioner's Comments

Petitioner-MELCO Comment 1: Petitioner argues that since the Department's verification confirmed that MELCO did have home market sales of CMT transceivers to Nippon Telephone and Telegraph (NTT) during the period of investigation, MELCO should not be allowed to "profit" from its repeated questionnaire responses that it shipped only a limited number of "test samples" to NTT during the period.

DOC Position: We agree. As noted in the "Foreign Market Value" section of this notice, the Department has determined that MELCO did have a viable home market of such or similar merchandise. This determination was based on the results of the verification of MELCO's questionnaire responses.

Prior to the verification, in its questionnaire responses pertaining to home market sales, MELCO consistently took the position that it had no sales of CMTs in the Japanese home market and that it had only supplied NTT with a small quantity of CMT transceivers for testing purposes. Thus, the Department was not required to determine whether the "sample units" (transceivers) constituted such or similar merchandise to MELCO's U.S. sales within section 771(16) of the Act because, based on the information supplied, the volume of "sample units" sold would not constitute a "viable" home market within the meaning of § 353.4 of the Commerce Regulations since such "sales" were less than five percent of the sales of CMTs to third countries. Accordingly, in its preliminary determination, the Department used MELCO's third country sales of CMTs to establish MELCO's foreign market value.

At the verification, the Department determined that during the period of investigation, MELCO had received three purchase orders for transceivers from an NTT subsidiary, in addition to the aforementioned test samples. We carefully examined the purchase orders and determined that the date these orders were issued was the appropriate date for determining dates of sale. [See DOC Position to MELCO Comment 2.] Since the volume of the units sold (and subsequently shipped) pursuant to these three purchase orders exceeded five percent of MELCO's third country sales of CMTs during the period of investigation, MELCO has a viable home market.

The Department subsequently determined that the transceivers sold by MELCO in the home market were "such or similar" to the CMTs it sold in the United States within the meaning of section 771(16)(C) of the Act. In making this determination, the Department considered four factors. First, a product expert retained by the Department analyzed the technical specifications of the CMTs sold by MELCO in the United States and third countries as well as the transceiver sold in the home market and determined that although there were differences in the actual basic electronic components used and in the specifications of the CMT sold in the United States and the transceiver sold in the home market, they were like in the purposes for which used and could be reasonably compared. Second, the CMT transceivers comprise approximately 85 percent of the value of a completed CMT. Third, CMT transceivers have no purpose except to function as an intregal part of the completed CMT. Fourth, no further processing is required other than the connection of a control unit in order for the CMT transceiver to function as a completed CMT. Since we have determined that the home market CMT is "such or similar" to the U.S. CMT and that there is a viable home market, the statute requires us to use the price of the home market merchandise as the basis for determining foreign market value.

Petitioner-MELCO Comment 2: Petitioner argues that based on the traditional NTT business practices in Japan (in which petitioner itself is a participant) MELCO reached an informal sales agreement with NTT for a large quantity of CMTs at an agreed-upon price. They further argue that in the event there is an insufficient number of home market sales to constitute an adequate basis for determining foreign market value, § 353.4 of Commerce Regulations requires that MELCO's offers to sell CMTs to NTT must be considered.

DOC Position: The Department has determined that MELCO "sold" CMT transceivers to an NTT subsidiary on the date that the subsidiary issued

purchase orders for these products. (See the DOC Position to MELCO Comment 2.)

Petitioner-MELCO Comment 3: In the event that the Department uses MELCO's third country sales as the basis for foreign market value, it should reject MELCO's claims for adjustments for differences in circumstances of sales as without statutory basis and differences in merchandise as improperly quantified.

DOC Position: Since we did not use the third country sales, these issues are moot.

Petitioner-OKI Comment 1: The petitioner argues that the Department should use the average costs of the CMT for the period of investigation because the quarterly information can not be matched to sales or to completion of the units.

DOC Position: The Department used the weighted average costs for the CMTs produced during the period April-November 1984. (See the DOC Position to OKI Comment 6.)

Petitioner-OKI Comment 2: The petitioner argues that SG&A expenses should not be allocated to the CMT based on production since during the relevant time period, substantial inventory had built-up and that SG&A expenses are on-going and should be expensed when incurred.

DOC Position: The Department agrees and has allocated the G&A of OAI and OAC based on the cost of the sales of the product during the period of investigation and has used the selling expenses of a comparable product in the home market.

Petitioner-OKI Comment 3: The petitioner argues that the financing expenses for a new product like a CMT are greater than the average financing expenses because of the substantial amount of R&D and new capital required for equipment.

DOC Position: The Department based OKI's financial expenses on the basis of financial expenses offset by financial income, which approximates the percentage of such expenses and income to the costs of goods of the consolidated corporation and which directly or indirectly benefited the production of CMTs. For a discussion on the reasons for this method see DOC Position to Toshiba Comment 3.

Petitioner-OKI Comment 4: Petitioner alleges that OKI's R&D is grossly understated because it does not include pre-investigatory period R&D.

DOC Position: The Department has capitalized and amortized all R&D costs associated with the CMT over the life of the CMT. (See DOC Position to OKI Comment 11.)

Petitioner-OKI Comment 5: The petitioner argues that the SG&A of the product selected by OKI as being in the same general class or kind of merchandise as the CMT does not reflect a rate which approximates the corporate average, and should not be used.

DOC Position: The Department has determined that the product selected by OKI is in the same general class or kind of merchandise as CMTs and has used the selling expenses of this product for determining constructed value.

Petitioner-OKI Comment 6: The petitioner strongly opposes OKI's arguments that R&D should be amortized over ten years and argues that the product currently on the market, after two years, is being replaced by a new model.

DOC Position: The Department amortized product specific R&D costs over 3 years and cellular technology costs over 6 years. (See DOC Position to OKI Comment 11.)

Petitioner-OKI Comment 7: Petitioner contends that OKI's argument that certain bond-related financing costs be amortized rather than expensed on the grounds they are extraordinary is unsupportable since the financing costs for the CMT are higher than the average financing costs for the corporation.

DOC Position: The Department amortized these extraordinary charges over the remaining life of the bond and used the interest expense as a percentage of the cost of goods.

Petitioner-OKI Comment 8: Petitioner alleges that favorable exchange gains are not related to the CMT and should not be included.

DOC Position: See DOC Position to OKI Comment 13.

Petitioner-OKI Comment 9: Petitioner alleges that OKI's claimed downward adjustment to material costs for parts assigned to the cellular business unit but used by some other unit was unsubstantiated and unverified.

DOC Position: The Department did not accept this adjustment. (See DOC Position to OKI Comment 16.)

Petitioner-OKI Comment 10: Petitioner argues that if a "positive" (i.e. cost-lowering) variance occurred in the production of CMTs, this should be accounted for by the accounting system.

DOC Position: The Department agrees. (See DOC Position to OKI Comment 17.)

Petitioner-OKI Comment 11: Petitioner alleges that the Department should reject OKI's claim that the transfer prices of parts obtained from related-party suppliers should be reduced by the average profit margin of the corporation manufacturing such parts.

DOC Position: The Department used the actual verified costs for two to the major components and did not accept the profit adjustment for the transfer prices of the other components. (See DOC Position to OKI Comment 18.)

Petitioner-OKI Comment 12: If the Department continues to apply "circumstance of sale" adjustments to constructed value, it does not follow that an ESP offset should automatically be applied in constructed value calculations whenever there are deductions from the U.S. price for U.S. selling expenses, such as is the case with OKI. The deductions from the U.S. sales price of OKI's CMTs for ocean transportation, duties, selling expenses in U.S. and other costs incurred after the product leaves the factory merely brings the U.S. price to a par with constructed value, *i.e.* the ex-factory return on U.S. sale, If it is lower than the ex-factory cost plus a profit, i.e., constructed value, there is dumping. The reduction of the constructed value ex-factory cost by an "ESP offset" is illogical and totally inappropriate in such circumstances.

DOC Position: We disagree. Constructed value includes direct and indirect selling expenses incurred in the home market. Therefore, it is appropriate to deduct direct and capped indirect selling expenses because such expenses have been deducted from ESP. (See DOC Position to OKI Comment 7).

Petitioner-NEC Comment 1: The Department should continue to reject the arguments made by NEC that since its home market CMTs were built to higher reliability and performance specifications than its U.S. model CMT no "such or similar" merchandise comparison between the two was possible. As demonstrated in detail by Motorola, even if the component or specification differences between NEC's home market CMT and its U.S. CMT were as great or as significant as claimed, it would not prevent the Department from making a reasonable comparison as required by section 771(16) of the Act.

DOC Position: The Department has determined that NEC's home market CMT solid during the period of investigation is such or similar mechandise to the model sold during the same period in the U.S. Consequently, the foreign market value should be based on NEC's home market sales of CMTs. (See DOC Position to NEC Comment 1.)

Petitioner-NEC Comment 2: Since NEC refused to provide the home market sales data requested, the Department should reject NEC's belated claims for adjustments for physical differences in

merchandise with respect to its home market sales. In addition to not having provided the information requested by the Department, the information NEC did provide is sketchy, conclusory and not verifiable.

DOC Position: We agree. The Department has not made NEC's requested adjustments for differences in physical characteristics. ("See DOC Position to NEC Comment 2)

Petitioner-Hitachi Comment 1: The petitioner alleges that AHitachi's material costs are too low because appropriate amounts for indirect materials and spoilage and waste have not been included. Additionally, certain prices for components received from related suppliers did not reflect a fair market value.

DOC Position: During verification the Department reviewed specific charges included in indirect material and overhead and determined that these categories did include indirect materials. The Department reviewed all relevant information on the record pertaining to the "fair value" of parts received from related suppliers. Certain of the transfer prices were adjusted as a result of these considerations.

Petitioner-Hitachi Comment 2: The petitioner contends that the methodology used by the respondent, which did not include pre-April material, labor and overhead cost and which did not appropriately adjust for work-in-process, understated the costs.

DOC Position: During verification the Department reviewed Hitachi's method of accounting for work-in-process and inventory valuation and has used the material, labor and overhead costs which have been verified, except as noted for the price of materials.

Petitioner-Hitachi Comment 3: Petitioner alleges that only direct labor was inlcuded in the cost of production and indirect labor charges were not included.

DOC Position: The Department reviewed the costs included in the overhead expenses and verified that indirect labor was included in the cost of manufacturing.

Petitioner-Hitachi Comment 4: Peitioner alleges that Hitachi's research and development is understated because it did not include general research and development and because the allocation methods related to product-specific research and developmenmt were not appropriate.

DOC Position: The Department agrees that general R&D should be included. The Department did not consider the product specific research and development to be verified, and therefore, use the corporate average and divided this amount between product-specific and general R&D.

Petitioner-Hitachi Comment 5: The petitioner argues that the Department should use the industry-wide general, selling and administrative expenses and not the selling expenses submitted by the respondent which were related to the modem.

DOC Position: The Department concluded that the modem is of the same general class or kind of merchandise as the CMT and therefore included general and administrative costs incurred by Hitachi Ltd. and Hitachi Denshi and direct and indirect selling expenses related to the modem for its final determination.

Petitioner-Hitachi Comment 6: Petitioner challenges the low financing charges which are reflected in Hitachi's cost of production for CMTs.

DOC Position: The Department did not accept the interest expenses reflected by Hitachi in its response for the cost of production. The interest expenses were based on only the interest incurred by the subsidiary and not by the corporation headquarters.

The consolidated financial statements were used to determine the interest expense attributable to CMTs. These statements reflect the borrowings required by the organization for all its activites. Therefore, since a subsidiary may benefit directly or indirectly by borrowing of the corporate group in the form of equity, advances, etc., the Department used a proporational share of the interest expense incurred by the consolidated corporation.

Petitioner-Hitachi Comment 7: The requirements contact entered into by Hitachi was not a contract, but was only the equivalent of distributing a price list to customers. Thus, only when a U.S. buyer placed an order for delivery of a specified quantity of CMTs at existing prices and terms, and that order was accepted by the Japanese supplier, did all of the elements of a final sales contract exist.

DOC Position: (See DOC Position to Hitachi Comment 1.)

Petitioner-Toshiba Comment 1: Petitioner argues that a pro rata share of the total R&D incurred in connection with a product should be included in the cost of manufacturing for each unit.

DOC Position: The Department included R&D expenses in accordance with its policies of accounting for such expenses. R&D expenses which are identified with a specific product are considered expenses incurred in order to manufacture a product and therefore are included in fabrication. Therefore, R&D expenses associated with the CMT were allocated to the product under investigation over a period of time. For CMT specific R&D, the R&D was amortized over three years, the anticipated market-life of the product.

Petitioner-Toshiba Comment 2: Petitioner argues that all R&D was not captured because R&D for product imporvement was not captured.

DOC Position: The Department used the R&D which Toshiba had specifically indentified in its company's records for the CMT.

Petitioner-Toshiba Comment 3: Petitioner argues that Toshiba's financing expenses should be higher than the corporate average because of the higher investment in R&D and capital assets.

DOC Position: The Department calculated Toshiba's interest expenses for CMTs as a percentage of the cost of manufacturing based on Toshiba's consolidated financial satements.

The Department concluded that this methodology was appropriate given the facts and circumstances of the investigation, because

(1) The cost of manufacturing captures a pro rata share of the capital assets investment and the R&D expenses specifically associated with the product, and

(2) The methodology attributes financing expenses equally to all activities of the corporation.

Petitioner-General Comment 1: Petitioner argues that in computing constructed value, the Department should follow the example recently set in *Cell Site Transceivers from Japan* (49 FR 43080), and use the 15.64 percent profit figure which was the profit for such equipment for several Japanese firms engaged in the production and sale of communications equipment in Japan. This recent information on Japanese producers's profits for such equipment better meets the statutory standard than the limited-scope profit information presented by invidividual companies.

DOC Position: We disagree. The profit figure that was developed in the investigation of *Cell Site Transceivers from Japan* was used as best available information. In that investigation, the respondent did not provide adequate profit data, nor were we able to verify to our satisfaction a company-specific profit rate.

Moreover, section 773(e), in describing constructed value, refers jointly to general expenses and profit in subparagraph(B). Because we use company-specific general expenses, consistency requires that we also use company-specific profit, when that data can be verified.

We recognize that there is a potential problem where general expenses and profit are based on merchandise in the same general class or kind because responding companies may select a product with favorably low general expenses and/or profit. However, in this investigation we have determined that the products selected are the same general class or kind of merchandise as CMTs and we have verified the profit data. Based on the record of this investigation we have no reason to believe that the profit levels on these products are not respensentive of the profits that would be earned on home market sales of CMTs, if they existed.

Petitioner-General Comment 2: Although the Department has recently begun to allow "circumstances of sales" adjustments to constructed value, such adjustments are contrary to the antidumping law. Thus, the Department should make no such adjustments for Toshiba, Hitachi, or OKI.

DOC Position: Section 773(a)(4)(B) of the Act provides that where it is established that the amount of any difference between the United States price and the foreign market value is due to differences in circumstances of sale, "due allowance shall be made." Section 773(a) of the Act does not distinguish constructed value from any other method of determining foreign market value. Thus, circumstances of sale adjustmnts are required where constructed value is used as the basis for foreign market value, just as they are required where home marekt or third country prices are used. *See, Certain Electric Motors from Japan,* 49 FR 32627, 32631 (1984); 48 FR 14719, 14721 (1983).

Circumstances of sale adjustments are necessary in constructed value cases because while general and administrative expense allocations will be the same in any market, selling expense allocations will differ by market. These circumstances of sale adjustments became necessary when the Department began using home market selling expenses instead of U.S. selling expenses in its constructed value calculation.

Petitioner-General Comment 3: The Department's use of margins based on the best information available in calculating the weight-average margin for all other producers is not punitive and is a fair basis for calculating a weighted-average margin.

DOC Position: We agree. See DOC Position to Other Respondents Comment 1.)

Suspension of Liquidation. In accordance with section 733(d)(2) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of the products covered by this investigation from Japan, with the exception of Toshiba, which are entered or withdrawn from warehouse, for consumption, on or after June 11, 1985. The Customs Service shall require a cash deposit or bond in an amount equal to the weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. In addition, the Custom Service shall require a declaration from importer of CMT subassemblies as to: (1) whether or not imported subassemblies are dedicated exclusively for use in CMTs, and (2) the dollar value. With respect to Toshiba, the suspension of liquidation ordered on or after June 18, 1985, is to be terminated and any cash deposit or bonds are to be released. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/sellers/exporters	Weighted-average margin percentage
OKI	9.72
Hitachi	2.99
Toshiba	[1] 0.00
MELCO	87.83
NEC	95.57
Matsushita	106.60
All other manufacturers/producers/exporters	57.81

[1] Excluded.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry within 45 days after we make our final determination. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on CMTs from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

October 24, 1985.

[FR Doc. 85-25894 Filed 10-30-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service, Marine Fisheries Advisory Committee; Partially Closed Meeting

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

Time and date: The meeting will convene November 12, 1985, 1:00 p.m. and adjourn at approximately 3:00 p.m. November 14, 1985.

Place: Sheraton-Charleston Hotel and NOAA/NMFS Charleston Laboratory, Charleston, South Carolina.

Status: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). Parts of this meeting will be open to the public. The remainder of the meeting will be closed to the public. MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, academia, and other national interests.

Matters to be Considered

Portions Open to the Public

November 12, 1985, 1:00–5:00 p.m., barriers to the U.S. fishing industry.

November 13, 1985, 8:30–11:30 a.m., (1) NOAA/NMFS Charleston Laboratory presentation and tour, and (2) fish/health initiative.

November 14, 1985, 8:30–3:00 p.m. (1) South Carolina State Marine Resources Research Institute presentation and tour, (2) South Carolina State Sea Grant Program briefing, and (3) Steering committee report/other issues.

Portions Closed to the Public

November 13, 1985, 1:00–5:00 p.m. (Executive Session), current and future year budget/program priorities.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with concurrence of the General Counsel, formally determined on *October 24, 1985*, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda item to be covered during the Executive Session may be exempt from the provisions of the Act relating to open meetings and public participation therein, because the item will be concerned with matters that are within the purview of 5 U.S.C. section 552(c)(9)(B) as information the premature disclosure of which will be likely to significantly frustrate the implementation of proposed agency action. (A copy of the determination is available for public inspection and duplication in the Central Reference and Records Inspection Facility, Room 6628, Department of Commerce.) All other portions of the meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, National Marine Fisheries Service, NOAA, Washington, D.C. 20235. Telephone: (202) 634–9563.

Dated: October 28, 1985.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries.

[FR Doc. 85–25995 Filed 10–30–85; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Change in Officials of the Government of Pakistan Authorized to Issue Export Visas for Certain Cotton Textile Products from Pakistan

October 28, 1985.

The Government of Pakistan has notified the United States Government under the terms of the Bilateral Cotton Textile Agreement of March 9 and 11, 1982 that Mrs. Nighat Parveen is now authorized to issue export visas for cotton textile products exported to the United States in place of Mazhar Hussian, who will not longer sign these documents. The purpose of this notice is to advise the public of this change.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–26018 Filed 10–30–85; 8:45 am]

BILLING CODE 3510–DR–M

Adjusting Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

Correction

In FR Doc. 85–25271 beginning on page 42982 in the issue of Wednesday, October 23, 1985, make the following corrections:

On page 42983, first column, in the table, for Category 320, the Adjusted 12-month restraint level should read "11,689,822 square yards"; and for Category 604, the Adjusted 12-month restraint level should read "857,716 pounds of which not more than 506,990 pounds shall be in T.S.U.S.A. number 310.5049".

BILLING CODE: 1505–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee National Energy Security Policy Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee National Energy Security Policy Task Force will meet November 19, 1985, from 9 a.m to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to clearly understand the policy implications of the energy security problem facing the United States. The entire agenda for the meeting will consist of discussions of key issues regarding the parameters of national energy security policy, their implications for U.S. Navy operations, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: October 25, 1985.

Willian F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc 85–25996 Filed 10–30–85; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Ocean Systems Center Review Team of the Naval Research Advisory Committee Panel on Laboratory Oversight will meet on November 21–22, 1985, at the Naval Ocean Systems Center, San Diego, California. The first session will commence at 8:00 a.m. and terminate at 5:15 p.m. on November 21. The second and final session will commence at 8:30 a.m. and terminate at 4:00 p.m. on November 22. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical and engineering health of NOSC. The agenda for the meeting will consist of technical briefings by the NOSC departments which will assist the team in their efforts to make a thorough evaluation of the scientific, technical and engineering health of the activity. These briefings and tours will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy Office of the Chief of Naval Research, (Code 00NR), 800 North Quincy Street, Arlington, VA

22217–5000, Telephone number (202) 696–4870.

Dated: October 25, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–25997 Filed 10–30–85; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Discretionary Grant Programs

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Dates for Transmittal of Certain Fiscal Year 1986 Applications for New Awards.

SUMMARY: The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of grant applications for new awards for certain programs administered by the Department of Education under the Office of Special Education and Rehabilitative Services.

Organization of Notice

This notice contains two parts. Part I includes, in chronological order, the list of all closing dates covered by this notice. Part II consists of the individual application announcements for each program. These announcements are in the same order as the closing dates listed in Part I.

Instructions for Transmittal of Applications:

Applicants should note specifically the instructions for the transmittal of applications included below:

Transmittal of Applications: Applications for all projects must be mailed or hand delivered on or before the closing date given in the individual program announcements included in this document.

Applications Delivered by Mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: (Insert appropriate CFDA number), 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant for a new award will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available Funds: In each application announcement, under the paragraph on availability of funds, the estimates of funding levels do not bind the Department to a specific number of grants or to the amount of any grant unless the amount is otherwise specified by statute or regulations.

Part I—List of Program Application Announcements Published in this Notice

CFDA No. and Program	Closing date
84.128H Handicapped American Indian Vocational Rehabilitation Service Projects.	Jan. 6, 1986.
84.128G Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects.	Jan. 6, 1986

Part II—Application Announcements

84.128H—Handicapped American Indian Vocational Rehabilitation Service Projects

Closing date: Jan. 6, 1986.

Applications for new projects are invited under the Handicapped American Indian Vocational Rehabilitation Service Projects Program.

Authority for this program is contained in section 130 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 750).

Awards are made under this program to the governing bodies of Indian tribes located on Federal and State reservations.

The purpose of the Handicapped American Indian Vocational Rehabilitation Service Projects Program is to support projects designed to provide vocational rehabilitation services to handicapped American Indians who reside on Federal or State reservations in order to prepare them for suitable employment.

Available Funds: The total amount of funds available under this grant program for Fiscal Year 1985 was $1,430,000. It is estimated that $715,000 will be available in Fiscal Year 1986 to support three new projects. The amount of funds for each project is expected to range from approximately $215,000 to $500,000.

It is expected that new projects funded under this program in Fiscal Year 1986 will be approved for project periods of up to 36 months.

Application Forms: Application forms and program information packages are available and may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, Mary E. Switzer Building, 400 Maryland Avenue, SW., (MS–2312) Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested. (Approved by the Office of Management and Budget under control number 1820–0018)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped American Indian Vocational Rehabilitation Service Projects Program (34 CFR Parts 369 and 371); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

For Further Information Contact: Frank S. Caracciolo, Division of Special Projects, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3317, Mary E. Switzer Building, 400 Maryland Avenue, SW., (MS–2312) Washington, D.C. 20202. Telephone: (202) 732—1340. (29 U.S.C. 750)

84.128G—Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects

Closing Date: Jan. 6, 1986.

New applications are invited under the Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects program.

Authority for this program is contained in section 312 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 777b).

Awards are made under this program to State vocational rehabilitation agencies or to local agencies that have agreements in effect with State vocational rehabilitation agencies to conduct vocational rehabilitation programs under the supervision of the State agencies in accordance with State plans approved under section 101 of the Act.

The purpose of this program is to support projects for providing vocational rehabilitation services to handicapped migratory agricultural workers or handicapped seasonal farmworkers.

Intergovernmental Review: On June 24, 1983, the Secretary published in the **Federal Register** final regulation (34 CFR Part 79, published at 48 FR 29158 et seq.) implementing Executive Order 12372 entitled: "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order:

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State post-secondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within the geographic area.

The following is the current list of States which have established a process, designated a single point of contact, and have selected this program for review:

Alabama	New Jersey
Arizona	New Mexico
Arkansas	New York
California	North Carolina
Connecticut	North Dakota
Delaware	Ohio
District of Columbia	Oklahoma
Florida	Oregon
Hawaii	Pennsylvania
Illinois	Rhode Island
Indiana	South Carolina
Iowa	South Dakota
Kansas	Tennessee
Louisiana	Texas
Maine	Utah
Maryland	Vermont
Massachusetts	Virginia
Michigan	Washington
Mississippi	Wyoming
Missouri	Guam
Montana	Northern Mariana Islands
Nebraska	Trust Territory
Nevada	Virgin Islands
New Hampshire	

Immediately upon receipt of this notice, applicants which are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities for 84.128G Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects must be mailed or hand delivered by Mar. 7, 1986 to the following address: The Secretary, U.S. Department of Education, Room 4161 (84.128G), 400 Maryland Avenue, SW., Washington, DC 20202. (Proof of mailing will be determined on the same basis as applications.)

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS APPLICATION. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.

Available Funds: The total amount of funds available under this grant program for Fiscal Year 1985 was $950,000. It is estimated that $950,000 will be available in Fiscal Year 1986 of which approximately $488,000 will be used for the support of new projects. An estimated five new projects will be awarded with the average grant totaling about $90,000.

It is expected that new projects funded under this program in Fiscal Year 1986 will be approved for project periods of up to 36 months.

Application Forms: Application forms and program information packages are available and may be obtained by writing to the Office of Development Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., (MS 2312), Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this announcement. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion [of the application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested. (Approved by the Office of Manangement and Budget under control number 1820–0018).

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects Program (34 CFR Parts 369 and 375); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78 and 79).

For Further Information Contact: Frank S. Caracciolo, Division of Special

Projects, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3327, Mary E. Switzer Building, 400 Maryland Avenue SW., (MS 2312) Washington, DC 20202. Telephone (202) 732–1340.

(29 U.S.C. 777b)

(Catalog of Federal Domestic Assistance No. 84.128 Vocational Rehabilitation Services Projects)

Dated: October 25, 1985.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 85–26004 Filed 10–30–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Involvement of the Strategic Petroleum Reserve Texoma Complex Distribution Enhancements

AGENCY: Strategic Petroleum Reserve, Department of Energy.

ACTION: Floodplain/wetlands assessment and opportunity for comment.

SUMMARY: The Strategic Petroleum Reserve (SPR) is considering the construction of two buried crude oil pipelines to enhance existing distribution capability of the SPR Texoma Complex in east Texas and west Louisiana. One pipeline, which would be at most 6 miles long and 30 inches diameter, would connect SPR facilities in Jefferson County, Texas with existing commercial crude oil facilities nearby. The second pipeline, which would be at most 13 miles long and 30 inches diameter would connect SPR facilities in Cameron Parish, Louisiana with existing commercial crude oil facilities in Calcasieu Parish, Louisiana. Each pipeline would involve activities within a floodplain/wetlands area. The floodplain/wetlands assessment is provided below. Public comments or suggestions on the SPR's activities in these floodplain/wetlands areas are invited. Comments received will be incorporated in an Environmental Assessment which is in preparation.

DATE: Written comments should be received at the address below by November 15, 1985.

ADDRESS: Address comments to Mr. Sidney R. Evans, SPR Project Management Office, Department of Energy, 900 Commerce Road East, New Orleans, LA 70123, Phone: (504) 734–4353.

FOR FURTHER INFORMATION CONTACT:

1. Mr. Sidney R. Evans at the above address.

2. Mr. Walter H. Delaplane, Jr., Strategic Petroleum Reserve, Department of Energy, FE–421, 1000 Independence Ave., SW., Washington, DC 20585, Phone: (202) 252–4730.

SUPPLEMENTARY INFORMATION: The Strategic Petroleum Reserve (SPR) of the U.S. Department of Energy is considering the construction and operation of two buried crude oil pipelines to enhance existing distribution capability for the SPR Texoma Complex (Figures 1–3). This action would provide for the unconstrained drawdown of SPR facilities at West Hackberry in Cameron Parish, Louisiana, Sulphur Mines in Calcasieu Parish, Louisiana, and Big Hill in Jefferson County, Texas. Figure 1 presents a regional overview and a map key for the candidate pipeline routes.

To enhance distribution of crude oil in the Beaumont/Port Arthur area from all three sites, the SPR is considering construction of a pipeline from the Sun Terminal in Nederland to one of the following three commercial terminals: Texas Eastern Beaumont Marine Terminal, which is located about three miles upstream of the Sun Terminal on the opposite side of the Neches River; Erickson Terminal, which is located about two miles downstream in Nederland; or the Texaco Terminal, which is located in Port Neches about four miles downstream (Figure 2). It is currently planned that the selection would be based on a limited competition among these three commercial terminals.

Throughput capacity of a pipeline to any of these commercial terminals would be up to 200,000 barrels per day (bpd). Pipeline length would be between 3 to 6 miles and the diameter would be between 24 to 30 inches depending on pipeline length. Reasonable alternatives for connecting the Sun Terminal to either the Erickson or Texco Terminal are limited by the congested urban environment. One pipeline route to each terminal is considered. For a pipeline to Texas Eastern, five alternative routes designated A, B, B_1, C, and D are addressed and compared.

In Louisiana, the SPR proposes to enhance flexibility and assurance of unconstrained drawdown from West Hackberry and Sulphur Mines by constructing a 700,000-bpd pipeline to tie into Texaco's 22-inch common carrier crude oil pipeline in the Lake Charles vicinity (Figure 3). Three alternative pipelines are being considered. A 30-inch diameter pipeline originating from the West Hackberry site could be constructed either directly across Black Lake or east of Black Lake along a waterway called Alkali Ditch. The Black Lake route is 10 miles long and the Alkali Ditch route is 13 miles long. The third alternative route is a 30-inch pipeline 11 miles long originating from the juncture of the 16-inch Sulphur Mines spur pipeline with the 42-inch West Hackberry—Sun Terminal crude oil pipeline at the Intracoastal Waterway (ICW) near Goose Lake.

BILLING CODE 6450–01–M

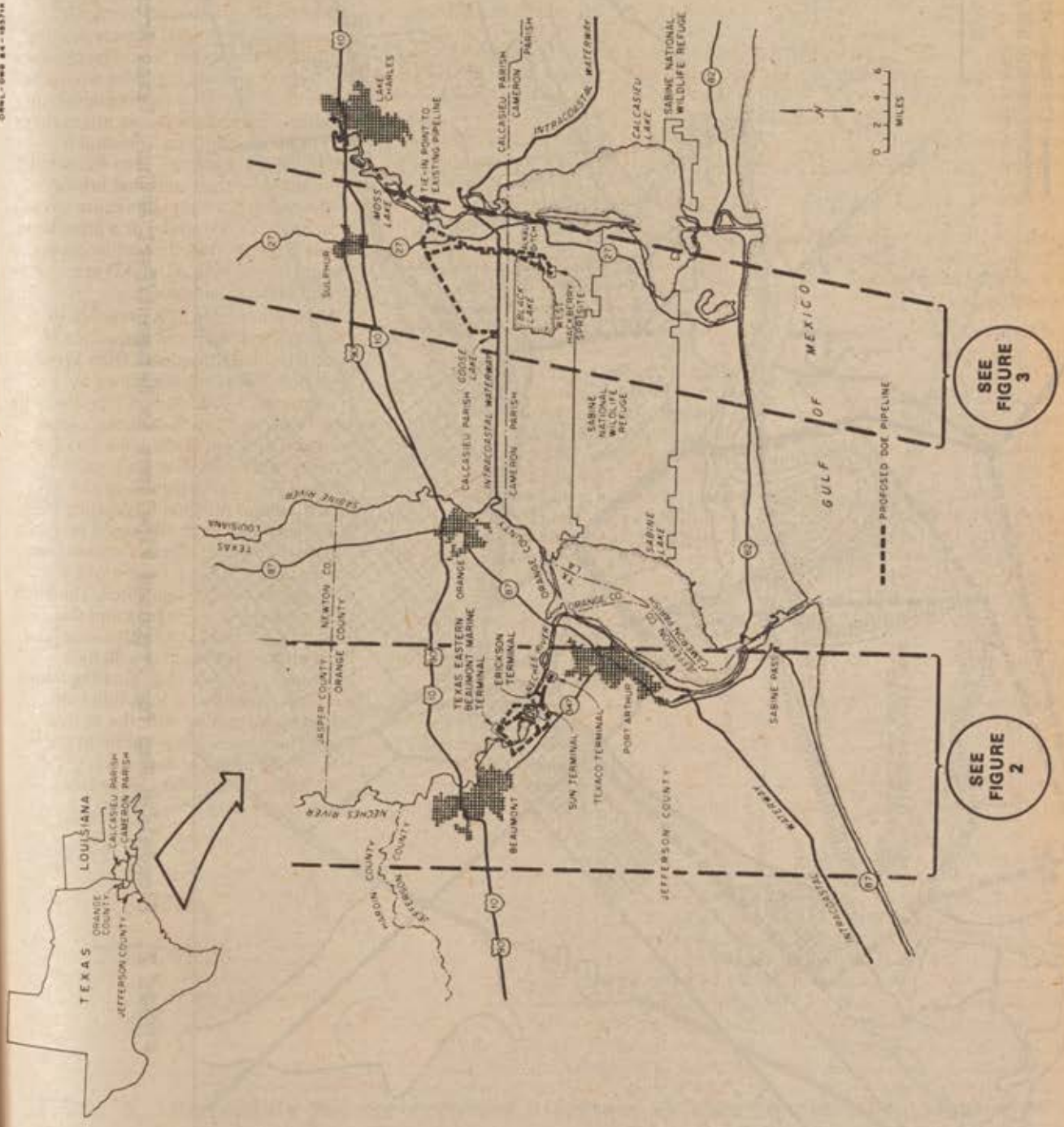


FIGURE 1. Regional Overview and Map Key

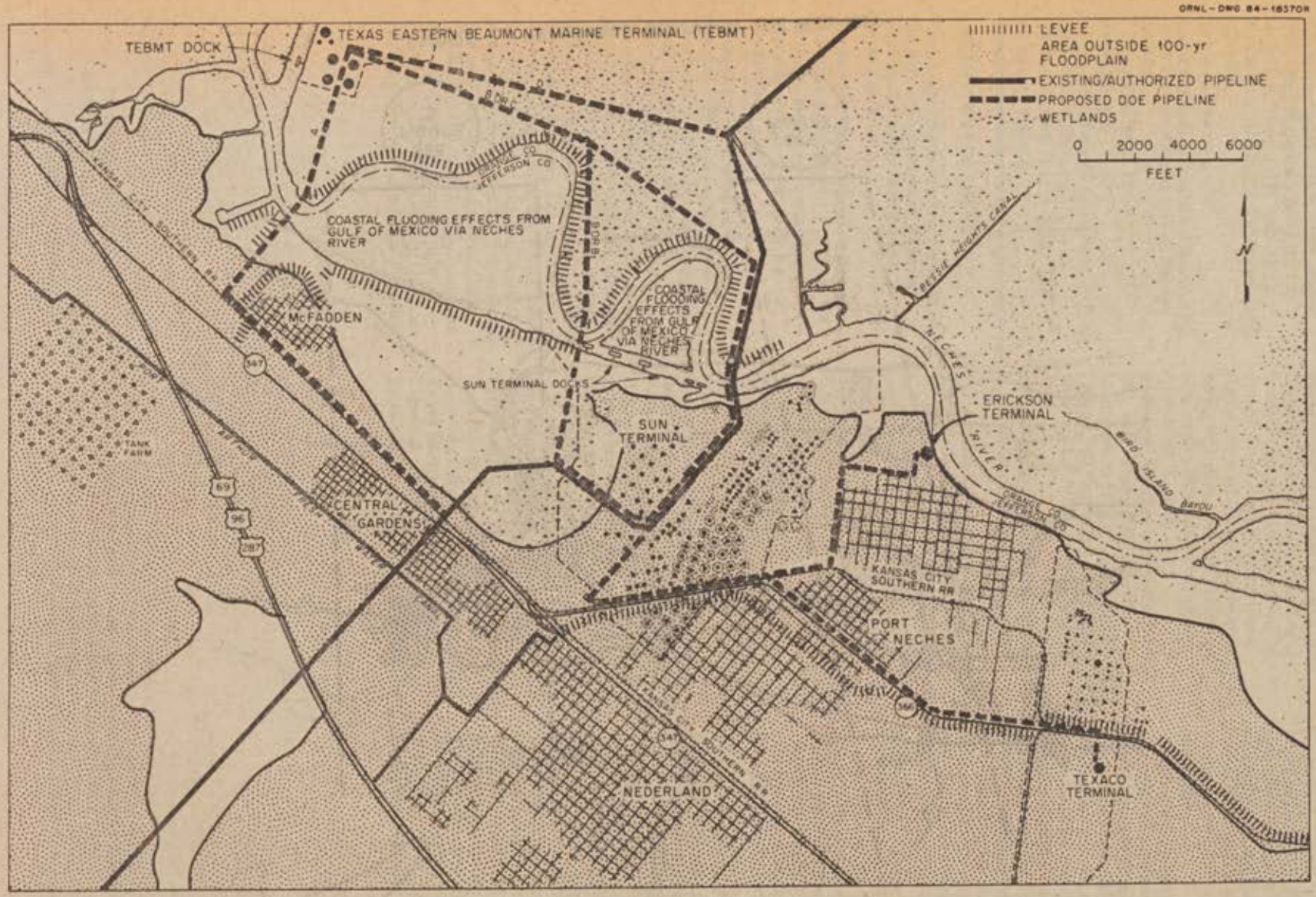


FIGURE 2. Floodplain Map for Proposed Pipelines in Beaumont/Port Arthur, Texas Area

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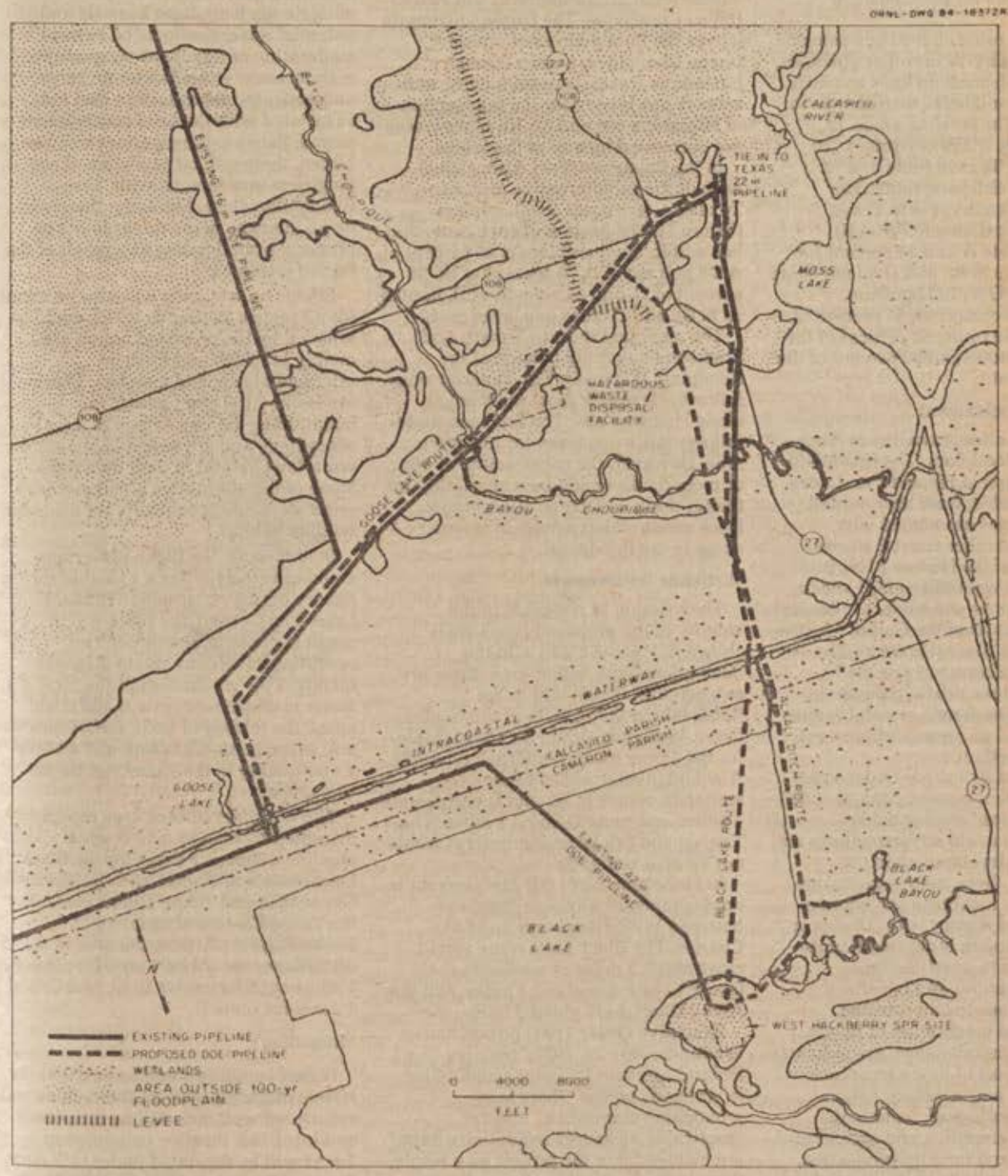


FIGURE 3. Floodplain Map for Proposed Pipelines in Lake Charles, Louisiana Area

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Any pipeline will require a permanent right-of-way (ROW) of about 50 ft and an additional temporary construction ROW of about 75–100 ft. The pipeline trench will be about 10 ft wide at the top, 4 ft wide at the bottom, and about 5 ft deep. Construction would take about four weeks for the Texas pipeline and about six weeks for the Louisiana pipeline.

Alternative routes have been selected to use existing ROW for other pipelines, roads, and transmission lines as much as possible to minimize distrubance to sensitive and/or prestine areas. In Texas, existing ROW comprises 100 percent of the Texaco route and 72 percent of the Erickson route. The percentage of each route to Texas Eastern using existing ROW is 50 percent for route A and 33 percent for route C. Routes B, B_1, and D do not share any existing ROW. In Louisiana, existing ROW comprises 82 percent of the Goose Lake route, 62 percent of the Alkali Ditch route, and 50 percent of the Black Lake route.

Floodplain Involvement

Most of the alternative routes cross the 100-year floodplain. The floodplain areas delineated in Figures 2 and 3 are subject to flooding from high rainfall and storm surges associated with hurricanes and other coastal storms.

Two areas of the Neches River in particular, the vicinities of McFadden and Sun Terminal, are subject to coastal flooding effects from the Gulf of Mexico via the Neches River (Figure 2). The environments characterizing the floodplain include urban/industrial land, fluvial woodlands, coastal praire (primarily used as range and pasture), and coastal wetlands.

According to Executive Order 11988 (Floodplain Management, May 24, 1977), Federal agencies "shall consider alternatives to avoid adverse effects and incompatible development in the floodplain." If there is no "practicable alternative" to locating a project in a floodplain, and agency is to "design or modify its action in order to minimize potential harm to or within the floodplain." Natural and beneficial floodplain values to be protected include natural moderation of floods, water quality maintenance, groundwater recharge, support of living resources (marshes, fish and wildlife), cultural richness (archeological, historical, recreational, scientific), and agricultural, aquacultural, and forestry production.

Given the locations of facilities of the SPR Texoma Complex and existing commercial crude oil terminals, there is no practicable alternative to activity in the floodplain for the project as a whole. The floodplain is unavoidable for any pipeline from West Hackberry to Lake Charles (Figure 3). The percentage of each route in the floodplain is: Black Lake route, 85 percent; Alkali Ditch route, 70 percent; and Goose Lake route, 65 percent.

Areas outside the floodplain are encountered primarily north and east of Bayou Choupique. The Goose Lake route leaves the floodplain after crossing Bayou Choupique, passes through a hazardous waste disposal facility, and crosses one levee near the intersection of Highways 108 and 27. No other levees are encounted by any of the routes.

In the Beaumont/Port Arthur area, each of the subalternative routes to Texas Eastern cross the floodplain (Figure 2). The portion of each route that lies within the floodplain is 25 percent of A, 75 percent of B, 70 percent of B_1, 35 percent of C, and 45 percent of D. Routes A, B, B_1, and C cross one levee each.

The piepline routes to Texaco and Erickson lie entirely outside of the floodplain (Figure 2). The Texaco route follows a levee for most of its length along Highway 366. The Erickson route follows this same levee for about one mile. However, the construction of one or more docks would be a possibility for the Erickson or Texaco alternatives. Dock construction would, of course, occur in the floodplain.

Wetlands Involvement

The location of wetlands in the vicinity of the proposed pipelines is shown in Figures 2 and 3. In the Beaumount/Port Arthur area, there are extensive wetlands within the floodplain in the vicinity of the Neches River. Wetlands would be unavoidable for the Texas Eastern alternative. Route A would involve about 1 mile of wetlands, routes B, B_1, and C each about 4 miles, and route D about 3 miles. The Texaco and Erickson alternatives would not involve wetlands.

In Louisiana, wetlands involvement is unavoidable for any pipeline route between West Hackberry and Lake Charles. The Black Lake route would cross about 3 miles of wetlands, the Goose Lake route about 2 miles, and the Alkali Ditch route about 2 miles.

Executive Order 11990 (Protection or Wetlands, May 24, 1977), requires Federal agencies to avoid construction in wetlands unless "there is no practicable alternative" and "all practicable measures to minimize harm" are included. For the project as a whole, there is no practicable alternative to avoiding wetlands. However, Texaco and Erickson would be practicable alternatives for avoiding wetlands in the Beaumont/Port Arthur area.

Floodplain/Wetlands Effects

The effects of pipeline construction on the 100-year floodplain will be direct, minor, and short-term. There will be little net change to habitat. The use of standard construction practices and compliance with permit conditions, described more fully below, will mitigate the temporary hazards and potential adverse effects on natural moderation of floods, water quality maintenance, groundwater recharge, and agricultural production that are associated with the brief construction period. Because the pipelines will be buried, there will be negligible, if any, long-term interference with these floodplain values. Similarly, there will be no increase in the threat to life or property from flooding as a result of the buried pipelines.

Effects on wetlands will also be minor for all routes. Wetlands which could be affected by the proposed action are mainly brackish and fresh or intermediate coastal marshes. These areas are vitial components in maintaining the bay-estuarine aquatic ecosystem, and are valuable aquatic and waterfowl habitat in their own right. None of the alternative pipeline routes cross wetlands specifically set aside for wildlife habitat.

In Louisiana, the Black Lake route could adversely affect a valuable shrimp fishery during construction in Black Lake. The Goose Lake route would result in construction through an operating hazardous waste disposal facility. This would disrupt the facility's water management system and could cause the release of toxic substances and subsequent degradation of surface water quality in the vicinity of Bayou Choupique.

The wetlands surface area directly disrupted by digging a 10-ft wide pipeline trench is 3 acres for the Black Lake route and 2 acres each for the Goose lake and Alkali Ditch routes. For the Texas Eastern alternative in Beaumont/Port Arthur, the area of direct disturbance would be 1 acre for route A, 5 acres each for routes B, B_1, and C, and 3 acres for route D.

Mitigation

Permit conditions will ensure that the effects of the pipeline on floodplains and associated wetlands will be temporary and localized. Pipeline construction in Texas will be regulated under U.S. Army Corps of Engineers General Permits. In particular, return to original bottom contours (General Permit 15800, Special Condition 3), revegetation of riparian areas (General Permit 15800, Special

Condition 7), and disposal of dredge spoils in upland areas (General Permit 15800) will minimize construction effects on surface waters.

For water bodies to be crossed by directional drilling, General Permit 14114 specifies that there will be no dredging or filling in the waterway or adjacent wetlands (Special Condition f), no disturbance of adjacent wetlands or submerged vegetation (Special Condition g), and restoration of preproject ground conditions (Special Condition h). Buffer zones of approximately 200 to 300 ft from water's edge on each side would separate directional drilling activities for alternative routes crossing the Neches River. Construction of docks would require individual Department of Army permits pursuant to section 404 of the Clean Water Act.

In Louisiana, pipeline construction will be regulated under individual permits issued by the U. S. Army Corps of Engineers under the Clean Water Act and the Rivers and Harbors Act. In addition, as a portion of the West Hackberry-Lake Charles pipeline will be in the Louisiana coastal zone, the project will be performed in accordance with the Louisiana Coastal Resources Program (LCRP) pursuant to section 307 of the Coastal Zone Management Act.

The SPR has provided the State of Louisiana with a determination of consistency with the LCRP. The State has indicated a preference for the Alkali Ditch route which they deem consistent with the LCRP.

Department of Army permit conditions will be determined on an individual basis, but typically include: (1) 3-foot minimum depth of burial for stream crossings, 8-foot minimum depth for the ICW; (2) trench and backfill for wetlands; and (3) spreading excess spoils (instead of transporting them off-site). For that portion of the proposed pipeline that would be laid in Alkali Ditch, backfilling may not be stipulated, nor is it likely that revegetation would be required for the crossing of Bayou Choupique.

The risks and potential impacts of crude oil spills on wetlands will be reduced by routine pipeline inspection and maintenance and implementation of a spill contingency plan.

Issued at Washington, DC.

Dated: October 24, 1985.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 85-25859 Filed 10-30-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Docket No. CAS-RM-79-112-B]

Modifications to Affordable Housing Through Energy Conservation; Inquiry and Public Briefing

AGENCY: Department of Energy.

ACTION: Notice of inquiry and public briefing.

SUMMARY: The Department of Energy (DOE) announces the availability of a draft revision of portions of the draft guide for homebuilders entitled, "Affordable Housing through Energy Conservation: A Guide to Designing and Constructing Energy Efficient Homes." The draft guide incorporates energy savings calculations and construction techniques for builders of new houses. This Notice of Inquiry is intended to solicit public comment on the draft update of portions of the guide. The draft guide is a part of the research program undertaken by DOE in the development of energy performance standards in accordance with the Energy Conservation Standards for New Buildings act of 1976, as amended, 42 U.S.C. section 36831 *et seq.* Congress directed the Department to develop and promulgate voluntary energy performance standards for the design of new commercial and residential buildings. After promulgation, only Federal agencies will be required to comply with these standards for the design of new Federal buildings. For all other buildings these standards will serve as voluntary guidelines. An energy performance standard for a new building is a design requirement which prescribes an energy consumption goal and a method for calculating whether the design meets that goal.

The draft guide was issued as a Notice of Inquiry in the Federal Register (49 FR 6537, February 22, 1984). The draft guide provides a simplified calculation technique for determining if the design of a house meets an energy consumption goal. Since no energy consumption goals have been specified at this time, the goal itself can be selected by a homebuilder, financial institution, or a consumer. The guide provides a simple, reliable way to determine the cost effectiveness of different energy conservation options without prescribing a specific level of investment for energy conservation. It allows the user to consider regional differences in climatic conditions, building materials and labor costs, energy prices, and energy types.

The draft guide issued for public comment on February 22, 1984, was primarily for the construction of what is known in the building industry as "stick-built" housing. The term "stick-built" refers to those houses built predominantly with wood-frame construction and sheathed with aluminum, vinyl, or wood siding, or a single layer of bricks. It does not include houses built with double layers of bricks, concrete blocks, logs, or other forms of massive construction. The February 22, 1984, issuance stated that the Department had begun a project to analyze the design of high mass houses and intended to incorporate the results of that research into the residential guide when it became available for public use. The relevant research results and modifications to the slide rule and guides are the subject of today's notice. The residential guide when made available to the public will contain an easy to operate slide rule that will enable home builders to calculate the amount of energy that can be saved by incorporating a variety of energy conservation options that can be saved by incorporating a variety of energy conservation options that affect space conditioning (e.g., infiltration, equipment, insulation, and thermal mass). When published for public use, the guide will contain slide rule tabs for 45 locations. Use of the slide rule will be explained in a short brochure. A design and construction guidebook that explains how to construct, install, specify, and operate the several energy conservation options that can be analyzed by using the slide rule will be provided. The guidebook will discuss additional space conditioning options as well as a variety of domestic hot water and appliance options. It will also provide the user with an easy to use economic evaluation technique for determining the cost effectiveness of a single option or combination of options.

A technical support supplement, an example of how to use the material, and new text for the guidebook are available for public inspection at the DOE Freedom of Information Reading Room, Room 1B-190, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6020, 9:00 a.m.-4:00 p.m. Copies may be obtained by writing to the Hearings and Dockets Branch at the address indicated in this Notice. Because supplies of the documents are limited, respondents are asked to request the documents only if they plan to submit comments.

DATES: Written comments must be received no later than 30 days following publication in the Federal Register. A public briefing will be held on November 18, 1985 9:30 a.m., in

Washington, D.C. at the Department of Energy, 1000 Independence Avenue, SW., Room 1E-245. The purpose of the public briefing is to provide a briefing on the draft update of portions of the guide to interested parties.

ADDRESSES: Send written comments (six copies) to: Conservation and Renewable Energy, Hearings and Dockets Branch, U.S. Department of Energy, Docket Number CAS-RM-79-112-B, 1000 Independence Avenue, SW., Room 6B-025, Washington, D.C. 20585, (202) 252-9319.

FOR FURTHER INFORMATION CONTACT:

Marvin Gorelick, Architectural and Engineering Systems Branch, Department of Energy, Room GF-253, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-9837;

Richard F. Kessler, Esq., Office of General Counsel, GC-33, Department of Energy, SW., Washington, D.C. 20585 (202) 252-9519.

SUPPLEMENTARY INFORMATION:

I. Background
II. Technical Approach
III. Summary of Modification to the Guide
IV. Public Comment
V. Availability of the Guide
VI. Comment Procedures

I. Background

The Department of Energy (DOE) issued a draft guide entitled, "Affordable Housing through Energy Conservation: A Guide to Designing and Constructing Energy Efficient Homes" in the **Federal Register** (49 FR 6537, February 22, 1984). The Department provided a comment period during which a total of 205 comments on the issuance were received. The majority of these comments (approximately 62 percent) were related to the guide booklet and typically questioned energy cost assumptions, the methodology for calculating costs and savings, and data provided on material and equipment performance. Approximately 14 percent were related to the Technical Support Document and typically challenged technical assumptions in the data base. Approximately 12 percent of the total were general in nature, addressing the applicability of the guide as a whole. Eight percent were related to the slide rule and the remaining four percent of the comments addressed the "Using the Slide Rule and Modifiers" booklet. The draft guide was primarily for the construction of "stick-built" housing. It did not include housing built with double layers of brick, concrete block, logs, or other forms of massive construction. As discussed in the February 22, 1984, issuance, the Department has undertaken a project to analyze the design of high mass homes. The Department said it intended to incorporate the recommendations of this research into the residential guide. The relevant research on mass has been completed and the purpose of today's notice is to modify the slide rule and guides to reflect the results of that research.

II. Technical Approach

DOE established a technical project to develop a slide rule that will account for the energy conservation benefits of heavy mass walls, such as brick, concrete block and log. Lawrence Berkeley Laboratory (LBL) conducted computer analysis work on single family homes with heavy mass walls and provided documentation of the research methods and results. LBL was also responsible for developing a method to make the results usable in the slide rule format and for masonry wall types.

Steven Winter Associates, Inc. (SWA) of New York, an architectural and engineering firm, developed the comprehensive information on heavy mass construction that is included in the guidebook. The company also assisted DOE to organize and coordinate the various industry and technical review meetings held during the project.

Guidance and assistance to the project was provided by a technical review panel. The panel included representatives from several industry groups including: Brick Institute of America, International Masonry Institute, Log Homes Council, Portland Cement Association, Masonry Research Foundation, and the National Concrete Masonry Association. Also included were experts from the National Bureau of Standards, the DOE national laboratories, and private industry. The panel met seven time during the course of the project and reviewed the modeling assumptions and methods, research results, presentation format, and typical wall constructions representative of heavy mass construction.

The goal of the project was to develop an easy-to-use, credible energy analysis tool that allows builders to make reliable comparisons of energy saving features in homes with heavy weight wall construction such as brick, concrete block and log. Considerable attention has been given to examining all research assumptions and procedures to ensure their adequacy and accuracy. In addition, all research methods, assumptions and results have been documented and are available for review at the DOE Headquarters Office in Washington, D.C., and at the nine DOE Regional Support Offices.

The process used to produce the inputs to the slide rules for heavy mass construction is consistent with the general technical approach followed for "stick-built" housing. The Building prototypes, which are the same types used for the "stick-built" slide rule, include: Ranch, two-story, split-level, and mid- and end-townhouse units. Three wall constructions were simulated and used in the analysis. They are a mass wall with integral insulation, which represents a log wall and approximates a brick and concrete masonry unit with cores filled with insulation, a mass wall that represents brick or concrete masonry with a layer of insulation inside the mass, and a similar wall with the insulation outside the mass.

The various wall constructions were simulated in a parametric series with DOE-2.1 using custom weighting factors to account for the thermal storage characteristics of the mass. DOE-2.1 is a public domain computer program. It estimates hourly energy consumption of a building prior to construction by using information derived from the design of the building, such as location, construction, operation, and space conditioning equipment specifications.

A data-base of DOE-2.1 simulations was generated for various massive walls in twelve heating and cooling zones that represent a cross-section of U.S. weather conditions. In order to make the results usable in the slide rule format, tables of "mass wall performance indices" were generated for each wall type and each heating and cooling zone. The user determines the appropriate index based on the heat capacity and R-value of the wall, and uses this value directly on the wall insulation tab of the slide rule. The result is a simple and accurate method to predict the performance of most common masonry and log walls.

III. Summary of Modifications to the Guide and Slide Rules

The slide rule portion of the guidelines is composed of a slide rule sleeve and openings for 10 tabs. Slide rule and tabs are printed on both sides for heatings and cooling calculations. The slide rule is used to estimate the savings associated with five categories of energy conservation measures including: ceiling insulation, wall insulation, floor insulation, window size and level of glazing, and infiltration reduction. In addition, the slide rule adjusts these savings to account for differences in floor area relative to the prototype

buildings, climate differences in a variety of locations, and a range of various equipment seasonal efficiencies. The energy effects of less significant conservation measures, such as window orientation or roof color, are not shown explicitly on the slide rule, but can be accounted for by use of modifier tables in the "Using the Slide Rule and Modifiers" booklet. By inserting the appropriate tabs into the slide rule sleeve and setting them to the selected conservation measures, users can replicate any portion of the data base.

The slide rule tab corresponding to wall insulation has been modified to include a scale called the Mass Wall Performance Index (MWPI), which will appear in both the Heating and Cooling Calculator sides of the tab. The user of the slide rule will utilize this scale when calculating energy savings for homes built of high mass (masonry or solid wood) wall materials. By consulting the "Using the Mass Wall Performance Index" section of the "Using the Slide Rule and Modifiers" booklet, the reader determines the correct heating and cooling MWPI values for his or her location. The heating and cooling MWPI scales on the wall insulation tab are then set to these values and the slide rule calculation process continues in the same fashion as for wood frame walls. No additional tabs or slide rule shells are required.

IV. Guide and Booklet

The text and graphics of the "Affordable Housing through Energy Conservation" guidelines were changed to incorporate discussions and illustrations of high mass wall construction considerations. Some existing drawings were changed to illustrate aspects of mass construction, and entirely new drawings were added where appropriate. Text additions were generally restricted to one or two paragraphs at most and no new chapters were added.

In the "Using the Slide Rule and Modifiers" booklet modest additions were made to the Heating Calculation and Cooling Calculation discussions. A completely new section on "Using the Mass Wall Performance Index" was also included, together with appropriate tables. Additional special tables were also provided; one to describe how to select the correct table to use for each of the slide rule tab sets; and the other describing the construction assumptions for each added insulation R-value.

Copies of all revised text pages (e.g. pages from the original guide and booklet on which changes appear) together with copies of all additional text, graphics, and tables are available at DOE Freedom of Information Office in Washington, D.C. and at nine DOE Regional Support Offices at the addresses indicated in this Notice.

V. Public Comment

DOE welcomes the comments of interested persons. DOE would appreciate receipt of all written comments and related information no later than 30 days after publication of this Notice in the **Federal Register**. A public briefing will be held on the date and at the location indicated in the *Dates* section of this notice.

VI. Availability of Draft Guide

Copies of the technical support document, illustration of the slide rule, and new text for the guidebook are available for inspection at the DOE Freedom of Information Office, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, D.C., 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Copies of the technical support document, an illustration of the slide rule, and the new text for the guidebook may be obtained by making a written request to: Office of Conservation and Renewable Energy, Hearings and Dockets Branch, Department of Energy, 1000 Independence Avenue, SW., Room 6B–025, Washington, D.C. 20585. Because supplies of each are limited, respondents are asked to request the documents only if they plan to submit comments.

VI. Comment Procedures

All interested persons are invited to submit written comments to DOE. The correspondence should be mailed to: Office of Conservation and Renewable Energy, Hearings and Dockets Branch, Department of Energy, 1000 Independence Avenue, SW., Room 6B–025, Washington, D.C. 20585. Comments should be identified on the document and envelopes submitted to DOE with the designation "Updated Portions of Affordable Housing through Energy Conservation." Six (6) copies should be submitted. All written comments and related information should be received by DOE no later than 30 days after the publication of this Notice in the **Federal Register** to receive consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination, pursuant to DOE's regulations on confidentiality (10 CFR Part 1004).

Issued in Washington, D.C., October 17, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 85–25960 Filed 10–30–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER86–35–000 et al.]

Green Mountain Power Corporation et al.; Electric Rate and Corporate Regulation Filings

October 25, 1985.

Take notice that the following filings have been made with the Commission:

1. Green Mountain Power Corporation

[Docket No. ER86–35–000]

Take notice that Green Mountain Power Corporation (GMP) on October 18, 1985 tendered for filing as a rate schedule an executed agreement dated as November 1, 1984 between GMP and Citizens Utilities Company (CU). The proposed rate schedule provides for the sale of capacity and associated energy by GMP to CU.

GMP states that a copy of the filing was served on CU, as well as the Vermont Public Service Board and Vermont Department of Public Service.

Comment date: November 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Electric and Gas Company

[Docket No. ER86–9–000]

Take notice that on October 17, 1985, Public Service Electric and Gas Company (Public Service) tendered for filing an amendment to an initial Rate Schedule (Docket No. ER86–9–000) for the transmission by Public Service of the combined shares of the Borough of Butler, Borough of Lavallette, Borough of Madison, Borough of Pemberton, Borough of Seaside Heights and Sussex Rural Electric Cooperative of the State of New Jersey's allocation of New York Power Authority (NYPA) neighboring state hydroelectricity from the New York/New Jersey border to Jersey Central Power and Light Company. This amendment provides supplementary information and does not represent any change to the filed service agreement, or the rates, charges, terms and conditions of service therein.

Public Service requests a waiver of notice requirements with the customer's consent so that the Rate Schedule can be made effective as of July 1, 1985.

Public Service states that a copy of this filing has been served by mail upon customers.

Comment date: November 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Aluminum Company of America

[Docket No. ER86-33-000]

Take notice that on October 17, 1985 Aluminum Company of America tendered for filing a notice of cancellation of the following Rate Schedules and effective dates of cancellation:

1. Notice is hereby given that effective December 1, 1985, *Rate Schedule F.P.C. No. 2*, effective date December 31, 1963 (including Supplements No. 3 and No. 4 thereto) and filed with the Commission by Long Sault, Inc., is to be cancelled.

2. Notice is hereby given that effective December 1, 1985, *Rate Schedule F.P.C. No. 3*, effective date August 2, 1964 and filed with the Commission by Long Sault, Inc., is to be cancelled

3. Notice is hereby given that effective December 1, 1985, *Rate Schedule F.P.C. No. 5*, effective date August 9, 1966 (including Supplement No. 1 thereto) was filed with the Commission by Long Sault, Inc., is to be cancelled.

4. Notice is hereby given that effective October 29, 1972, *Rate Schedule F.P.C. No. 9*, effective date May 8, 1972 and filed with the Commission by Long Sault, Inc., be cancelled.

5. Notice is hereby given that effective December 1, 1985, *Rate Schedule F.P.C. No. 10*, effective date December 22, 1972 and filed with the Commission by Long Sault, Inc., is to be cancelled.

Comment date: November 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp.

[Docket No. ER86-38-000]

Take Notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on October 18, 1985, tendered for filing, in accordance with Section 35.13a(d)(5) of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Oregon, Bonneville Power Administration's (Bonneville) Docket No. 5-A1-8401. The Revised Appendix 1 calculates an average system cost for the state of Oregon applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective November 15, 1984, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Public Utility Commissioner of Oregon, and Bonneville's Direct Service Industrial Customers.

Comment date: November 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Mississippi Power & Light Company

[Docket No. ER86-36-000]

Take notice that on October 18, 1985, Mississippi Power & Light Company (MP&L) tendered for filing service Schedule RE—Replacement Energy, and an Amendment No. 1 thereto, under the Interconnection Agreement between South Mississippi Electric Power Association and MP&L filed with the Commission in Docket ER-79-529.

Service Schedule RE and Amendment No. 1 add an additional service—Replacement Energy service—to the Mutual Support Services provided for in the Interconnection Agreement. The other Mutual Support Services in the Interconnection Agreement are Emergency Service (Service Schedule ES), Maintenance Service (Service Schedule MS) and Economy Energy (Service Schedule EE).

MP&L requests an effective date of May 1, 1985, for Service Schedule RE and September 9, 1985, for Amendment No. 1. MP&L requests waiver of the Commission's notice requirements under Part 35 of the Commission's Regulations.

Comment date: November 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket No. ER86-37-00]

Take notice that Arizona Public Service Company on October 18, 1985 tendered for filing a Letter Agreement amending Supplement No. 11 to The Wholesale Power Agreement between Arizona Public Service Company (Arizona) and the Navajo Tribal Utility Authority (NTUA) executed July 3, 1985.

Arizona requests a waiver so that the Agreement will become effective January 1, 1985.

Copies of this filing have been served upon the Arizona Corporation Commission, NTUA and the Secretary of the Interior.

Comment date: November 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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. 85-25952 Filed 10-30-85; 8:45 am]

BILLING CODE 6717-01-M

[P-2574-001]

Hydroelectric Application Filed With the Commission

October 25, 1985.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: 2574-001.

c. Date Filed: October 4, 1985.

d. Applicant: Milstar Manufacturing Corporation and the Merimil Limited Partnership.

e. Name of Project: Lockwood Project.

f. Location: On the Kennebec River, in Kennebec County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: John W. Gulliver, Pierce Atwood Scribner, Allen Smith, & Lancaster, One Monument Square, Portland, ME 04101.

i. Comment Date: November 22, 1985.

j. Description of Proposed Transfer: On December 31, 1969, a license was issued to Milstar Manufacturing Corporation (Licensee), to construct, operate, and maintain the Lockwood Project No. 2574. The license was amended by order issued September 30, 1985, authorizing additional capacity. The Licensee intends to transfer the license to Merimil Limited Partnership (a limited partnership between the Licensee and Kennebec Hydro

Resources, Inc., a subsidiary of Central Maine Power Company) to facilitate the redevelopment and operation of the project through the establishment of this joint venture to utilize Central Maine Power Company's expertise in hydro development. For that reason the Licensee and Merimil Limited Partnership have filed a request to transfer the license to Merimil Limited Partnership (Transferee). The Licensee has complied with the terms and conditions of the license. The project has been operating since 1919. The Transferee has agreed to accept all the terms and conditions of the license and the requirements of the Federal Power Act and to be bound by it as if it is were the original licensee.

k. This notice also consists of the followig standard paragraphs: B.

l. Filing and Service of Responsive Documents: Any filing must bear in all capital letters to the title "COMMENTS", "PROTESTS" OR MOTION TO INTERVENE", as applicable, and the Project Number of this application. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 203 RB at the above address. A copy of any motion to intervene must also be served upon the representative of the Applicant specified herein.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements to the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29550 Filed 10-30-85; 8:45 am]

BILLING CODE 6717-01-M

[P-1986-001]

Hydroelectric Application Filed With the Commission

October 25, 1985.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: 1986-001.

c. Date Filed: October 18, 1985.

d. Applicant: CP National Corporation (California—Pacific Utilities Company—Licensee) and Idaho Power Company (Transferee).

e. Name of Project: Rock Creek.

f. Location: On Rock Creek, tributary to the Power River, partially within the Whitman National Forest, in Baker County, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Marvin S. Litt, CP National Corporation, 120 Montgomery Street, San Francisco, California 94104 and Mr. Paul L. Jauregui, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707.

i. Comment Date:

j. Description of Transfer: On June 28, 1951, a major license was issued to California—Pacific Utilities Company (now CP National Corporation) for the continued operation and maintenance of the Rock Creek Project No. 1986. It is proposed to transfer the license to the Idaho Power Company. CP National and Idaho Power entered into an agreement whereby CP National agreed to sell to Idaho Power all of CP National's electric properties in the State of Oregon. Included among those properties is the 800-kW Rock Creek Hydroelectric Project.

The transferee is a corporation organized under the laws of the State of Maine, and qualified to do business in the State of Oregon. Transferee has filed an application with the Oregon Public Utilities Commissioner for approval of its acquisition of Project No. 1986.

The Licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The Transferee accepts all the terms and conditions of the license, as amended, and agrees to be bound thereby to the same extent as though it was the original licensee.

k. This notice also consists of the following standard paragraphs: B and C.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Kenneth F. Plumb;

Secretary.

[FR Doc. 85-25951 Filed 10-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-133-002, et al.]

ANR Pipeline Company et al.; Natural Gas Certificate Filings

October 23, 1985.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP85-133-002]

Take notice that on September 18, 1985, ANR Pipeline Company (Petitioner), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85-133-002 a petition to amend the order issued February 26, 1985, in Docket No. CP85-133-000 pursuant to section 7(c) of the Natural Gas Act so as

to authorize the transportation of natural gas from additional receipt points and a change in the contract demand volume, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in Docket No. CP85–133–000 it received authorization to transport up to 2,500 Mcf of natural gas per day on a firm basis for Michigan Consolidated Gas Company (MichCon) from Newaygo County, Michigan, to Mecosta County, Michigan.

Petitioner proposes to add the Wolverine Jansma 1–29 and Jennings Hudson 1–35 wells in Newaygo County as additional receipt points for the transportation. Petitioner further proposes that the transportation contract demand be increased to 12,000 Mcf of gas per day.

Petitioner further requests authorization to add points of receipt and/or delivery to the transportation service and to report such changes in an annual tariff sheet filing. Petitioner also requests authorization to reduce the contract demand pursuant to the redetermination provision of amendment to the transportation agreement with MichCon, to no less than 1,000 Mcf per day, if mutually agreed to by Petitioner and MichCon.

Comment date: November 13, 1985, in accordance with the first subpargraph of Standard Paragraph F at the end of this notice.

2. K N Energy, Inc.

[Docket No. CP86–31–000]

Take notice that on October 10, 1985, K N Energy, Inc. (K N), P.O. 15265, Lakewood, Colorado 80215, filed in Docket No. CP86–31–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing K N to exchange natural gas with panhandle Eastern Pipe Line Company (Panhandle) pursuant to a gas exchange agreement dated August 27, 1985, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N seeks authority to exchange natural gas with Panhandle and to add and delete wells or other exchange and balancing points as required from time to time. K N asserts it would report such additions or deletions by January 31 of each year.

K N states that this agreement would replace an agreement dated December 1, 1957, for the exchange of gas in the Guymon Hugoton Field of Oklahoma, and adds a new exchange point in Texas County, Oklahoma, and adds a new exchange point in Texas County, Oklahoma, at its existing Baker delivery point. K N states it does not presently have sufficient gas to deliver to Panhandle at the delivery points included in the 1957 agreement and consequently an imbalance has developed which continues to increase monthly. It is alleged that 8,000 Mcf of gas per day could be delivered at the Baker piont.

Comment date: November 13, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP86–5–000]

Take notice that on October 2, 1985, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75210, filed in Docket No. CP86–5–000 an application pursuant to Section 7(e) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of compression facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Lone Star proposes to construct and operate a compressor station on Line 26–A at Quanah, Texas. The compressor station would consist of two skid-mounted 175 horsepower units and is estimated to cost $385,200, it is explained. Lone Star states that the compressors are necessary to avoid loss of line pressure to the new plant facilities of the Republic Gypsum Company (Republic Gypsum) in Oklahoma as well as the other customers on Line 26–A in Oklahoma. Lone Star explains that Republic Gypsum recently signed a contract to increase gas purchases from Lone Star for the addition of new facilities at its existing plant, and that unless additional compression is added to Line 26–A it is likely that Republic Gypsum's new facilities cannot be operated this winter.

Comment date: November 13, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Midwestern Gas Transmission Company

[Docket No. CP85–913–000]

Take notice that on September 26, 1985, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85–913–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Tricentrol Petroleum Marketing, Inc. (Tricentrol), acting on behalf of Armour-Pharmaceutical Company (Armour-Pharmaceutical), under the certificate issued in Docket No. CP82–414–000 pursuant to Section 7 of the Natural Gas Act, all more fully set forth in the request which is on file with the Commission and open to the public inspection.

Midwestern proposes to transport up to 2,000 Mcf of natural gas per day for Tricentrol, acting on behalf of Armour-Pharmaceutical, until the earlier of (1) October 31, 1985, or (2) the effective date of a final rule in Docket No. RM85–1–000. Midwestern states that the gas to be transported would be purchased by Armour-Pharmaceutical from reserves made available to Tricentrol and would be used as boiler fuel in Armour-Pharmaceutical's Bradley, Illinois, plant.

Midwestern states that it would receive up to 2,000 Mcf of natural gas per day delivered into its pipeline at an existing point of interconnection with ANR Pipeline Company (ANR) in Will County, Illinois, and would redeliver such gas to Northern Illinois Gas Company, the distribution company serving Armour-Pharmaceutical.

Midwestern states that it would charge a rate set forth in its Rate Schedule IT–1 for this transportation service and that this rate is currently 2.25 cents per Mcf. Midwestern further states that it would retain 0.5 percent of the total quantity of gas received into its system from ANR for system fuel and uses.

In addition, Midwestern states that it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Midwestern also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Armour-Pharmaceutical. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Midwestern would 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 addition sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: December 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP73-219-007]

Take notice that on September 18, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP73-219-007 a petition to amend the order issued May 6, 1974, as amended, in Docket No. CP73-219 pursuant to Section 7(c) of the Natural Gas Act so as to authorize a reduction in the maximum transportation quantity under an existing transportation service and also to permit interruptible transportation of overrun quantities of natural gas for Trunkline Gas Company (Trunkline), all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Natural states that pursuant to an amendment dated May 24, 1985, Natural and Trunkline have provided for a reduction in the Reserved Daily Capacity and the interruptible transportation of overrun gas from time to time. Natural further states that it would not be obligated to receive quantities in excess of a total Reserved Daily Capacity of 560,000 Mcf. It is indicated that the maximum quantities delivered and received at the Holly Beach delivery point would in no event, without Natural's consent, be in excess of a Reserved Daily Capacity of 405,000 Mcf and the maximum quantities delivered and received at the UTOS delivery point would in no event, without Natural's consent, be in excess of a Reserved Daily Capacity of 155,000 Mcf.

Natural proposes to charge Trunkline a monthly demand charge equal to the product of the Reserved Daily Capacity of 405,000 Mcf and 60.48 cents for gas Trunkline delivers to Natural at the Holly Beach delivery point. Natural further proposes to charge Trunkline an additional charge of 1.99 cents per Mcf of overrun gas accepted by Natural for transportation.

For gas Trunkline would deliver to Natural at the UTOS delivery point, Natural proposes that Truckline pay Natural a monthly demand charge equal to the product of the Reserved Daily Capacity of 155,000 Mcf and 64.96 cents. Natural also proposes that Truckline pay Natural an additional charge of 2.14 cents per Mcf of overrun gas.

Natural proposes to charge Trunkline 1.36 cents per Mcf for any quantities of gas which Natural delivers to Trunkline at the Montgomery redelivery point. It is stated that these rates are based on Natural's settlement approved by the Commission in Docket No. RP83-68.

Comment date: November 13, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP86-14-000]

Take notice that on September 26, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP86-14-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Atlanta Gas Light Company (AGLC), acting as agent for Cherokee Brick and Tile Company (Cherokee), under the certificate, issued in Docket No. CP82-406-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport up to 2.2 billion Btu of natural gas per day for AGLC, acting on behalf of Cherokee, until the earlier of (1) June 30, 1986; (2) the termination of authorization as provided by Subpart F of Part 157 of the Commission's Regulations; or (3) termination of the transportation agreement by either party. Southern states that the gas to be transported would be purchased from SNG Trading Inc. (SNG) and would be used for plant protection, process fuel and other non-boiler fuel uses.

Southern states that it would receive up to 2.2 billion Btu of natural gas per day delivered into its pipeline at existing interconnections in Plaquemines, DeSoto and Assumption Parishes, Louisiana; Shelby County, Texas; and Walthall County, Mississippi, and would redeliver such gas to AGLC which is acting as agent for Cherokee.

Southern states that it would charge the following rates for this transportation service: (1) Where volumes transported on any day to AGLC under Southern's Rate Schedule T-IS, when added to volumes delivered to AGLC under Southern's OCD Rate Schedule, do not exceed the daily contract demand of AGLC, 49.45 cents per million Btu; and (2) where these total volumes exceed AGLC's daily contract demand, 78.85 cents per million Btu. Southern further states that it would retain 3.25 percent of the total quantity of gas received into its system from SNG for compressor fuel, company-use gas and unaccounted-for gas. In addition, Southern states that it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under this arrangement.

Southern also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Cherokee. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Southern would file a report providing certain information with regard to the addition or deletion of sources of gas 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: December 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. South Georgia Natural Gas Company

[Docket No. CP86-18-000]

Take notice that on October 8, 1985, South Georgia Natural Gas Company (South Georgia), Post Office Box 1279, Thomasville, Georgia 31792, filed in Docket No. CP86-18-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a limited-term blanket certificate of public convenience and necessity authorizing South Georgia to perform certain transportation services for its customers and for permission and approval to abandon such services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

South Georgia requests a blanket certificate of public convenience and necessity for a limited term of one year, which would authorize it to perform transportation services for its resale and direct industrial customers pursuant to the terms and conditions of its proposed Rate Schedule T-IS.

It is stated that transportation service would be available under Rate Schedule T-IS to South Georgia's resale customers arranging such service as the agent for an industrial end-user served by a customer and to industrial end-users presently connected directly to South Georgia's pipeline system. South Georgia indicated that all transportation services would be performed on an interruptible basis and would be conditioned upon the availability of capacity sufficient for South Georgia to perform the service without detriment or disadvantage to South Georgia's obligations to its customers which are dependent on its general system supply and would be further subject, in South Georgia's sole judgment, to the availability of excess capacity in South

Georgia's pipeline facilities and to the operating conditions and system requirements of South Georgia. If South Georgia is required to interrupt or curtail transportation services under Rate Schedule T–IS, it would implement such interruption or curtailment on a *pro rata* basis, it is stated. South Georgia proposes, however, that it not be required to interrupt or curtail any transportation service if it determines that such service does not affect or otherwise cause the interruption or curtailment of other services.

South Georgia states that it would charge the following transportation rates for services performed under Rate Schedule T–IS:

1. A customer which purchases gas from South Georgia under Rate Schedule G–2 would pay the following transportation rates:

a. To the extent that the volumes transported under Rate Schedule T–IS on any day, when added to the volumes of gas delivered under Rate Schedule G–2 on such day, do not exceed the maximum daily quantity of the customer, the transportation rate would be 12.08 cents per million Btu;

b. To the extent that the volumes transported under Rate Schedule T–IS on any day, when added to the volumes delivered under Rate Schedule G–2 on such day, exceed the maximum daily quantity of the customer, the transportation rate would be 49.88 cents per million Btu.

2. A customer which arranges transportation services for an industrial end-user previously provided service under South Georgia's Rate Schedule G–1 would pay a transportation rate of 101.02 cents per million Btu.

3. A customer which arranges transportation services for an industrial end-user previously provided service under South Georgia's Rate Schedule I–1 and an industrial end-user served directly by South Georgia would pay a transportation rate of 49.88 cents per million Btu.

South Georgia proposes to retain all transportation revenues received for the performance of the service described herein because South Georgia believes that such services would displace South Georgia's system sales. South Georgia states that it is a small interstate pipeline extending from its interconnection with Southern Natural Gas Company (Southern) in Lee County, Alabama, in a southeasterly direction through southern Georgia to points in northern Florida. It is indicated that in this small regional market, South Georgia sells gas to 40 small municipalities for resale and to 11 direct industrial customers. South Georgia further states that as the traditional supplier of natural gas for this market, the transportation by South Georgia of gas purchased directly by its customer for a portion of the customer's natural gas requirements would necessarily result in a corresponding reduction in the customer's purchases from South Georgia. Thus, the rates proposed herein and the retention of the revenues generated by those rates would be intended to ensure that South Georgia receives its approved rates for natural gas sevice provided to its customers, it is stated.

South Georgia states that in addition to the payment of the applicable transportation rate, a customer would be required to reimburse South Georgia for all regulatory fees incurred by South Georgia in the performance of the transportation service and would be responsible for all costs of transporting or delivering the gas to South Georgia's pipeline system, including specifically the reimbursement of the transportation charges and other costs paid by South Georgia to Southern for the transportation of the customer's gas through Southern's pipeline system.

It is indicated that all gas would be delivered to South Georgia for transportation at the existing point of interconnection between the pipeline systems of South Georgia and Southern located in Lee County, Alabama. South Georgia states that it would redeliver a thermally equivalent quantity of gas (less 0.5 percent retained by South Georgia for fuel and company-used gas and less the customer's *pro rata* share of any gas delivered for its account which would be lost or vented for any reason to its existing points of delivery with its customers. South Georgia does not propose the construction of any facilities in connection with transportation services under Rate Schedule T–IS.

South Georgia proposes that Rate Schedule T–IS become effective for a limited term of one year, except that it would remain in effect for a maximum term of one year with respect to any service agreement executed during said year. South Georgia states that the actual continued availability of transportation service under Rate Schedule T–IS, however, would depend upon the availability of transportation services through Southern's pipeline system.

Comment date: November 13, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP81–83–004]

Take notice that on October 2, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP81–83–004 a petition to amend the order issued February 8, 1982, in Docket No. CP81–83–000, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize two additional points of delivery, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued February 8, 1982, as amended on October 25, 1982, Transco was authorized to transport on a firm basis up to the dt equivalent of 9,000 Mcf of gas per day to Florida Gas Transmission Company (FGT) for the account of Southern Natural Gas Company (Southern). It is asserted that such transportation is for Southern individually and as agent for Amoco Production Company. It is stated that in accordance to the terms of the transportation agreement between Transco and Southern dated September 30, 1980, as amended March 4, 1981, Transco receives the natural gas at an interconnection between facilities orginating in Ship Shoal Block 84 jointly owned by Northern Natural Gas Company, Division of InterNorth, Inc., United Gas Pipe Line Company and Southern, and at Transco's Southeast Louisiana Gathering System in Ship Shoal Blocks 70 and 72, all in offshore Louisiana. Transco, it is explained, then redelivers thermally equivalent quantities, less quantities retained for compressor fuel and line loss make-up, to FGT for the account of Southern at existing interconnections between the systems of FGT and Transco in Vermilion Parish, Louisiana (Vermilion delivery point), and when mutually agreeable, in St. Helena Parish, Louisiana (St. Helena delivery point).

Transco states that by amendatory agreement dated July 12, 1985, additional points of delivery for the gas which Transco transports for Southern individually were added at the existing interconnection between Transco and Southern in Livingston Parish, Louisiana (Livingston delivery point) and at the existing interconnection between Transco and Trunkline at Katy, Wharton County, Texas (Katy delivery point). It is stated that the Livingston delivery point would be the primary point of delivery for the gas transported for Southern individually. It is further

stated that deliveries would be made at the Katy, Vermilion and St. Helena delivery points when mutually agreeable.

Transco asserts that for such transportation service, Transco would continue to charge Southern an initial monthly demand charge of $28,080 based upon a contract demand quantity of 9,000 Mcf of gas per day.

Comment date: November 13, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP86-24-000]

Take notice that on October 10, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston Texas 77001 filed in Docket No. CP86-24-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 205) for authorization to install a 1-inch sales tap on United's 24-inch Baxterville-to-Mobile line in Mobile County, Alabama, under 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 on file with the Commission and open to public inspection.

United states that the proposed sales tap would enable United to sell and deliver to Mobile Gas Corporation, the local distributor, an estimated daily average of 1 Mcf of gas for resale to the residence of Mr. Eddie J. Branch located in Mobile Gas's Mobile County, Alabama, service area, under United 's Rate Schedule DG-N. The effective service agreement for such service is dated November 17, 1983. United advises it has sufficient capacity to render proposed service without detriment or disadvantage to United's other customers, and that the proposed tap would be installed in compliance with the Commission's Regulations.

Comment date: December 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP85-915-000]

Take notice that on September 26, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-815-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport fuel oil displacement gas on behalf of B.F. Goodrich (Goodrich) under the certificate issued to United in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more ful set forth in the request on file with the Commission and open to public inspection.

It is explained that Goodrich, a low-priority end user, has purchased gas from Koch Hydrocarbons and Texas Eastern Gas Trading Company. It is stated that United would receive up to 3,000 Mcf of gas per day on behalf of Goodrich at United's facilities in the Bayou Rambio field, Terrebonne Parish, Louisiana. It is explained that United would then transport and redeliver said gas on behalf of Goodrich to an existing point of interconnection between United's and Texas Eastern Transmission Company's (Texas Eastern) facilities located in Attala County, Mississippi. United further states that Texas Eastern under a separate agreement would deliver the gas to Philadelphia Electric Company for transportation to the Goodrich facility in Oaks, Pennsylvania. It is explained that such natural gas would be used for fuel oil displacement at this end-user location.

United states that the rate applicable to this transmission service is an amount equal to Unites's Type IV Rate (Rate Schedule IT) which includes a component for gas consumed in the operation of United's pipeline system. United states that currently such rate is 34.17 cents per Mcf and that this rate is in accordance with United's FERC Gas Tariff, First Revised Volume No. 1, effective July 1, 1985. There is no added incentive charge for this service.

It is explained that the transportation agreement would be effective on July 1, 1985, and would remain in full force and effect from the date of the initial deliveries of natural gas until the earlier date of the final rule by the Commission in Docket No. RM85-1-000 for low priority end-use transports or October 31, 1985, or the term set forth in the Gas Transportation Agreement between the practice dated June 28, 1985.

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 constistute the transportation quantities herein and not to increase those quantities.

Comment date: December 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to aid filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 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 385.211 and 385.214) and the Regulations under the National Gas Act (18 CFR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effect 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. 85-25853 Filed 10-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 4784-007, et al.]

Applications Filed With the Commission; Hydroelectric Applications (Androscoggin Water Power Co. et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.

b. Project No.: 4784-007.

c. Date Filed: December 10, 1984.

d. Applicant: Androscoggin Water Power Company.

e. Name of Project: Pejepscot Project.

f. Location: On the Androscoggin River in Sagadahoc, Cumberland and Androscoggin Counties, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Douglas E. Davidson, Bishop, Liberman & Cook, 1155 Avenue of the Americas, New York, NY 10036.

i. Comment Date: November 25, 1985.

j. Description of Project: The project as licensed consists of: (1) A rock, gravel and concrete filled timber crib dam, which is 430 feet long, has a maximum height of 40 feet and has a crest elevation, including flashboards, at 64.5 feet above mean sea level; (2) a reservoir with a normal surface area of about 203 acres at elevation 64.5 feet above mean sea level extending about 3 miles upstream from the dam; (3) a powerhouse, with associated headworks and intake structures, located on the left bank of the river adjacent to the dam, and containing given turbine-generators with a total rated capacity of 10,025 kW; (4) downstream fish passage facilities and provisions for future upstream fish passage facilities; (5) the 900-foot-long, 12.5-kV bus connection; (6) the 50-foot-long, 0.480-kV and 12.5-kV generator leads; and (7) appurtenant facilities.

The Applicant proposes to amend the license by increasing the total installed capacity from 10,025 kW to 11,400 kW by installing 3-foot-high flashboards and the average annual generation from 60,000,000 kWh to 68,000,000 kWh.

k. This notice also consists of the following standard paragraphs: B, C & D1.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 9314-000.

c. Date Filed: July 2, 1985.

d. Applicant: Hood River No. 2 Associates.

e. Name of Project: Hood River No. 2.

f. Location: On West Fork of the Hood River in Hood River County Oregon within the Mt. Hood National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Jordan R. Walker, Great Western Power and Light, Inc., 484 East 300 North, Manti, UT 84642.

i. Comment Date: November 25, 1985.

j. Competing Application: Project No. 9271, Filed June 3, 1985. Notice Issued: September 10, 1985. Due Date: November 12, 1985.

k. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 35-foot-wide diversion structure at elevation 1,680 feet; (2) a 10,000-foot-long steel pipeline; (3) a surge tank; (4) a powerhouse containing one generating unit with a rated capacity of 1,880 kW operating under a head of 223 feet; (5) a 7,490-foot-long, 14-kV transmission line tying into an existing line.

The average annual energy output would be 10,901,820 kWh.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost of conducting these studies is $35,000.

l. Purpose of Project: Project power would be sold to local municipalities or the local power company.

m. This notice also consists of the following standard paragraphs: A8, B, C, D2.

3 a. Type of Application: Transfer of License.

b. Project No.: 3633-011.

c. Date Filed: August 14, 1985.

d. Applicant: Alternative Energy Associates and Alternative Energy Associates Limited Partnership.

e. Name of Project: Brighton Dam.

f. Location: On the Patuxent River in Montgomery and Howard Counties, Maryland.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Ann Jordan, 1220 Nineteenth Street, Suite 700, Washington, DC 20036.

i. Comment Date: December 2, 1985.

j. Description of the Proposed Transfer: On September 21, 1984, a minor license was issued to Alternative Energy Associates, a General Partnership, to construct, operate and maintain the Brighton Dam Project No. 3633. It is proposed to transfer the license to Alternative Energy Associates Limited Partnership. Applicants state that the transfer is necessary to facilitate the financing of the project. The Transferee is a limited partnership organized under the laws of the State of Maryland as the successor to the Transferor, thereby proceeding to all rights, title, and interests of the Transferor in the project.

k. This notice also consists of the following standard paragraphs: B and C.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9325-000.

c. Date Filed: July 3, 1985.

d. Applicant: Merrimack Hydro Associates.

e. Name of Project: Blackwater Dam.

f. Location: On the Blackwater River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, #600, Washington, DC 20005.

i. Comment Date: December 2, 1985.

j. Competing Application: Project No. 9313, Date Filed July 2, 1985.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Blackwater Dam and Reservoir and would consist of: (1) A proposed penstock 175 feet long and 10 feet in diameter; (2) a proposed powerhouse 35 feet wide and 35 feet long containing one proposed turbine/generator with an installed capacity of 1,000 kW; (3) a proposed tailrace channel 25 feet wide and 55 feet long; (4) a new 12.5-kV transmission line approximately 230 feet long; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 3.5 GWh operating under an hydraulic head of 60 feet.

l. Purpose of Project: Project power will be sold to the Public Service of New Hampshire.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license

to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $145,000.

5 a. Type of Application: Conduit Exemption.

b. Project No.: 6282–003.

c. Date Filed: August 19, 1985.

d. Applicant: City of Boulder, Colorado.

e. Name of Project: Orodell.

f. Location: Boulder Creek Pipeline, in the City of Boulder, Boulder County, Colorado.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person:

Mr. Andy Hollar, Mr. Bill Mitzelfeld, City of Boulder, Utilities Division, P.O. Box 791, Boulder, CO 80306

Mr. Bob Looper, HDR Infrastructure, Inc., 1100 Capitol Life Ctr. Denver, CO 80203, (303) 861–1300

i. Comment Date: December 2, 1985.

j. Description of Project: The proposed project would utilize the City of Boulder's existing 18-inch-diameter Boulder Creek high pressure water distribution pipeline and would consist of a powerhouse, located 1.5 miles upstream of the existing Four-Mile Pressure Reducing Vault, at elevation 5,846 feet msl, housing a single fixed gate pump turbine-generator unit with an installed capacity of 210 kW and producing an estimated average annual generation of 1.36 GWH. Applicant intends to sell power to Public Service Company of Colorado.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. The notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

6 a. Type of Application: Transfer of License.

b. Project No.: 3494–008.

c. Date Filed: September 27, 1985.

d. Applicant: Noah Corporation, and Allegheny Number 6 Hydro Partners.

e. Name of Project: Allegheny River Lock and Dam No. 6.

f. Location: On the Allegheny River in Armstrong County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Bruce J. Wrobel, Allegheny No. 6 Hydro Partners, 91 Newbury Street, 3rd Floor, Boston, MA 02116.

i. Comment Date: November 12, 1985.

j. Description of the Proposed Transfer: On July 19, 1984, a major license was issued to Noah Corporation (Noah) to construct, operate, and maintain the Allegheny River Lock and Dam No. 6 Project No. 3494. It is proposed to transfer the license to the Allegheny Number 6 Hydro Partners (Partners). Applicants state that the purpose of the transfer is to facilitate the acquisition of the proposed project at Allegheny River Lock and Dam Number 6 by the Allegheny Number 6 Hydro Partners, and ultimately facilitate financing of the project. A construction contract with the General Electric Company, and a power purchase agreement with the Allegheny Power Service Corporation have both been negotiated. An offer to fully finance the project has been received from the General Electric Credit Corporation. Transferee stands ready to close financing and begin construction of the project by December 31, 1985.

Allegheny Number 6 Hydro Partners is a limited Partnership organized under the laws of the State of Pennsylvania.

k. This notice also consists of the following standard paragraphs: B and C.

7 a. Type of Application: Amendment of License.

b. Project No.: 2609–005.

c. Date Filed: May 15, 1985.

d. Applicant: International Paper Company and Curtis/Palmer Hydroelectric Company.

e. Name of Project: Curtis/Palmer Falls Project.

f. Location: On the Hudson River in the Towns of Corinth Hadley, and Luzerne, Saratoga and Warren Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Andrew E. Sims, Kleinschmidt & Dutting, 75 Main Street, P.O. Box 576, Pittsfield, Maine 04967.

i. Comment Date: December 6, 1985.

j. Competing Application: Description of Project: The project as licensed consists of the following two developments:

(a) The Curtis Development consisting of: (1) A concrete dam about 25 feet high and 736 feet long in two sections: (a) an overflow spillway having crest elevation 545.3 feet USGS datum about 663 feet long and having 49-inch-high flashboards; and (b) a reservoir with a surface area of about 390 acres and a usable storage capacity of 1,368 acre-feet at a maximum drawdown of three feet; (3) a integral—intake powerhouse containing five generating units, "three generating units having a total rated capacity of 8,100-kW at a net head of 24.5 feet and hydraulic capacity of 4,740 cfs and two generating units having a total rated capacity of 2,200 kW at a net head of 24.5 feet and hydraulic capacity of 1,750 cfs, totaling 10,300 kW, their associated 4,160 volt electrical leads, circuit breakers and disconnect switches; (4) a 4.16/13.8-kV substation; (5) a 13.8-kV transmission line approximately 3,300 feet long to the Palmer Falls Mill; and (6) appurtenant facilities.

(b) The Palmer Falls Development consisting of: (1) A concrete arch dam about 37 feet high and 369 feet long with (a) a spillway having crest elevation 517.2 feet USGS datum 334 feet long and having 45-inch-high flashboards, and (b) a central log sluice and sluice gates in the remaining 35 feet; (2) a reservoir about 2,700 feet long with a surface area of about 27 acres and negligible storage capacity; (3) a forebay at reservoir level controlled by an intake with eight slide gates and a 92-foot-long spillway having crest elevation 518.5 feet USGS datum and having 36-inch-high flashboards; (4) a concrete intake structure having four 16-foot by 20-foot steel gates; (5) two 20-foot-diameter, 150-foot-long steel penstocks; (6) a concrete powerhouse containing two generating units having a total rated capacity of 48,000-kW at a net head of 84.3 feet and hydraulic capacity of 7,500 cfs, their associated 13,800 volt electrical leads, circuit breakers and disconnect switches; (7) a 13.8/115-kV substation; (8) a 700-foot-long, 115-kV transmission line; (9) a tailrace having average water surface elevation 434.4 feet USGS datum; and (10) appurtenant facilities."

Applicant proposes to change the Palmer Falls Development by: (1) Raising the 45-inch-high flashboards to 69-inch-high flashboards; (2) the reservoir would be changed to having a surface area of 28 acres with negligible storage capacity, and a normal water surface elevation of 522.9 feet USGS; (3) reconstructing the forebay by removing the headgates and building a new retaining wall; and (4) appurtenant facilities. The average annual generation would increase from 239,000 MWh to 245,400 MWh. No changes would be made to the Curtis Development.

k. Purpose of Project: Project energy would be used by Applicant within its Hudson River Paper Mill or sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: B, C and D1.

a. Type of Application: Amendment of License.

b. Project No.: 3267–002.

c. Date Filed: May 30, 1985.

d. Applicant: The Greater Malone Community Council, Inc.

e. Name of Project: Ballard Mill Dam.

f. Location: On the Salmon River in Franklin County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Gladys Chetney, The Greater Malone Community Council, Inc., South William Street, Malone, NY 12953.

i. Comment Date: December 16, 1985.

j. Description of Project: The project as licensed consists of: (1) A timber and concrete gravity overflow-type dam about 200 feet long and about 10 feet high extending across the main channel with a crest elevation of 696 feet U.S.G.S. and a sluice control structure at each abutment; (2) a reservoir having a surface area of 10 acres and a storage capacity of 50 acre-feet; (3) a powerhouse extending across the east (right) channel containing two generating units having a combined total rated capacity of 275 kW; (4) a tailrace channel; and (5) appurtenant facilities. Project energy would be sold to the Niagara Mohawk Power Corporation.

The Applicant proposes to amend the license by increasing the total installed capacity from 275 kW to 405 kW by replacing the 125-kW unit with a 255-kW unit, and the average annual generation from 1,000,000 kWh to 1,470,000 kWh. The Applicant also proposes to build a new powerhouse to house the new unit and dam rehabilitation.

k. This notice also consists of the following standard paragraphs: B, C, & D1.

9 a. Type of Application: Transfer of License.

b. Project No.: 3267–003.

c. Date Filed: September 5, 1985.

d. Applicant: The Greater Malone Community Council, Inc. (Licensee) and Bellows-Tower Hydro, Inc. (Transferee).

e. Name of Project: Ballard Mill.

f. Location: On the Salmon River in Franklin County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Gladys Chetney, Greater Malone Community Council, Inc., South William Street, Malone, NY 12953 and Mr. Howard Doud & Mr. Frank O. Christie, Bellows-Tower Hydro, Inc., Box 131, Dickinson Center, NY 12930.

i. Comment Date: December 9, 1985.

j. Description of Project:

On September 5, 1985, The Greater Malone Community Council, Inc. (Licensee), and Bellows-Tower Hydro, Inc. (Transferee), filed a joint application for transfer of a minor license for the Ballard Mill Project No. 3267.

The purpose of the proposed transfer of the license is to facilitate the financing of the licensed project. The Transferee has a commitment from the Franklin County Industrial Development Agency for industrial bonds in the amount of the project. The Transferee also has over $1,000,000 in equity capital.

The proposed transfer of the license to Bellows-Tower Hydro, Inc. would not result in any changes in the proposed development. All engineering, design and feasibility studies performed would be transferred to the Transferee.

The Transferee states that it would comply with all the terms and the conditions of the license. Cosntruction is required to be completed by April 1, 1987.

k. This notice also consists of the following standard paragraphs: B and C.

10 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 7218–001.

c. Dated Filed: December 17, 1984 and supplemented July 9, 1985.

d. Applicant: Bluestone Energy Design, Inc.

e. Name of Project: Berry Shoals Power Project.

f. Location: On the South Tyger River near Reidville, Spartanburg County, South Carolina.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C., 2705 and 2708.

h. Contact Person: Mr. F. Timothy Lamb, P.O. Box 469 Downtown Station, Boone, NC 28607.

i. Comment Date: December 6, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing rock dam approximately 537 feet long and 27 feet high; (2) an existing 40-acre reservoir at an elevation 708.9 feet MSL; (3) an existing 45-foot-wide and 3,438-foot-long headrace canal; (4) two existing 8-foot-diameter penstocks each approximately 137 feet long; (5) a new powerhouse housing one 1200-kW generator and one 800-kW generator for a total installed capacity of 2000 kW; (6) an existing 80-foot-wide and 200-foot-long tailrace; (7) a new 3-kV transmission line or equivalent, approximately 400 feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual generation would be 4,600 MWh. The Applicant has a valid and current agreement with Spartan Mills of Spartanburg, South Carolina, the owners of the dam and appurtenant facilities, for development of this hydroelectric project.

k. Purpose of Project: The Applicant proposes to sell all the generated power to Duke Power Company.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9262–000.

c. Date Filed: June 3, 1985.

d. Applicant: North Marin Water District.

e. Name of Project: Kaiser Creek.

f. Location: On Kaiser and Westfall Creeks in Fresno County, California; within Sierra National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John Olaf Nelson, General Manager, 999 Rush Creek Place, P.O. Box 146, Novato, CA 94948.

i. Comment Date: December 9, 1985.

j. Competing Application: Project No. 9150. Dated Filed: May 1, 1985.

k. Description of Project: The proposed project would consist of: (1) A 115-foot-high, 550-foot-long rockfill dam at elevation 5,310 feet on Kaiser Creek; (2) a 63-acre reservoir with a storage capacity of 2,700 acre-feet; (3) a 42-inch-diameter, 700-foot-long pipeline; (4) the Kaiser Creek Powerhouse #1 containing a single generating unit operating under a head of 140 feet, with a total installed capacity of 630 kW; (5) a 20-foot-high, 82-foot-long diversion dam at elevation 5,170 feet on Kaiser Creek; (6) a 42-inch-diameter, 12,900-foot-long pipeline; (7) a 10-foot-high, 40-foot-long diversion dam at elevation 5,170 feet on Westfall Creek; (8) a 24-inch-diameter pipeline carrying water diverted from the Westfall Creek to the 42-inch-diameter pipeline; (9) the Kaiser Creek Powerhouse #2 containing a single generating unit operating under a head of 1,770 feet, with an installed capacity of 7,900 kW and discharging into the existing Mammoth Pool Reservoir of Project No. 2085; (10) a surge tank; (11) an 11.4-mile-long, 11-kV transmission line transmitting power generated by Kaiser Creek Powerhouse No. 2 to Southern California Edison Company's (SCE) Big Creek No. 2 Powerhouse of FERC Project No. 120; (12) a 2.3-mile-long, 11-kV transmission line transmitting power generated by Kaiser Creek Powerhouse No. 1 to the 11-kV transmission line connecting Kaiser Creek Powerhouse No. 2 with Big Creek No. 2 Powerhouse of FERC Project No. 120; and (13) appurtenant facilities. The power generated by the proposed

project would be sold to SCE or another utility.

l. The notice also consists of the following standard paragraphs: A8, B, C, and D2.

12 a. Type of Application: Transfer of License.

b. Project No.: 1986–001.

c. Date Filed: October 18, 1985.

d. Applicant: CP National Corporation (California—Pacific Utilities Company—Licensee) and Idaho Power Company (Transferee).

e. Name of Project: Rock Creek.

f. Location: On Rock Creek, tributary to the Powder River, partially within the Whitman National Forest, in Baker County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Marvin S. Litt, CP National Corporation, 120 Montgomery Street, San Francisco, California 94104 and Mr. Paul L. Jauregui, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707.

i. Comment Date: November 29, 1985.

j. Description of Transfer: On June 28, 1951, a major license was issued to California—Pacific Utilities Company (now CP National Corporation) for the continued operation and maintenance of the Rock Creek Project No. 1986. It is proposed to transfer the license to the Idaho Power Company. CP National and Idaho Power entered into an agreement whereby CP National agreed to sell to Idaho Power all of CP National's electric properties in the State of Oregon. Included among those properties is the 800-kW Rock Creek Hydroelectric Project.

The transferee is a corporation organized under the laws of the State of Maine, and qualified to do business in the State of Oregon. Transferee has filed an application with the Oregon Public Utilities Commissioner for approval of its acquisition of Project No. 1986.

The Licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The Transferee accepts all the terms and conditions of the license, as amended, and agrees to be bound thereby to the same extent as though it was the original licensee.

k. This notice also consists of the following standard paragraphs: B and C.

13 a. Type of Application: Transfer of License.

b. Project No.: 2574–001.

c. Date Filed: October 4, 1985.

d. Applicant: Milstar Manufacturing Corporation and the Merimil Limited Partnership.

e. Name of Project: Lockwood Project.

f. Location: On the Kennebec River, in Kennebec County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John W. Gulliver, Pierce Atwood Scribner, Allen Smith, & Lancaster, One Monument Square, Portland, ME 04101.

i. Comment Date: November 22, 1985.

j. Description of Proposed Transfer: On December 31, 1969, a license was issued to Milstar Manufacturing Corporation (Licensee), to construct, operate, and maintain the Lockwood Project No. 2574. The license was amended by order issued September 30, 1985, authorizing additional capacity. The Licensee intends to transfer the license to Merimil Limited Partnership (a limited partnership between the Licensee and Kennebec Hydro Resources, Inc., a subsidiary of Central Maine Power Company) to facilitate the redevelopment and operation of the project through the establishment of this joint venture to utilize Central Maine Power Company's expertise in hydro development. For that reason the Licensee and Merimil Limited Partnership have filed a request to transfer the license to Merimil Limited Partnership (Transferee). The Licensee has complied with the terms and conditions of the license. The project has been operating since 1919. The Transferee has agreed to accept all the terms and conditions of the license and the requirements of the Federal Power Act and to be bound by it as if it were the original licensee.

k. This notice also consists of the following standard paragraphs: B and C.

14 a. Type of Application: Amendment of License.

b. Project No.: 2534–004.

c. Date Filed: April 8, 1985.

d. Applicant: Bangor Hydro-Electric Company.

e. Name of Project: Milford Project.

f. Location: On the Penobscot River in the town of Milford and City of Old Town, Penobscot County, Maine.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert S. Briggs, Vice President and General Counsel, Bangor Hydro-Electric Company, 33 State Street, Bangor, ME 04401.

i. Comment Date: December 9, 1985.

j. Description of Project: The existing project consists of: (1) The 1,400-foot-long, 30-foot-high Milford Dam containing a forebay intake, log sluice and flashboards, and the 475-foot-long, 5-foot-high Gilman Dam (at which no electricty is generated) containing a log sluice, two taintor gates, and which can be fitted with flashboards; (2) the reservoir with a surface area of 235 acres, a storage capacity of 2,250 acre-feet and a normal water surface elevation of 101.7 feet USGS; (3) a powerhouse containing four generating units having a total installed capacity of 6,400 kW; and (4) appurtenant facilities.

The Licensee proposes to change the project by adding a fifth generating unit to the powerhouse and increasing the total installed capacity to 8,000 kW; and appurtenant facilities. The average annual generation would be increased from 52,100 MWh to 59,400 MWh.

k. Purpose of Project: All project energy generated would be used by the Applicant for sale to its customers.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

15 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 8949–001.

c. Date Filed: February 13, 1985.

d. Applicant: The City of Auburn, New York.

e. Name of Project: North Division Street.

f. Location: On the Owasco River in Cayuga County, New York

g. Filed Pursuant: Section 408 of the Energy Security Act of 1980, 16 U.S.C 2705 and 2708.

h. Contact Person: Mr. Donald W. Lystra, 3983 Research Park Drive, Ann Arbor, MI 48104.

i. Comment Date: December 9, 1985.

J. Description of Project: The proposed project would consist of: (1) The existing 80-foot-long, 11-foot-high North Division Street Dam; (2) an existing reservoir with a surface area of 1 acre which will be increased to approximately 6-acres when the breach is repaired, resulting in a water surface elevation of 626 feet msl; (3) a proposed 10-foot-diameter, 40-foot-long penstock; (4) the installation of a 750 kw generation unit into the existing Shank Building; and (5) appurtenant facilities.

The electricity production from the hydro plant will be sold entirely to the local electric utility, New York State Electric and Gas Company. The interconnection to the NYSEG grid will be at 12.47 kv, 3-phase. The physical tie-in will be made at a riser pole located adjacent to the hydro plant on Clark Street.

The Applicant estimates the average annual energy generation to be 3.3 GWh.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D 3a.

16 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 9379–000.

c. Date Filed: July 31, 1985.

d. Applicant: Grenfell Hydroelectric Associates.

e. Name of Project: Belding Dam.

f. Location: On the Flat River in Ionia County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: David L. Grenfell, Rural Route #1, Box 361–D, Iron Mountain, Michigan 49801 and Ashok K. Rajpal, Mead and Hunt, Inc., 2320 University Avenue, P.O. Box 5247, Madison, Wisconsin 53705.

i. Comment Date: December 9, 1985.

j. Description of Project: The Belding Dam is owned by the Applicant. The proposed project would consist of: (1) An existing 15-foot-high, 192-foot-long reinforced concrete dam; (2) an existing reservoir with a surface area of 110 acres and a storage capacity of 490 acre-feet at powerpool elevation of 760 feet NGVD; (3) a proposed powerhouse containing two generating units rated at 140-kW each; (4) a proposed tailrace; and (5) appurtenant facilities. No installation of transmission lines would be needed since the Consumer Power Company's powerline crosses the dam. The estimated average annual generation is 1,570-kWh.

k. Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. Purpose of Project: The energy produced at the project would be sold to the Consumer Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D3a.

17 a. Type of Application: Amendment of License.

b. Project No.: 7153–002.

c. Date Filed: August 3, 1985.

d. Applicant: SNC Hydro Inc.

e. Name of Project: Victory Mills.

f. Location: on the Fish Creek in Saratoga County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Keith F. Corneau, SNC Hydro Inc., 125 Wolf Road, Albany, NY 12205.

i. Comment Date: December 13, 1985.

J. Description of Project: The existing project consists of: (1) A concrete weir dam varying from 4 to 6 feet in height and 220 feet long; (2) a sluice dam 9 feet high and 20 feet long; (3) a reservoir having a surface area of 4.3 acres, a storage capacity of 19 acre-feet and normal water surface elevation of 189.0 feet m.s.l.; (4) the intake canal; (5) three steel penstocks, one 5 feet in diameter and 20 feet long, one 6 feet in diameter and 90 feet long and one 4 feet in diameter and 40 feet long; (6) a powerhouse with three generating units having a total installed capacity of 1,237 kW; (7) the tailrace canal; (8) a 4.8-kV transmission line; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 4,500,000 kWh.

The licensee proposes to amend the project by: (1) building one 200-foot-long, 8-foot-diameter steel penstock instead of 3 penstocks; (2) building a new powerhouse instead of utilizing the existing powerhouse and installing one generating unit, instead of 3 units, with the same 1,237-kW capacity.

K. Purpose of Project: All project energy generated would be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: B, C, Dl.

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a time notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applicatons for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications must be filed in response to and in compliance with the public notice of the initial develoment application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: October 28, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–26001 Filed 10–30–85; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–140070; FRC–2916–9]

Toxic and Hazardous Substances Control; Access to Confidential Business Information by Contractors and Subcontractors

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has authorized the contractors and subcontractors named in this notice for access to information which has been submitted to EPA under various sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

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

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Inventory of Chemical Substances, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA. Section 12 requires a person to report his or her intent to export certain chemical substances to foreign countries.

EPA has selected the contractors and subcontractors named below to perform work under contract in support of the Agency's activities under TSCA. In accordance with 40 CFR 2.306(j), EPA has determined that these contractors and subcontractors will require access to CBI submitted to EPA under TSCA to perform work successfully under the Act. EPA is issuing this notice to inform submitters of information under TSCA

that EPA may provide access to TSCA CBI to these contractors on a need-to-know basis.

Under Contract No. 68–01–7176, Computer Science Corp. (CSC), 8100 Gatehouse Rd., Falls Church, VA, and its subcontractor, InterAmerica Research Associates, Inc., 1555 Wilson Blvd., Rossyln, VA, will operate the Confidential Business Information Center (CBIC) at EPA Headquarters. The CBIC is EPA's central storage facility for confidential information submitted under the reporting provisions of TSCA. CSC and InterAmerica will mange and update EPA's TSCA CBI files and data bases, perform information searches and retrievals on those data bases, and index CBI files. In addition, CSC will assist in the development, testing, and modification of Office of Toxic Substances (OTS) automated information systems, such as the Data and Personnel Security System (DAPSS). Another subcontractor to CSC, Fairfax Opportunities Unlimited (FOU), 5500 Port Royal Rd., Springfield, VA, will provide an individual to operate photocopy equipment in the CBIC under the direction of the EPA Document Control Officer.

CSC, InterAmerica, and FOU personnel will be authorized for access to TSCA CBI collected under all TSCA reporting provisions at EPA Headquarters only.

Informatics, Inc., 6011 Executive Blvd., Rockville, MD, under subcontract to CSC, will operate the OTS Document Processing Center to receive documents submitted to EPA under all reporting provisions of TSCA. Informatics will process, index, and microfiche these documents and will maintain archival storage for these and other OTS document collections at its facility in Rockville, MD.

CSC, InterAmerica, Informatics, and FOU were previously authorized for access to TSCA CBI for the same type of work under Contract No. 68–01–6639, announced in the **Federal Register** of January 18, 1983 (48 FR 2195) and June 14, 1985 (50 FR 24944). CBI access authorization under the new contract will expire on September 30, 1990.

Under Contract No. 68–02–4246, Battelle Memorial Institute, Columbus Division (Battelle), 505 King Ave., Columbus, OH; and its subcontractors Westat, Inc., 1650 Research Blvd., Rockville, MD; the University of North Carolina, Department of Biostatistics, 401 Rosenau, 201H Chapel Hill, NC; and K. S. Crump & Co., Inc., 1201 Gaines St., Ruston, LA, will provide statistical and epidemiologic support for OTS in its review of new and existing chemicals. This support will be in the form of statistical analyses of animal toxicity data, quantitative risk assessments, and epidemiologic evaluations and analyses.

Under this contract, contractor and subcontractor personnel will be authorized for access at EPA Headquarters to TSCA CBI submitted under all reporting provisions of TSCA.

Battelle and Westat were previously authorized for access to TSCA CBI for the same type of work under Contract No. 68–01–7621, announced in the **Federal Register** of January 27, 1983 (48 FR 3852). CBI access authority under the new contract will expire on September 30, 1986.

Under Contract No. 68–02–3948, SAIC–JRB Associates, 8400 Westpark Drive, McLean, VA, will assist OTS in conducting initial hazard assessments of chemical substances subject to TSCA section 8(e) Substantial Risk Notifications or chemical substances being considered for regulation under TSCA section 5(e). Specifically, contractor personnel will perform analyses of structure-activity relationships (SAR) of selected chemical classes relevant to structural types of section 5(e) and 8(e) chemicals. The SAR analyses will enable the Agency to more accurately predict the potential health effects of these chemical substances.

CBI access under this contract will be authorized for data submitted to EPA under TSCA sections 4, 5, and 8. Such access will occur only at EPA Headquarters.

JRB is also authorized for access to TSCA CBI under Contract No. 68–02–4210, announced in the **Federal Register** of February 27, 1985 (50 FR 7960). Access authorization under Contract No. 68–02–3948 will expire on September 30, 1986.

All contractors and subcontractors named above have been authorized for access to TSCA CBI under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved contractors' and subcontractors' security plans, has performed the required inspections of their facilities, and has found them to be in compliance with the requirements of the manual. Contractor and subcontractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI. Contractors and subcontractors that review confidential materials at their facilities under these contracts will return them to EPA upon completion of their review.

Dated: October 24, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85–26009 Filed 10–30–85; 8:45 am]

BILLING CODE 6560–50–M

[OW–3–FRL–2917–2]

Water Pollution Control; Ground Water System of an Aquifer of the Appalachian Valley Region in Clarke County, VA; Request for EPA Determination Regarding Aquifer System; Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency announces the receipt of a petition requesting the designation of the groundwater system of an aquifer of the Appalachian Valley Region as a sole or principal source of drinking water and opens a public comment period to request information about the basin.

DATE: Comments will be accepted until January 29, 1986. If there are sufficient requests for a public hearing, such hearing will be announced in the **Federal Register** and in newspapers of general circulation in the affected area. At least 30 days notice will be given before that hearing will be held.

ADDRESS: Written comments should be sent to: Environmental Protection Agency, Region III, Water Management Division, Attn: State Programs Section, (3WM41), 841 Chestnut Building Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Jeffrey Burke, Program Manager, State Programs Section, at the above address, or telephone (215) 597–3427. Copies of the petition are available upon request.

SUPPLEMENTARY INFORMATION: Section 1424(e) of the Safe Drinking Water Act (Pub. L. 93–523) authorizes the Administrator of the Environmental Protection Agency (EPA) to determine that an area has an aquifer which is the sole or principal drinking water source for the area. The Clarke County Board of Supervisors has requested the Administrator to determine that the Prospect Hill Spring aquifer of the Appalachian Valley Region is the sole or principal drinking water source for the area in and around Boyce and Millwood, Virginia. The petitioned area is that area directly overlying the Prospect Hill Spring aquifer in the vicinity of Boyce. There is a portion of a major stream that comprises the stream flow source zone for the aquifer, Page Brook, from its

headwaters to the point where it flows past Prospect Hill Spring.

Information is solicited about the petitioned area's hydrogeologic system, including the surface boundary of its recharge area and about the number and kinds of small entities (business, governmental jurisdictions, and organizations) receiving Federal financial assistance in the area. This will assist EPA in evaluating the aquifer system and the potential impact of a designation on small entities pursuant to Regulatory Flexibility Act requirements. Based on EPA experience with other sole source designations, some Federal financially assisted projects that potentially may be affected include highway construction, subdivision construction, and waste disposal sites. EPA will decide whether to make the requested determination following its review of relevant data and after providing an opportunity for full public participation on its proposed decision.

Dated: October 1, 1985.

James M. Seif,

Regional Administrator.

[FR Doc. 85-26010 Filed 10-30-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1543]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

October 15, 1985.

The following listing of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Licensing Space Stations in the Domestic Fixed-Satellite Service (CC Docket No. 85-135).

Filed by: Benjamin J. Griffin & Gertrude J. White, Attorneys for Home Box Office, Inc., on 10-7-85. Benjamin J. Griffin & Robert J. Aamoth, Attorneys for Gannett Co., Inc., on 10-7-85.

Note.—On October 8, 1985,, Public Notice was given of two other petitions for reconsideration filed in this proceeding. The filing dates for responses to those petitions is modified to correspond with the filing date for the above petitions.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-25940 Filed 10-30-85; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1547]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

October 25, 1985.

The following listing of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.606, Table of Assignments, TV Broadcast Stations. (Great Falls, Havre and Missoula, Montana)

Filed by: Richard R. Zaragoza, Ann K. Ford & Bruce D. Jacobs, Attorneys for Cora Victorene Zaser on 9-16-85.

Subject: Amendment of § 97.28 of the Commission's Rules to Remove Unnecessary Regulations Concerning Amateur Operator Examinations Administered by Volunteers. (PR Docket No. 85-'21, Rm-4835)

Filed by: David B. Popkin on 10-16-85.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-25941 Filed 10-30-85; 8:45 am]

BILLING CODE 6712-01-M

[Gen. Docket No. 84-282; FCC 85-459]

General Fairness Doctrine Obligations of Broadcast Licensees

Correction

In FR Doc. 85-20563 beginning on page 35418 in the issue of Friday, August 30, 1985, make the following corrections:

1. On page 35419, in the first column, in paragraph 4, in the third line, "predicted" should read "predicated".

2. In the first column, in footnote 6, in the forth line, "attitude" should read "attitudes".

3. Also on Page 35419, in the third column, in the twelfth line, "tenent" should read "tenet".

4. On page 35420, in the first column, in footnote 16, in the tenth line, "Stewart H.," should read "Stewart, J.,".

5. On page 35421, in the second column, in the fourth line from the bottom of the text, "if" should read "is".

6. On page 35430, in footnote 135, lines three through twenty-four should be moved to the first column after the first two lines of footnote 134.

7. On page 35431, in the first column, in footnote 143, in the fourth line from the bottom, "statement" should read "statements".

8. On page 35431, in the second column, the last three lines now in footnote 147 and in the third column, the first four lines at the top of the footnotes should be moved under footnote 146.

9. On page 35438, in the first column, in footnote 214, in the first line, "Date" should read "Data"; in footnote 215, in the third line "*rev's*" should read "*rev'd*".

10. On page 35439, in the first column, in footnote 221, in the fourth and fifth lines, "AID" should read "ADI"; in the ninth line, "availability" should read "availability".

11. On page 35444, in the third column, in footnote 301, in the fifth line, "assertions" should read "assertion".

12. On page 35447, in the second column, in footnote 331, in the seventh line, "restructive" should read "restrictive".

BILLING CODE 1505-01-M

FEDERAL HOME LOAN BANK BOARD

[Res. No. 85-965]

Downey Savings and Loan Association, Costa Mesa, CA; Filing of Application To Withdraw Securities From Listing and Registration on American Stock Exchange

Dated: October 28, 1985.

Downey Savings and Loan Association, Costa Mesa, California (the "Association") has filed on September 10, 1985 pursuant to Securities Exchange Act ("Exchange Act") section 12(d) and Exchange Act Rule 12d2-2(d) an application with the Federal Home Loan Bank Board ("Board") to withdraw from listing and registration on the American Stock Exchange its Common Stock without par value. The Association's stock was approved for listing and registration on the New York Stock Exchange on October 4, 1985.

The reasons stated in the Association's application for withdrawing the securities from listing and registration on the American Stock Exchange include the following:

1. The direct and indirect costs and expenses attendant on maintaining the

dual listing of the common stock on the New York Stock Exchange and the American Stock Exchange are not justified.

2. The belief that dual listing would fragment the market for the common stock without any off-setting benefits.

3. The American Stock Exchange has no objection to the withdrawal of the Association's common stock from listing on the American Stock Exchange.

4. The withdrawal from listing of the Association's common stock from the American Stock Exchange shall have no effect upon the continued listing of such common stock on the New York Stock Exchange.

5. By reason of sections 12(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Association shall continue to be obligated to file reports under Section 13 of that Act with the Federal Home Loan Bank Board and the New York Stock Exchange.

Any interested person may inspect the application at the Board and, on or before November 15, 1985, submit by letter to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, facts bearing upon whether the application has been made in accordance with the rules of the American Stock Exchange and what terms, if any, should be imposed by the Board for the protection of investors. The Board, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Board determines to order a hearing on the matter.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-26003 Filed 10-30-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regardiing a pending agreement.

Agreement No.: 221-003508-005.

Title: Palm Beach Terminal Agreement.

Parties:

Port of Palm Beach District (Port)

Gulfstream Line, Inc. (GLI)

Synopsis: Agreement No. 221-003508-005 redefines the use for which the properties provided for under the basic lease can be used for within the Port. GLI will use the facilities at Marginal Terminal as a passenger terminal. The amendment also defines the parking facility charges, provides for improvements to be made to the facility, states the rent to be assessed and the wharfage guarantee.

Agreement No.: 202-009420-010.

Title: The United States Great Lakes and St. Lawrence River Ports/West Africa Agreement.

Parties:

Black Star Line

Westwind Africa Line, Ltd.

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format.

Agreement No.: 207-010137-010.

Title: Barber Blue Sea Agreement.

Parties:

Scanbarber A/S

Ocean Transport and Trading Plc.

Rederiaktiebolaget Transatlantic

Wilh. Wilhelmsen Limited A/S

Synopsis: The proposed amendment would modify the agreement to (1) remove Barber Lines A/S as a member of the agreement; (2) permit Scanbarber A/S and Wilh. Wilhelmsen Ltd. A/S to assume the functions of Barber Lines A/S as parties to the agreement; (3) clarify the cost and revenue sharing provisions of the agreement; (4) delete China Mutual Steam Navigation Co., Ltd. as a party and eliminate reference to Blue Funnel Line on the signature page; (5) delete the present requirement that all parties' names appear on bills of ladings; (6) change Ocean Transport and Trading Ltd.'s name to Ocean Transport and Trading, Plc.; and (7) add an additional name to the agreement officials list. The parties have requested a shortened review period.

Agreement No.: 224-010844.

Title: Portland Terminal Agreement.

Parties:

The Port of Portland (Port)

The Fred F. Noonan, Co., Inc.—Operator (Noonan)

Synopsis: This agreement provides that Noonan will operate the Port's CFS at Terminal 6, performing stuffing and unstuffing and other services necessary in the operation of a CFS. The term of the agreement will be for three years. Noonan will hire and pay the longshore personnel necessary to perform the services; will pass on that cost to the Port, including insurance and taxes; and will receive a management fee of $5,500 per month. The stuffing and unstuffing services will be assessed at rates and charges published in the Port's Terminal Tariff 6.

Agreement No.: 224-010845.

Title: Port of Palm Beach Terminal Agreement.

Parties:

The Port of Palm Beach District (Port)

Crown Cruise Line of Florida, Inc. (CCL)

Synopsis: This agreement gives CCL the right to operate cruise ships out of the Port. It provides for the rate on dockage and passenger wharfage for cruise ships. CCL owns and operates cruise ships and it can also charter cruise ships. CCL shall have non-exclusive but preferential use of Berths Nos. 15, 16 and 17 in the Port for passenger cruise operations. The term of the agreement shall be for seven years.

Agreement No.: 231-010846.

Title: Baltimore Terminal Agreement.

Parties:

Maryland Port Administration (MPA)

Baltimore Marine Terminal Association (BMTA)

Synopsis: This agreement provides that the MPA and the BMTA may from time to time confer, discuss and make recommendations on rates, charges, practices and other tariff matters and on matters of concern to the Baltimore marine terminal industry. The agreement does not confer rule-making or joint or multi-tariff issuance authority upon the Association. This agreement would replace the previous MPA-BMTA agreement, FMC No. T-4033, which expired on September 8, 1985.

Agreement No.: 224-010847.

Title: New York Terminal Agreement.

Parties:

Global Terminal & Container Services, Inc. (GLOBAL)

Associated Container Transportation, Australia, Ltd. (ACTAL)

Synopsis: This agreement provides that GLOBAL will perform stevedoring, LCL cargo handling, and terminal services for containers to be loaded on to or discharged from vessels owned, operated, chartered, or controlled by ACTAL in the trade between Australia, New Zealand and the Port of New York. ACTAL agrees to utilize exclusively for

such services at the Port of New York the marine facility to be prescribed by GLOBAL. ACTAL shall compensate GLOBAL for the performance of the services in accordance with the established schedule of rates.

By Order of the Federal Maritime Commission.

Dated: October 28, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-26020 Filed 10-30-85; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. 224-010839]

Agreement Between the Port of Seattle and American President Lines, Ltd.; Erratum

The **Federal Register** Notice published on October 16, 1985, (Vol. 50, No. 200, Pg. 41950), covering Agreement No. 224-010839 inadvertently indicated that the term of the lease shall extend to January 1, 1986, whereas it should have stated that the term shall end on December 31, 2015.

By Order of the Federal Maritime Commission.

Dated: October 28, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-26019 Filed 10-30-85; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Office of Federal Supply and Services

New Requirements for Future Metal Office Furniture Contracts

ACTION: Notice.

SUMMARY: The Office of Federal Supply and Services will be including three new contract requirements in future metal office furniture contracts. These contract requirements are intended to reduce the number of damaged shipments received by customer agencies as well as the timeframes experienced for replacement/repair.

DATES: The new contract requirements will be included in all future single award metal office furniture solicitations, the next scheduled for issuance during November/December 1985.

FOR FURTHER INFORMATION CONTACT: Charles Hulick, Director, Office of Contract Management (703) 557-8675.

SUPPLEMENTARY INFORMATION: The requirements are as follows.

I. Packaging and Packing

Shall be in compliance with the Uniform Freight Classification and National Motor Freight Classification. In addition, all packed units meet one of the following conditions described in 1 or 2 below.

1. Every three (3) months, for the duration of this contract, three (3) packed units per item awarded shall be subjected to "Distribution Cycle 9 (DC9), Assurance Level II of ASTM D4169, for items not requiring palletization, or DC10, Assurance Level II of ASTM D4169, for items requiring palletization.

Acceptance Criteria—After subjecting the samples to all required tests, a visual examination shall be made of the shipping container and its contents. Any damage to the contents or functional damage to the container or packing shall be cause for rejection. Structural damage to the container, which could result in spilling or exposure of the contents or failure of the container in subsequent handling, is cause for rejection. Substantial shifting of the contents within the container that create conditions likely to cause damage during shipment, storage, and reshipment will also be cause for rejection. When the visual examination of the pack and packing has been completed, the contents of the tested package shall be assembled (if assembly is required) and examined for damage. Any bent, twisted, chipped, or misaligned components that prevent proper assembly or operation shall be cause for rejection.

2. Pack and Packaging certified acceptable by the National Safe Transit Association (NSTA), including the static compression test, and bearing the Transit Tested Seal of the NSTA are acceptable provided certification was received within three (3) months of contract award and retest frequency is no greater than six (6) months. If First Article Testing is required, a dated copy of the packaging test report must be included with the First Article Test Report.

II. Marking

All shipping containers shall be legibly marked on two sides, in bold print with the following information.

IMPORTANT "REPORTING DAMAGE"

CLAIMS FOR LOSS OR DAMAGE SHOULD BE MADE TO THE DELIVERING CARRIER

CONCEALED DAMAGE

For damage which is discovered when unpacking, make a written request for inspection and file a claim within 15 days of delivery with the carrier

VISIBLE DAMAGE

Damage must be noted on the freight bill or express receipt, and signed by the carrier's agent

Report all damages to GSA by completing Standard Form 361 (Discrepancy in Shipment Report—DISREP) and forward to "GSA DISCREPANCY REPORT CENTER (6FR), 1500 EAST BANNISTER ROAD, KANSAS CITY, MO 64131.

DO NOT RETURN MERCHANDISE WITHOUT AUTHORIZATION

III. Repair/Replacement of Nonconforming Material

(a) Upon receipt of damaged or otherwise nonconforming material, the Administrative Contracting Officer or the GSA Discrepancy Reports Center (6FR), as applicable, will issue written notification to the Contractor which may:

(1) Require the prompt repair, replacement or other specific corrective action of any supplies or parts thereof (including preservation, packaging, packing and marking);

(2) Require disposition instructions to be furnished for the nonconforming material on hand; and/ or

(3) Permit the Government to retain such supplies at a reduced cost. This contract price reduction shall be negotiated between the Administrative Contracting Officer and the Contractor with the amount agreed upon as being equitable. The Contractor shall make appropriate repayment to the Government within 30 days, or any extension agreed to by the Government.

(b) The Contractor shall respond to such written notification within the time frame specified therein, or any extension as agreed to by the Government.

(c) Repair or replacement of nonconforming material must be completed within sixty (60) days of receipt of written notification by the Contractor, or such longer period as the Government may specify in writing.

(d) If the Contractor fails to correct or replace the nonconforming supplies within sixty (60) days, the Government may, by contract or otherwise, repair or replace them with similar supplies and charge to the Contractor any and all costs incurred thereby.

(e) If the Contractor fails to furnish required disposition instructions within the time specified by the Government, the Contracting Officer may dispose of the nonconforming supplies. The Government may recover its expenses

for the storage and disposition of the nonconforming supplies, as well as any excess costs incurred or to be incurred, from the proceeds of this disposition or from the Contractor.

(f) Any supplies or portions thereof repaired or furnished in replacement pursuant to this clause shall be subject to all provisions to the same extend as supplies initially delivered.

(g) Failure to agree upon any determination made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(h) The word "supplies" as used herein includes related services.

(i) The rights and remedies of the Government provided in this clause are in addition to, and do not limit, any rights afforded to the Government under any other clause of this contract.

Charles Hulick,

Director, Office of Contract Management.

October 22, 1985.

[FR Doc. 85-26017 Filed 10-30-85; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority; Office of Facilities and Management Services

Part A (Office of the Secretary), Chapter AMS (Office of Facilities and Management Services), of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services is amended. Chapter AMS was last amended at 49 FR 35426 (September 7, 1984). The changes to the Office of Facilities and Management Services reflect the added responsibilities of the Office of Buildings Management and Telecommunications (formerly the Washington Facilities Division) in assuming, under a delegation from the General Services Administration (GSA), the operation of several buildings formerly operated by GSA. In addition, this Office now has the added responsibility of preparing and administering the telecommunications budget for the Office of the Secretary. The changes to Chapter AMS are as follows:

1. Delete Section AMS.00 in its entirety and replace it with the following:

The Office of Facilities and Management Services (OFMS) provides Department-wide leadership and direction for real property, occupational safety and health, administrative services, and emergency preparedness; and provides administrative and management services and support to all HHS components in the Southwest Washington D.C. area. Plans and administers the Telecommunications Budget for the Office of the Secretary.

2. Amend Section ASM.10 to substitute "Office Buildings Management and Telecommunications" for "Washington Facilities Division".

3. Delete Subsection AMS.20E in its entirety and replace it with the following:

E. Office of Buildings Management and Telecommunications. In the Washington-Baltimore metropolitan area, provides facilities management services for the Department and telecommunications services for the Office of the Secretary.

1. Responsible for the acquisition, disposition, allocation, and budgeting of space for the Office of the Secretary in the Washington-Baltimore metropolitan area.

2. Administers all General Services Administration (GSA) space assigned to DHHS activities located in the Washington-Baltimore metropolitan area including acquisition and disposition. Provides engineering and architectural services as well as oversight in support of the maintenance and operations of these facilities.

3. Under delegation from GSA, responsible for the physical plant operation and maintenace of the Hubert H. Humphrey, Federal Office Building No. 8, Parklawn, and Wiscon Buildings.

4. Monitors and reconciles centralized SLUC billings and distributes charges to responsible offices.

5. Provides telecommunications management, both voice and data, for OS headquarters facilities, including installation, alterations, and maintenance. Monitors telecommunications billings. Plans and administers telecommunications budgets for Office of the Secretary headquarters and regional offices.

6. Manages the conference rooms assignments in the headquarters complex.

7. Operates and manages departmental parking facilities in the greater headquarters area.

8. Oversees the Office of the Secretary Safety and Health Program, including responsibility for the employee exercise facility.

Dated: October 18, 1985.

John J. O'Shaugnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 85-26023 Filed 10-30-85; 8:45 am]

BILLING CODE 4150-04-M

Statement of Organization, Functions and Delegations of Authority; Office of Inspector General

This notice amends Part A (Office of the Secretary) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, to reflect certain changes in Chapter AF, Office of the Inspector General (47 FR 20035, May 10, 1982, as amended by 48 FR 4917 ad 4919, February 3, 1983).

The description of the Office of Inspector General is republished below in its entirety, in order to reflect substantial restructuring of the organization. The most significant change is the elimination of the Office of Health Financing Integrity. That Office consisted of investigators, who will now be assigned to the Office of Investigations, and analysts, who will now be assigned to the Office of Analysis and Inspections. In each instance, the reassigned staff will carry out the same functions they previously performed, but under their new organizational assignment. Minor changes have also been made in the organization of the Immediate Office of the Inspector General and in the Administrative Office.

Chapter AF is amended to read as follows:

AF.00 Mission

The Office of Inspector General, under the general supervision of the Inspector General and the Secretary, is responsible for:

A. Conducting and supervising audits and investigations relating to programs and operations of the Department;

B. Maintaining security programs designed to protect government property, sensitive information, and personnel;

C. Providing leadership and coordination for, and recommending policies and corrective actions concerning, activities designed to:

(1) Promote economy and efficiency in the administration of, and

(2) Prevent and detect fraud and abuse in, the Department's programs and operation;

D. Providing a means for keeping the Secretary and the Congress fully and

currently informed about problems and deficiencies relating to the administration of such programs and operations, and the need for corrective action; and

E. Imposing sanctions against providers of health care under Medicare and Medicaid who commit certain prohibited acts.

AF.10 Organization

The Office of Inspector General, under the supervision of an Inspector General, consists of:

A. Office of the Inspector General.
B. Immediate Office of the Inspector General.
C. Administrative Office.
D. Office of Audit.
E. Office of Investigations.
F. Office of Analysis and Inspections.

AF.20 Functions

A. *Office of the Inspector General.* The Inspector General operates under the general supervision of the Secretary or the Under Secretary, and (1) supervises, coordinates, and provides policy direction for auditing, investigative, and security activities relating to programs and operations of the Department; (2) recommends policies for, and conducts, supervises, or coordinates other activities carried out or financed by the Department for the purposes of promoting economy and efficiency in the administration of, or detection and prevention of fraud and abuse in, the programs and operations of the Department; (3) recommends policies for, and conducts, supervises, or coordinates relationships between the Department and other federal agencies, state and local governmental agencies, and non-governmental entities with respect to audit and investigative matters relating to (a) the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department or (b) the identification and procescution of participants in such fraud and abuse; (4) keeps the Secretary and the Congress informed concerning fraud and other serious problems, abuses, and deficiencies in the administration of programs and operations administered or financed by the Department; recommends corrective actions concerning such problems, abuses and deficiencies; and reports on the progress made in implementing such corrective action; (5) delivers reports to the Secretary, Congress, and others as required by section 204 of Pub. L. 94–505; (6) to avoid duplication and provide efficient use of time and funds, keeps apprised of activities of the Comptroller General of the United States pertaining to the Department, and coordinates and reviews the Department's responses to draft and final reports by the GAO; (7) gives prior notice to the Secretary of major investigations to be undertaken with respect to programs and operations of the Department; and (8) in general, coordinates activities with the Office of the General Counsel.

B. *The Immediate Office of the Inspector General.*—(1) *The Inspector General.* The Inspector General is the senior official of the Office of the Inspector General (OIG). The Inspector General is responsible for the management of all OIG personnel, for determining the budget needs of the OIG, for setting OIG policy and priorities, for oversight of OIG operations, and for reporting to the Secretary and Congress.

(2) *The Deputy Inspector General.* The Deputy Inspector General assists the Inspector General in the administration of the office and during the absence or temporary incapacity of the Inspector General, or during a vacancy in the office, acts as the Inspector General. The Deputy Inspector General supervises the Assistant Deputy Inspector General for Information Resources Management. The Information Resources Management staff is under the general supervision of the Assistant Deputy Inspector General for Information Resources Management.

(a) The Information Resources Management Staff: serves as the principle information resource management (IRM) advisor to the Inspector General; develops the OIG IRM strategic plan; initiates and manages projects to accomplish the OIG strategic plan; provides leadership in the development and implementation of OIG information systems and office automation; develops new applications of the computer technology for use by OIG field staffs; and maintains liaison with other elements of the Department, other federal agencies, state and local government agencies, and non-government agencies.

C. *Administrative Office.* The Administrative Office is under the general supervision of the Executive Officer, who serves as the principal advisor to the Inspector, who serves as the principal advisor to the Inspector General on management and administrative activities of the Office of Inspector General. The Administrative Office manages and coordinates functions in the areas of resources planning, budgeting, personnel, resource management, training, correspondence, and records management.

D. *Office of Audit.* (1) The Office of Audit, under the general supervision of the Assistant Inspector General for Audit:

(a) Provides audit services to all management levels within the Department through the conduct of comprehensive audits which include examinations of the operations of the Department and its grantees and contractors;

(b) Works with other components of the Office of Inspector General on special assignments and projects;

(c) Provides technical assistance as necessary to federal, state, and local investigative staffs on matters concerning the Department's programs or operations;

(d) Develops policies, procedures, standards, and criteria relating to audit activities at all level within the Department;

(e) Participates in interagency cooperative efforts intended to implement OMB Circulars A–128 and A–110, which call for use of the single audit concept for most external audits;

(f) Develops general and special audit programs as may be necessary to conduct audits of programs and activities performed by the Office of the Secretary and the operating divisions (OPDIVs);

(g) Determines when audits can be most appropriately carried out by other audit organizations outside of the Department, including those by other agencies of government or by private organizations;

(h) Evaluates the adequacy of audits performed for the Department by others;

(i) Performs audits of activities administered by other federal departments in accordance with the system of audit cognizance administered by the Office of Management and Budget;

(j) Accumulates and provides the Inspector General with data on unresolved audit findings—such data serving as the basis for Semi Annual Reports to the Congress, and for the Under Secretary's use as Chairman of the Audit Resolution Council;

(k) Conducts follow-ups and special analyses to determine completeness and propriety of actions taken on previously reported audit findings and recommendations;

(l) Prepares and disseminates reports of audits or special studies to OPDIVs, Regional Directors, and others who may be concerned;

(m) Reviews legislative and programs proposals for audit implications;

(n) Performs special reviews of grant or contract proposals for the purpose of

determining the financial capabilities of the grantees or contractors;

(o) Provides assistance to appropriate OPDIVs and staff divisions of the Secretary (STAFFDIVs) in the development of grants and procurement management policy and in the formulation of policy to govern establishment of indirect cost rates;

(p) Acts as Department liaison with the General Accounting Office (GAO). With respect to this responsibility:

(i) Reviews drafts and final reports concerning Department activities, and through the Inspector General, advises the Secretary and other officials of significant findings.

(ii) Reviews all replies to GAO reports on behalf of the Inspector General to insure that they are responsive, properly coordinated, and represent Department policy.

(iii) Maintains and fosters liaison with representatives of the Office of Management and Budget and others regarding GAO reports and proposed Department responses.

(2) The Office of Audit consists of the following divisions:

(a) Management, Operations, and Evaluation Division.

(b) Health Care Financing Audits Division.

(c) Social Security Audits Division.

(d) Grants, Internal Systems and EDP Audits Division.

(e) Regional and Field Offices.

(3) The responsibilities of the divisions are:

(a) *Management, Operations and Evaluation Division:* (i) Develops audit policies, procedures, and instructions for the various components of the Department, including the Office of Audit;

(ii) Develops audit plans and schedules;

(iii) Serves as liaison to other federal audit organizations and the public;

(iv) Evaluates OIG audit work;

(v) Conducts special studies on management issues;

(vi) Maintains a professional development program for staff; and

(vii) Directs administrative functions of the Office of Audit.

(b) *Health Care Financing Audits Division.* (i) Conducts audits of the Medicare Program and the Medicaid Program; and

(ii) Provides direction, advice, and guidance to field staff on those programs.

(c) *Social Security Audits Division.* (i) Conducts audits of the Social Security Administration's Old Age, Survivors, and Disability Insurance Programs; the Supplemental Security Income Program and the Black Lung Program.

(ii) Provides direction, advice, and guidance to field staff on those programs.

(d) *Grants, Internal Systems, and EDP Audits Divison.* (i) Conducts audits of the operations and programs of the Office of the Secretary, the Office of Human Development Services, the Public Health Service, and the Office of Family Assistance;

(ii) Provides direction, advice, and guidance to field staff on those operations and programs; and

(iii) Reviews the design and development of, and conducts audits of, the Department's computer-based systems.

(e) *Regional and Field Offices.* Carries out the activities of the Office of Audit in their assigned geographic areas.

E. *The Office of Investigations.* (1) The Office of Investigations, under the general supervision of the Assistant Inspector General for Investigations:

(a) Provides leadership, policy direction, planning, coordination, and management of the investigative programs of OIG and is responsible for the physical, documentary, and executive security programs of the Department;

(b) Reports results of investigations to the Inspector General and keeps the Inspector General informed of significant developments regarding OIG activities;

(c) Provides technical assistance and advice to the program staffs of the OPDIVs within the Department in identifying areas of high fraud potential and in developing integrity controls to minimize that potential;

(d) Reports information, allegations, and complaints regarding suspected criminal activity and conduct involving Departmental employees to the Department of Justice pursuant to the requirements of 28 U.S.C. 535;

(e) Serves as the Department's principal liaison with the Department of Justice on all matters relating to investigations of Departmental programs and personnel;

(f) Provides technical assistance and advice to the program staffs of the OPDIVs of the Department regarding physical and documentary security concerns and the integrity of program files;

(g) Reports information, allegations, and complaints regarding the compromise, theft, or loss of classified material to the Department of Justice and other interested government agencies;

(h) Advises appropriate Department OPDIVs and STAFFDIVs of the results of investigations and security surveys conducted by the Office of Investigations, including the disposition of any matter presented to the Department of Justice for possible criminal prosecution;

(i) Works with other OIG components and other investigative agencies on special assignments and projects;

(j) Reviews legislative and program proposals for investigative implications;

(k) Proposes sanctions against individuals and entities which violate certain provisions of the statutes governing the Medicare and Medicaid programs; and

(*l*) Conducts analyses and makes recommendations regarding abuse in the Department's health care financing programs.

(2) The Office of Investigations consists of the following divisions:

(a) Criminal Investigations Division.

(b) Civil Fraud Division.

(c) Headquarters Operations Division.

(d) Regional and Field Offices.

(3) The responsibilities of the divisions are:

(a) *The Criminal Investigations Division.* (i) Provides direction and coordination to the investigative field offices concerning projects and investigations;

(ii) Implements guidelines and policies for the detection, investigation, and prevention of fraud and abuse in Department programs, and for the investigation of wrongdoings by grantees or contractors, or by Department employees in the performance of their official duties;

(iii) Identifies systemic and programmatic vulnerabilities in the Department's operations, and makes recommendations for changes in statutes, policies, and procedures;

(iv) Develops investigative techniques and programs and coordinates investigative projects with other OIG components and with other agencies;

(v) Provides programmatic expertise and disseminates information on new programs, procedures, regulations, and statutes to the field offices;

(vi) Reviews completed reports of investigation for accuracy and compliance with OI guidelines and policies and disseminates reports to prosecutive agencies, management officials, and through the Inspector General, to the Secretary;

(vii) Maintains liaison with OPDIVs and STAFFDIVs, OIG counterparts, and other investigative and law enforcement agencies; and

(viii) Assists the Assistant Inspector General for Investigations in establishing investigative priorities, supervising and evaluating field offices.

and monitoring and reporting on the effectiveness of Division efforts.

(b) *The Civil Fraud Division.* (i) Investigates or coordinates investigations which result in civil fraud litigation or imposition of a civil money penalty;

(ii) Investigates or coordinates investigations which result in administrative actions against employees, contractors, or grantees for misconduct;

(iii) Investigates or coordinates investigations of allegations of violations of standards of conduct by Department employees;

(iv) Recommends to the Secretary, OPDIVs and STAFFDIVs, when necessary, consideration of debarment actions against contractors and grantees, and personnel actions against employees who have committed wrongful acts against the Department;

(v) Monitors and coordinates administrative sanctions taken by OPDIVs or STAFFDIVs as a result of OIG referrals;

(vi) Maintains liaison with OPDIVs and STAFFDIVs to insure that appropriate procurement review and action is made on OIG referrals;

(vii) Maintains an index of individuals, corporations, and organizations which are prohibited from conducting business with the Department or any of its components; and

(viii) Reviews and makes determinations regarding the suspension or exclusion of providers under Medicare or Medicaid.

(c) *The Headquarters Operations Division.* (i) Directs the administrative functions of the Office of Investigations;

(ii) Develops strategies and techniques to assist state efforts in combatting fraud and abuse in the Department's programs;

(iii) Provides for the personal protection of the Secretary and other Department officials;

(iv) Develops policy and maintains oversight guidance on matters pertaining to personnel, document, and physical security;

(v) Maintains an automated data and management information system used by OIG managers and Department field investigators;

(vi) Maintains a laboratory facility which provides examination and analysis of questioned documents to establish authorship and authenticity; and

(vii) Identifies and evaluates OIG professional investigative training needs and provides appropriate training.

(d) *Regional and Field Offices.* Carries out the activities of the Office of Investigations in their assigned geographic areas.

F. *The Office of Analysis and Inspections.* (1) The Office of Analysis and Inspections, under the general supervision of the Assistant Inspector General for Analysis and Inspections:

(a) Plans and conducts inspections and studies of HHS programs to identify vulnerabilities to fraud, waste and abuse, and recommends appropriate changes in program policy, regulations and laws to detect or prevent vulnerabilities;

(b) Makes appropriate referrals for corrective action where aberrant practices are identified;

(c) Conducts data and trend analysis of major HHS programs to determine effects of current policies on program efficiency and effectiveness;

(d) Conducts policy analysis to evaluate options for future policy, regulatory, and legislative improvements;

(e) Assesses the providers' problems of HHS services to determine their prevalence, implications, and solutions;

(f) Reviews proposed legislation and regulations;

(g) Develops legislative and regulatory proposals;

(h) Manages OIG participation in the President's Council on Integrity and Efficiency (PCIE) and other interagency efforts;

(i) Coordinates the preparation of the Office of Inspector General's long range strategic plan, Semiannual Report, and the OIG submission for PCIE Semiannual Report;

(j) Manages public affairs activities for the Office of Inspector General and the processing of requests for information under the Freedom of Information and Privacy Acts;

(k) Maintains OIG liaison with the Congress including coordination with the Assistant Secretary for Legislation and the preparation of testimony;

(l) Provides advice regarding complex medical and health administration issues;

(m) Operates the OIG Hotline;

(n) Conducts internal reviews of OIG field and headquarters offices to access their conformance with policies and procedures, and recommend improvements; and

(o) Maintains liaison with other Office of Inspectors General, related professional organizations, federal agencies and non-governmental entities to promote the objectives of the Office of Inspector General.

(2) The Office of Analysis and Inspections (OA) consists of the following divisions:

(a) Program Inspections Division.

(b) Management and Operations Division.

(c) Regional and Field Offices.

(3) The responsibilities of the divisions are:

(a) *Program Inspections Division.* (i) Plans and coordinates an Inspections Program to assess the management efficiency and effectiveness of HHS programs, and their vulnerability to fraud and abuse;

(ii) Recommends changes in program policy, regulations and laws, to improve program efficiency, effectiveness and to provide early detection and prevention of fraud, waste, and abuse;

(iii) Assesses the problems of HHS service providers to determine their prevalence, implications and solutions;

(iv) Provides oversight for projects conducted by the Regional Inspectors General including coordination with the Office of the Secretary and OPDIV's; and

(v) Manages the preparation of the OAI workplan and submissions to the OIG Semiannual Report.

(b) *Management and Operations Division.* (i) Manages the OAI budget, personnel, space and procurement resources;

(ii) Provides technical support for statistical analysis;

(iii) Develops and monitors management information systems;

(iv) Operates computer based data analyses systems;

(v) Coordinates the preparation of OIG reports;

(vi) Operates the OIG Hotline;

(vii) Manages internal reviews of OIG field and headquarters offices to assess their conformance with OIG policies and procedures; and

(viii) Prepares reports on improving policies and procedures.

(c) *Regional and Field Offices.* Carries out the activities of the Office of Analysis and Inspections in their assigned geographic area.

Dated: October 24, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-26024 Filed 10-30-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Advisory Committees; Meetings

Correction

In FR Doc. 85-24971, beginning on page 42225 in the issue of Friday, October 18, 1985, make the following correction:

On page 42226, first column, in the first paragraph, in the last line, "5 U.S.C. 55b" should have read "5 U.S.C. 552b".

BILLING CODE 1505-01-M

[Docket No. 85E-0162]

Determination of Regulatory Review Period for Purposes of Patent Extension; Coactin® Sterile; Amended Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has redetermined the component parts of the regulatory review period for Coactin® Sterile which published on June 21, 1985 (50 FR 25786). This action is based upon the submission of documents to the Associate Commissioner for Health Affairs showing that a date used in computing the regulatory review period was incorrect.

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

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (the act) (Pub. L. 98-417) generally provides that a patent may be extended for a period up to 5 years, provided the patented item (human drug production, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under the act, a product's "regulatory review period" forms the basis for determining the length of extension an applicant may receive.

On June 21, 1985, in response to an applica tion by Leo Pharmaceutical Products, Ltd., FDA published its determination of the regulatory review period for the human drug product Coactin® Sterile, a sterile injectable preparation of the antibiotic amdinocillin. In that notice, FDA stated that December 20, 1982 was the date an application for Coactin® Sterile was initially submitted under section 507 of the Federal Food, Drug, and Cosmetic Act. The agency then determined the regulatory review peirod to be 2,690 days; 1,957 days occurred during the testing phase and 733 days occurred during the approval phase. FDA invited anyone with knowledge that any of the published dates were incorrect to submit written comments to the Dockets Management Branch and request a redetermination.

On August 14, 1985, Hoffmann-La Roche, Inc., on behalf of Leo Pharmaceutical Products, Ltd., submitted a written comment to the Associate Commissioner for Health Affairs stating that it believed one of the published dates was incorrect. The company submitted FDA-stamped copies of documents showing that the date an application was initially submitted with respect to this human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act was December 15, 1982, rather than December 20, 1982.

In light of this information, FDA had redetermined the component parts of the 2,690-day regulatory review period for Coactin® Sterile. Of this time, 1,952 days occurred during the testing phase and 738 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 507(d) of the Federal Food, Drug, and Cosmetic Act involving this drug became effective:* August 12, 1977.

2. *The date an application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act:* December 15, 1982.

3. *The date the application was approved:* December 21, 1984.

This notice affects neither the 180-day filing period nor the requirements for due diligence petitions as described in the original **Federal Register** notice. The filing period expires on December 18, 1985.

Dated: October 25, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85-25703 Filed 10-30-85; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute on Aging; Meeting of Aging Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Aging Review Committee, National Institute on Aging, on December 3, 4, and 5, 1985, to be held at the Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland, 20814.

The meeting will be open to the public from 8:30 a.m. to 9:00 a.m. on December 3 for introductory remarks. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 3 from 9:00 a.m. to adjournment on December 5 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-5898, will provide summaries of meetings and rosters of Committee members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: October 17, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-25976 Filed 10-30-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Cancer Preclinical Program Project Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Preclinical Program Project Review Committee, National Cancer Institute, National Institutes of Health, November 20, 1985, Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814. This meeting will be open to the public on November 20, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 20 from approximately 9:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets on commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Edwin M. Bartos, Executive Secretary, Cancer Preclinical Program Project Review Committee, National Cancer Institute, Westwood Building, Room 836, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7565) will furnish substantive program information.

Dated: October 17, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-25980 Filed 10-30-85; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Resources; General Clinical Research Centers Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), November 18-19, 1985, Conference Room 10, Building 31, 9000 Rockville Pike, Bethesda, MD 20892.

The meeting will be open to the public on November 18 from 8:00 a.m. to approximately 10:30 a.m. during which time there will be comments by the Director, DRR; an update on the GCRC Program; and reports on the Clinical Associate Physician Program; the diffusion of the CLINFO System; possible new technologies for GCRCs; and clinical research data management. Attendance by the public will be limited space available.

In accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 18 from approximately 10:30 a.m. to recess and from approximately 8:00 a.m. to adjournment on November 19 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B-10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the Committee members. Dr. Ephraim Y. Levin, Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Room 5B51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6595, will furnish program information.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: October 17, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-25981 Filed 10-30-85; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Resources; Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee (MBRSS) of the General Research Support Review Committee (GRSRC), Division of Reserarch Resources (DRR), November 25-26, 1985, at the National Institutes of Health. The meeting will be held in Conference Room 6, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 8:30 a.m. to approximately 12:00 p.m. on November 25, to discuss policy matters relating to the Minority Biomedical Research Support Program (MBRSP). Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 25 from approximately 1:00 p.m. to 5:00 p.m. and on November 26 from 8:30 a.m. to adjournment for the review, discussion and evaluation of the individual grant applications submitted to the Minority Biomedical Research Support Program (MBRSP). These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B10, Bethesda, Maryland 20892, Telephone (301) 496-5545, will provide a summary of the meeting and a roster of panel members upon request. Dr. Ethel B. Jackson, Executive Secretary of the General Research Support Review Committee (GRSRC), Building 31 Room 5B11, Bethesda, Maryland 20892, telephone (301) 496-4390, will furnish substantive program information upon your request.

(Catalog of Federal Domestic Assistance Program No. 13.375, Minority Biomedical Research Support Program, National Institutes of Health)

Dated: October 17, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-25977 Filed 10-30-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Frederick Cancer Research Facility Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Frederick Cancer Research Facility Advisory Committee, National Cancer Institute, 8:30 a.m.-5:00 p.m., November 25-26, 1985. The meeting will be held in Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public on November 25 from 8:30 a.m. to 11:00 a.m. for regular status report, update on shared services, status of transgenic mouse workshop, supercomputer acquisition, and update on Basic Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed from 11:00 a.m. to adjournment on November 25, and from 8:30 a.m. to adjournment on November 26, for review, discussion, and evaluation of individual projects and programs conducted by the contractor for the National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892, (301–496–5708, will provide a summaries of the meeting and rosters of committee members upon request.

Dr. Berge Hampar, Executive Secretary, Frederick Cancer Research Facility Advisory Committee, National Cancer Institute, Frederick Cancer Research Facility, Building 427, Frederick, Maryland 21701 (301–695–1108) will furnish substantive program information.

Dated: October 17, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–25978 Filed 10–30–85; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Board of Scientific Counselors, BSC; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, December 2–3, 1985, Building 31, NEI Conference Room 6A33, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on December 2 from 8:30 a.m. until approximately 3:00 p.m. for general remarks by the Institute's Scientific Director on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 2 from approximately 3:00 p.m. until recess and on December 3 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Sensory Motor Research (LSR). These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20892 (301) 496–4903, will provide summaries of the meetings and rosters of committee members.

Substantive program information may be obtained from Dr. Jin Kinoshita, Scientific Director, National Eye Institute, Building 31, Room 6A04, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7483).

Dated: October 17, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–25973 Filed 10–30–85; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Vision Research Program Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Vision Research Program Committee, National Eye Institute, November 14–15, 1985, Conference Room 8, Building 31, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on November 14 from 8:30 a.m. to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. on November 14 until recess and on November 15 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These evaluations and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A–03, National Institutes of Health, Bethesda, Maryland 20892 (301) 496–4903, will provide summaries of the meeting and rosters of committee members.

Dr. Catherine Henley, Review and Special Projects Officer, Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A–06, National Institutes of Health, Bethesda, Maryland 20892 (301) 496–5561, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

Dated: October 17, 1985.

Betty J. Beveridge,

Committee Management Office, NIH.

[FR Doc. 85–25982 Filed 10–30–85; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, January 23 and 24, 1986, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20892. This meeting will be open to the public from 9:30 a.m. to 4:00 p.m. January 23 and from 9:30 a.m. to 12 noon on January 24 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 12 noon to adjournment January 24 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496–2116.

Dated: October 17, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–25974 Filed 10–30–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Board of Scientific Counselors, NICHD; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 6, 1985, in Building 31, Room 2A52. This meeting will be open to the public from 9:00 a.m. to 12 noon on December 6 for review of Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 6 from 1:00 p.m. to 4:30 p.m. for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NICHD, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485 will provide a summary of the meeting and a roster of the Board members. Dr. Arthur Levine, Scientific Director, NICHD, Building 31, Room 2A50, National Institutes of Health, Bethesda, Maryland, Area Code 496–2133, will furnish substantive program information.

Dated: October 17, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–25975 Filed 10–30–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Environmental Health Sciences Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on November 22, 1985, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public from 9:00 a.m. to approximately 10:30 for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 10:30 a.m. to adjournment on November 22, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun or Carol Shreffler, Executive Secretaries, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709 (telephone 919–541–7826), will provide summaries of meeting, rosters of committee members, and substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: October 17, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–25979 Filed 10–30–85; 8:45 am]

BILLING CODE 4101–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species; Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Chicago Zoo, Brookfield, IL—PRT–697739.

The applicant requests a permit to import one captive-born Goeldi's monkey (*Callimico goeldii*) from the University Kassel, Kassel, Federal Republic of Germany, for enhancement of the propagation of the species.

Applicant: David Bilbie, Ann Arbor, MI—PRT–699542

The applicant requests a permit to import captive-born Swinhoe (*Lophura swinhoei*) and Elliott's (*Syrmaticus ellioti*) pheasants from Garnet Hyslop, Hamilton, Ontario, Canada, for enhancement of propagation.

Applicant: New England Wild Flower Society, Inc., Framingham, MA—PRT–700728

The applicant requests a permit to sell artificially propagated Tennessee Coneflower (*Echinacea tennesseensis*) in interstate commerce, for the purpose of enhancement of the propagation of and survival of the species.

Applicant: Vance B. Grannis, Jr., Inver Grove Heights, MN—PRT–686602

The applicant requests to amend his current endangered species permit, PRT–686602, authorizing the import of several species of pheasants, to add 5 more pairs of Mikado pheasants (*Syrmaticus mikado*). All other information on original permit remains the same. Notice of receipt of his original application was published October 19, 1984.

Applicant: Cincinnati Zoo, Cincinnati, OH—PRT–700809

The applicant requests a permit to import 30 captive-bred larvae of Japanese giant salamander (*Andrias davidianus japonicus*) from Asa Zoological Park, Hiroshima, Japan, for enhancement of propagation of the species.

Applicant: Jack Elkins, Jr., Dallas, TX—PRT–700813

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of John M. Mullins in Cape Province, Republic of South Africa, for the purpose of enhancement of propagation.

Applicant: B.J. Elkins, Sr., Dallas, TX 75229—PRT–700814

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of John M. Mullins in Cape Province, Republic of South Africa, for the purpose of enhancement of propagation.

Applicant: Baltimore Zoo, Baltimore, MD—PRT–700784

The applicant requests a permit to import one captive-bred white naped crane (*Grus vipio*) from the Hong Kong Zoo, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publiction by

submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: October 28, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-26021 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[M 57660]

Order Providing for Opening of Public Land; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Order Providing for Opening of Public Land in Madison County, Montana.

SUMMARY: This order will open certain lands that were segregated from appropriation under the public land laws, including the mining laws, by the Notice of Realty Action published in the **Federal Register** on June 21, 1985 (50 FR 27588).

DATE: At 9 a.m. on December 23, 1985, the lands described below will be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law:

Principal Meridian, Montana

T. 5 S., R. 3 W.,
Sec. 30, S½NE¼.
Containing 80 acres.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

October 22, 1985.

[FR Doc. 85-25970 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-DN-M

Environmental Impact; Final Decision on Fable Valley Trail, UT; Maintenance in Dark Canyon ISA

October 24, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Final Decision on Fable Valley Trail Maintenance in Dark Canyon ISA.

SUMMARY: The Bureau of Land Management has been requested by Indian Creek Cattle Company to allow maintenance of the Fable Valley Trail for livestock use. A draft environmental assessment has been prepared and was available for comment for 30 days. Based on comments received and further consideration, the decision is to allow construction of water bars but no blasting of slickrock on the Fable Valley Trail. Any party wishing to protest the final decision should do so to the District Manager, P.O. Box 970, Moab, Utah 84532, phone (801) 259-6111 within 30 days of the publication of this notice.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 85-25962 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-DQ-M

[OR 39509]

Realty Action, Exchange of Lands (Amendment); OR

The following described lands have been determined to be potentially suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Willamette Meridian

	Acreage
T. 24 S., R. 29 E.,	
Sec. 2: SW¼SW¼	40
T. 26 S., R. 29 E.,	
Sec. 2: SE¼SE¼	40

In the Federal Register, Volume 50, No. 85, appearing on Pages 18747 and 18748, in the issue of Thursday, May 2, 1985, the two parcels of public land mentioned above were inadvertently omitted. The purpose for this land exchange and those public benefits gained as a result, will not be significantly affected by the consideration for disposal of these two parcels.

On page 18748, the land description and subsequent acreage in the first column should be corrected as follows:

Willamette Meridian

	Acreage
T. 33 S., R. 31 E.,	
Sec. 3: Lots 1 & 2, S½NE¼, SE¼	322.14
Sec. 5: Lots 1 & 2, S½NE¼, SE¼	318.63
Sec. 19: Lots 1 thru 4 incl., E½, E½W½	645.45
T. 34 S., R. 31 E.,	
Sec. 15: N½, N½S½, SE¼SE¼	520.00

The first sentence, first paragraph, first column, on page 18748, should read as follows: The area described aggregates approximately 9451.09(±) acres in Harney County, and 1340.31(±) acres in Grant County, Oregon.

For a perod of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 74 S. Alvord St., Burns, OR 97720. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: October 18, 1985.

Joshua L. Warburton,

District Manager.

[FR Doc. 85-25969 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-33-M

[M-016008, et al.]

Proposed Continuation of Withdrawals; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that 13 withdrawals for the Lower Marias Project be all or partially continued through the year 2035. Of the approximate 34,633 acres currently withdrawn, the effect of the withdrawal on approximately 10,773 acres would be terminated. The approximate 23,860 acres proposed for continuation would remain closed to surface entry and mining. The extraction of locatable minerals from these lands would be permitted by the Bureau of Reclamation, provided this extraction can be performed in a manner that would not jeopardize or otherwise interfere with the purposes of the Lower Marias Project. All of the lands have been and would continue to be open to the mineral leasing laws.

ADDRESS: Comments should be sent to: Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM, Montana State Office, (406) 657-6090.

The Bureau of Reclamation proposes that the existing land withdrawals made by Director's Orders of September 20, 1955, September 2, 1955, and August 25, 1948, Secretarial Orders of October 3, 1958, March 15, 1946, July 27, 1904, July 3, 1956, March 30, 1950, October 15, 1904 and Public Land Orders 2182, 2606 and 3876, be continued in their entirety or in part until the year 2035 pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 43 U.S.C. 1714.

The lands involved are located in Liberty, Chouteau, Hill, Toole and Pondera Counties and aggregate approximately 34,353 acres in the State of Montana.

The purpose for continuance of the withdrawals is to protect the Lower Marias Reclamation Project. The withdrawals would continue to segregate approximately 23,860 acres from operation of the public land laws and location under the United States mining laws; however, the extraction of locatable minerals would be permitted by the Bureau of Reclamation, provided that this extraction could be performed in a manner that would not jeopardize or otherwise interfere with the purposes of the Lower Marias Project. All of the lands would continue to be open to the mineral leasing laws.

No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

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 lands 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 withdrawals 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 withdrawals will continue until such final determination is made.

October 22, 1985.

James Binando,

Chief, Branch of Land Resources.

[FR Doc. 85-25963 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-DN-M

Filing of Plats of Survey; NM

October 18, 1985.

The plats of the surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, effective at 10 a.m. on October, 18, 1985.

The dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 27 through 30 of Townships 23 and 24 North, Range 13 West, New Mexico Principal Meridian, New Mexico, under Group 850 NM approved May 3, 1985.

The dependent resurvey of a portion of the subdivision of section 21 and the survey of a portion of the subdivision of section 20, Township 17 South, Range 30 East, New Mexico Principal Meridian, New Mexico, under Group 783 NM, approved on August 18, 1983.

These surveys were requested by the State Director, New Mexico State Office and the Roswell District Manager, BLM.

The plats will be 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 that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-25967 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-FB-M

[U-47388]

Realty Action; Sale of Public Land in Washington County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public land sale U-47388 advertised in the October 21, 1983 **Federal Register** is hereby cancelled. Lot 10, Section 13, T. 43 S., R. 16 W., SLB&M, Utah, containing 0.66 acre, will be reoffered for sale under the authority of section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 (by competitive bidding at no less than appraised fair market value of $11,000. The land described is hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments should be submitted to address listed below by December 30, 1985.

The sale will be held on January 14, 1986 at 2:00 p.m.

ADDRESS: Detailed information concerning the sale, including bidding procedures, is available at the Dixie Resource Area Office, 225 North Bluff, St. George, Utah 84770, (801) 673-4654. The sale will be held at the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. The title transfer will be subject to valid existing rights, including Oil and Gas Lease No. U-49859 and Rights-of-Way U-52859 and U-52861 for a buried irrigation pipeline and telephone cable.

4. If the tract of public land is not sold pursuant to this notice, it will remain available for sale on a continuing basis until sold or until withdrawn for the market.

Any comments or objections received during the comment period will be evaluated and the District Manager may vacate or modify this realty action. In the absence of any objections, this realty action notice will become the final determination of the Department of the Interior.

Dated: October 22, 1985.

Morgan S. Jensen,

District Manager.

[FR Doc. 85-25968 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-010-029]

Public Hearing Review of the Rockhouse Basin Wilderness Study Area (WSA); Recommendations

AGENCY: Bureau of Land Management, Interior.

ACTION: Public hearing of the Rockhouse Basin WSA recommendations (CA-010-029).

SUMMARY: Notice is hereby given in accordance with Pub. L. 88-577 that the U.S. Forest Service and the Bureau of Land Management will conduct a joint meeting on Tuesday, December 3, 1985, from 7 p.m. to 9:30 p.m. in the Venus Room of the Bakersfield Civic Auditorium, 1001 Truxtun Avenue in Bakersfield, California. The first part of the meeting will be a briefing by the Forest Service to provide information and answers on the Sequoia National Forest Draft Environmental Impact Statement and the Proposed Land and Resource Management Plan. The second part of the meeting will be a Bureau of Land Management public hearing to accept comments on the Rockhouse Basin WSA recommendations (CA-010-029). This area is being studied by the Forest Service under joint agreement with the Bureau of Land Management.

SUPPLEMENTARY INFORMATION: The Rockhouse Basin WSA (CA-010-029) is comprised of 35,557 acres adjacent to the eastern boundary of the present USFS Domelands Wilderness Area. Ten alternatives are analyzed and portrayed in the Draft Environmental Impact Statement and the Proposed Land and Resource Management Plan. Public

comments should address the suitability on nonsuitability of this area designation as wilderness. Written comments after the hearing will be accepted until January 3, 1986.

FOR FURTHER INFORMATION CONTACT: Glenn Carpenter, Area Manager, Bureau of Land Management, Caliente Resource Area, 520 Butte Street, Bakersfield, California, 93305; (805) 861–4236.

Dated: October 22, 1985.

Robert D. Eheiner, Jr.,

District Manager.

[FR Doc. 85–25966 Filed 10–30–85; 8:45 am]

BILLING CODE 4310–40–M

Emergency Area Closure, Butte District, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency area closure, closed to all vehicles, except on designated routes.

SUMMARY: This notice closes an area west of Twin Bridges in the Highland Mountains of southwestern Montana to all vehicle use except on designated roads and for administrative use (43 CFR 8341.2). The purpose of the closure is to provide fall habitat security for deer and elk, reduce watershed damage, provide access through private land, allow walk-in hunting on private land and improve hunting qualities. The emergency closure is effective immediately on the following lands, and will remain in effect until the 1984 Interagency Travel Plan is revised.

Township 2 South, Range 7 West, P.M.M.

Sec. 21: NE¼;
Sec. 22: All except SW¼;
Sec. 26: All except SE¼NE¼, NW¼SE¼;
Sec. 27: All except NW¼;
Sec. 28: SW¼;
Sec. 33: All of the public land in the N½ NE¼.

ADDRESS: Harry R. Cosgriffe, Area Manager, Dillon Resource Area, P.O. Box 1048, Dillon, Montana 59725.

DATE: October 23, 1985.

Jack A. McIntosh,

District Manager, Butte District.

[FR Doc. 85–26041 Filed 10–30–85; 8:45 am]

BILLING CODE 4310–DN–M

Craig District Advisory Council, CO; Meeting

In accordance with Pub. L. 94–579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on November 26, 1985.

The meeting will begin at 10 a.m. at the Craig District Office, 455 Emerson Street, Craig, Colorado.

Agenda items will include:

1. Report on Management of North Sand Hills (Kremmling Resource Area)
2. Application of the Kremmling Resource Area Resource Management Plan (RMP)/Conflict Resolution
3. Application of the White River Resource Area Management Framework Plan (MFP)/Conflict Resolution
4. BLM Access Policy

The meeting will be open to the public and interested persons may make oral statements to the Council beginning at 10:30 a.m. The District Manager may establish a time limit for oral statements, depending on the number of people wishing to speak. Anyone wishing to address the Council, or file a written statement, should notify the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, by November 20, 1985.

Summary minutes of the Council Meeting will be maintained in the Craig District Office and will be available for public inspection and reproduction during regular business hours.

Dated: October 25, 1985.

Terry L. Plummer,

Acting District Manager.

[FR Doc. 85–26042 Filed 10–30–85; 8:45 am]

BILLING CODE 4310–JB–M

Roseburg District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act (as amended), the Roseburg District Advisory Council will meet December 13, 1985. The meeting will convene at 9:30 a.m. in the conference room at the Roseburg District Office, 777 N.W. Garden Valley Blvd., Roseburg, Oregon.

The agenda for the meeting will include:

1. Opening remarks and general topics.
2. Timber sale buy-backs.
3. Fish habitat enhancement program.
4. Site preparation using prescribed fire.
5. No bid sales and appraisals.
6. Public comment period begins about 11:00 a.m.

Interested persons may make oral statements before the Council or file written statements for the Council's consideration.

Summary minutes of the Council meeting will be maintained in the District Office and available for public inspection during regular business hours within 30 days following the meeting.

M.D. Berg,

District Manger.

[FR Doc. 85–26043 Filed 10–30–85; 8:45 am]

BILLING CODE 4310–33–M

Susanville District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with Pub. L. 94–579 (FLPMA), a District Advisory Council meeting will be held on the date listed below.

DATE: December 10, 1985, 8:00 a.m.

ADDRESS: Bureau of Land Management, 705 Hall Street, Susanville, CA 96130.

SUPPLEMENTARY INFORMATION:

Agenda will include—

1. Fort Sage Technical Review Team Recommendations, based on the team's consensus, to the District Advisory Council.
2. Modoc/Washoe Experimental Stewardship Program Report to Congress.
3. Discussion of public notification process of action(s) in Wilderness Study Areas (WSA).
4. Discussion of helicopter gathering of wild horses and burros in fiscal year 1986.

The meeting is open to the public and time will be provided for public comment.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Louisa Beld, Public Affairs Officer, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130, 916/257–5381.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 85–26044 Filed 10–30–85; 8:45 am]

BILLING CODE 4310–40–M

[Alaska AA–48321–T]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48321–T has been received covering the following lands:

Copper River Meridian, Alaska

T. 13 N., R. 9 W.,
Sec. 17, NE¼SE¼.
(40 acres).

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from February 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48321–T as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective February 1, 1985 to the terms and conditions cited above.

Dated: October 25, 1985.

Robert E. Sorenson,

Chief, Branch of Mineral Adjudication.

[FR Doc. 85–26045 Filed 10–30–85; 8:45 am]

BILLING CODE 4310–JA–M

[A–20242]

Public Lands Exchange, La Paz County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action exchange, public lands in La Paz County, Arizona.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 7 N., R. 13 W.,
Sec. 6
T. 7 N., R. 14 W.,
Secs. 7, 11, 14, 15, 21, 22, 28–31;
T. 7 N., R. 15 W.,
Secs. 1, 6, 22, 25, 26, 36;
T. 8 N., R. 13 W.,
Secs. 7, 18–21, 29–31;
T. 8 N., R. 14 W.,
Secs. 8–17, 20, 22, 27, 28, 31, 35.
Comprising 19,782.04 acres of public land.

In exchange for these lands, the federal government will acquire nonfederal land from the Arizona State Land Department, described as follows:

Gila and Salt River Meridian, Arizona

T. 39 N., R. 5 E.,
Sec. 36;
T. 18 N., R. 15 W.,
Secs 16, 32, 36;
T. 41 N., R. 6 W.,
Secs. 2, 10, 16;
T. 42 N., R. 6 W.,
Sec. 32;
T. 34 N., R. 8 W.,
Secs. 2, 32;
T. 35 N., R. 8 W.,
Sec. 16;
T. 34 N., R. 9 W.,
Sec. 36;
T. 23 N., R. 11 W.,
Secs. 4, 6, 8, 10, 16, 18, 20, 28, 30, 32;
T. 24 N., R. 11 W.,
Secs. 16, 32, 36;
T. 23 N., R. 12 W.,
Secs. 8, 10, 14, 16, 24, 32, 36;
T. 24 N., R. 12 W.,
Secs. 2, 8, 10, 12, 14, 16, 18, 20, 22, 30, 32, 36;
T. 24 N., R. 13 W.,
Secs. 2, 12, 14, 16, 24, 26, 28, 32, 34, 36;
T. 25 N., R. 13 W.,
Sec. 16;
T. 41 N., R. 13 W.,
Sec. 16;
T. 38 N., R. 14 W.,
Sec. 2;
T. 41 N., R. 14 W.,
Secs. 2, 16;
T. 18 N., R. 15 W.,
Secs. 16, 32, 36;
T. 38 N., R. 15 W.,
Secs. 2, 16.
Comprising 33,535.61 acres of land owned by State of Arizona.

The exchange proposal involves the surface and mineral estate of the state land and the surface and mineral estate of the public land with the exception of existing oil and gas leases which will be reserved to the government until lease expiration. The exchange has been proposed in the Bureau's planning system.

Value of the lands and interests to be exchanged has been determined by appraisals.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions.

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1980, 26 Stat. 391, 43 U.S.C. 945.

2. A reservation of all existing oil and gas leases until lease termination.

3. All valid existing rights and reservations of record on the date of patenting.

A complete list of legal descriptions for the lands listed in this Notice is available at the Phoenix District Office.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriations under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona.

Marlyn V. Jones,

District Manager.

[FR Doc. 85–26047 Filed 10–30–85; 8:45 am]

BILLING CODE 4310–32–M

Amendment of Arrastra Mountain Wilderness Study Area Boundary and Wilderness Study on Acquired Lands (Peoples Canyon Land Exchange); Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

This notice serves as an amendment to previous wilderness inventory decisions by the Bureau of Land Management for the Arrastra Mountain Wilderness Study Area (AZ–020–059) and Peoples Canyon Section 202 Wilderness Study Area (AZ–020–068) as announced by publication in the Federal Register, Vol. 48, No. 154, Tuesday, August 9, 1983. This notice also serves to announce the start of the wilderness study process on lands acquired through Peoples Canyon Land Exchange.

On September 24, 1984 BLM acquired, through land exchange, 6,800 acres of State of Arizona land. These acquired lands lie between the Arrastra Mountain Wilderness Study Area (WSA) and Peoples Canyon Section 202 WSA. These State lands were acquired in order to: (1) Combine the Arrastra Mountain WSA and Peoples Canyon WSA; (2) improve the wilderness manageability of Peoples Canyon; and (3) consolidate Federal lands administration in an area with important multiple resources values.

The acquired lands were inventoried and found to possess wilderness characteristics as set forth in section 2(c) of the 1964 Wilderness Act. An inventory report, satisfying guidelines in the September 27, 1978 BLM Wilderness Inventory Handbook and Organic Act Directive No. 78–61, Change 3, was prepared describing the wilderness characteristics found in the acquired lands. A copy of the report is available from the BLM's Phoenix District Office.

On November 26, 1984, the BLM Director approved wilderness

consideration for these acquired lands pursuant to section 202 of the Federal Land Policy and Management Act (FLPMA) of 1976. The acquired lands and Peoples Canyon WSA will be combined with the Arrastra Mountain WSA and incorporated into the Upper Sonoran Wilderness study effort.

The eastern boundary of the Arrastra Mountain WSA will be modified to enclose all 6,800 acres of acquired land and the 3,480 acres of existing public land within the Peoples Canyon WSA, thus incorporating all contiguous federal land under study within one wilderness study area.

The adjusted Arrastra Mountain WSA boundary contains 123,930 acres, with 113,650 acres studied for wilderness under section 603 of FLPMA, and 10,280 acres studies for wilderness under section 202 of FLPMA.

Additional information can be obtained by contacting Rich Hanson, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Rd., Phoenix, Arizona 85027 (602–863–4464).

Dated: October 11, 1985.

Barry D. Stallings,

Acting District Manager.

[FR Doc. 85–26046 Filed 10–30–85; 8:45 am]

BILLING CODE 4310–32–M

[A–20240]

Realty Action; Direct Sale of Public Land in Graham County, AZ

AGENCY: Bureau of Land Management, Safford District, Interior.

ACTION: Notice of reality action, direct sale of public lands in Graham County, Arizona.

SUMMARY: The following lands have been examined and identified as suitable for disposal under section 203 of the Federal Land and Management Act of 1976 (90 Stat. 2750, U.S.C. 1713) at no less than the appraised fair market value.

Legal description	Acres	Appraised value
Gila & Salt River Meridian T. 8 S., R. 26 E. Sec. 29, lots 16, 22	3.19	$400

The land is being offered to Delmar and Elizabeth Stauffer by direct sale at the appraised fair market value. No other bids or bidders will be considered.

The land has not been used for and is not required for any Federal purpose. The parcels are difficult and uneconomic to manage as public land. Disposal would best serve the public interest. The disposal would be consistent with the Bureau's planning recommendations.

All minerals, except oil and gas, sodium and geothermal resources will be offered for conveyance. The mineral interests being offered have no known mineral value. A bid on the parcel will also constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)). Purchasers of the affected parcels will be required to submit a non-returnable filing fee in the amount of $50.00 to cover the processing costs of conveying the available mineral interests. Failure to do so will result in disqualification.

The patent issued as the result of the sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for a right-of-way for ditches and canals under the Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945, for oil and gas, sodium and geothermal resources, and for a Federal Aid Highway recorded under Serial Number A–20660. The patent will also be issued subject to oil and gas lease A–16361, an electric distribution line right-of-way (A–1172) and a floodplain restriction.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

Sale Procedures

The designated bidder will be required to submit payment of at least 20 percent of the fair market value by cash, certified or cashier check, or money order to the BLM at 425 East 4th Street, Safford, Arizona 85546 on January 6, 1986.

The balance of the appraised fair market value will be due within 180 days, payable in the same form at the same location. Failure to submit the remainder of the payment within 180 days of receipt of the decision notice accepting the bid deposit will result in cancellation of the sale offering and forefeiture of the deposit.

DATE: For a period of 45 days from the date of this notice in the **Federal Register,** interested parties may submit comments to the District Manager at the above address. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this reality action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the interior.

SUPPLEMENTARY INFORMATION: Detailed information concerning reserations, conditions, terms, appraised price, bidding procedures and other items may be obtained from the Safford District Office or by calling (602) 428–4040 during the office hours 7:45 to 4:15 MST.

Dated: October. 24, 1985.

Lyle K. Rolston,

District Manager.

[FR Doc. 85–2605 Filed 10–30–85; 8:45 am]

BILLING CODE 4310–32–M

Draft Environmental Assessment; San Rafael Reef Study Area, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of 30-day comment period on Draft Environmental Assessment analyzing impacts of the change of kind of livestock from sheep to cattle, located within the San Rafael Reef Wilderness Study Area (WSA #UT–060–029A), Utah.

SUPPLEMENTARY INFORMATION: Mr. Wade Jensen, Price, Utah proposes to run 50 cattle and 1,240 sheep on the Taylor Flat Allotment from November 1 through April 30. The proposal area is located within:

Salt Lake Base and Meridian

Township 24 South, Range 12 East
Sections 3, 4, 9, 10, 14, 15, 22, 23, 29, 30.
Township 24 South, Range 11 East
Section 25.
Township 23 South, Range 12 East
Sections 32, 33.

A draft environmental assessment has been written to analyze the impacts from the proposed action.

For a period of 30 days from the date of publication of this notice, interested parties may comment on the proposal.

Legal Authority: Federal Land Policy and Management Act of 1976, section 603 (90 Stat. 2785, 43 U.S.C. 1782) and Interim Management Policy.

WSA Name: San Rafael Reef (UT–060–029A)

FOR FURTHER INFORMATION CONTACT: Mary Beth Stulz, Range Specialist, or Terry Humphrey, Area Recreation Specialist, 801–637–4584, Bureau of Land Management, P.O. Drawer AB, Price, Utah 84501.

Dated: October 23, 1985.

Gene Nodine,

District Manager.

[FR Doc. 85-26039 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-DQ-M

Final Environmental Assessment; Floy Canyon WSA, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Environmental Assessment and Record of Decision for issuance of a commercial special recreation permit in the Floy Canyon Wilderness Study Area (WSA).

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Land Policy and Management Act, section 603, and the Bureau's Interim Management Policy, notice is hereby given of availability of Final Environmental Assessment and Record of Decision.

WSA Name: Floy Canyon.

WSA Number: UT-060-068-B.

Decision: As a result of a 30 day comment period, September 10 to October 11, 1985, resulting in no comments received, the decision has been made to issue a special recreation permit to Larry Allen of Hotchkiss, Colorado to conduct guided hunts for licensed hunters into the Floy Canyon WSA during the general and muzzleloader deer seasons.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Grand Resource Area, P.O. Box M, Moab, Utah 84532. A copy of the final Environmental Assessment and the accompanying Record of Decision is available upon request.

Dated: October 23, 1985.

Gene Nodine,

District Manager.

[FR Doc. 85-26040 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-DQ-M

[W-81328]

Competitive Sale of Public Lands in Laramie County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to Notice of Realty Action.

SUMMARY: The public land sale scheduled for December 4, 1985, under Notice of Realty Action (W-81328) published in the **Federal Register** on Tuesday, September 24, 1985, (50 FR 38717/38718) has been amended.

The original notice is hereby amended to reflect the following change. All other aspects of the original notice remain the same. Item number 4 of the "PATENT TERMS AND CONDITIONS" section shall be replaced by:

4. A powerline right-of-way reservation over and across a 215-foot strip of land will be reserved for the Department of Energy—Western Area Power Administration.

5. Patent issued for parcel 1 would be subject to W-40660, a right-of-way for county road 109 and W-89121, an access road right-of-way. Patents issued for parcels 1 and 2 would be subject to W-86482, an access road right-of-way. All patents issued would be subject to oil and gas lease W-77432.

Richard Bastin,

District Manager.

[FR Doc. 85-26048 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group; Meeting

AGENCY: Minerals Management Service, Alaska OCS Region, Interior.

ACTION: Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group Committee; notice for meeting.

SUMMARY: This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463.

The Alaska Regional Technical Working Group Committee (RTWG) of the Outer Continental Shelf (OCS) Advisory Board is scheduled to meet from 8:30 a.m. to 4:00 p.m., November 21, 1985, at the Minerals Management Service Alaska OCS Region Office, Room 601, 959 East 36th Avenue, Anchorage, Alaska. The Alaska RTWG is one of six such committees of the OCS Advisory Board that provide advice to the Director, Minerals Management Service, on technical matters of regional concern regarding OCS prelease and postlease sale activities.

Topics which may be addressed at the meeting are:

(a) Status of Alaska OCS Region Oil and Gas Lease Sales, the 5-Year OCS Leasing Program, and Regional Studies Plans.

(b) Summaries of Alaska OCS Region Information Transfer Meeting and the Scientific Advisory Committee Meeting.

(c) Drilling Technologies for Petroleum Exploration in the Beaufort Sea.

(d) Oil Spill Contingency Planning and Capabilities in the Arctic.

(e) Bowhead Whale Monitoring Program—Issues/Status.

The Alaska RTWG meeting will be open to the public. Public seating may be limited. Interested persons may make oral or written presentations to the committee. A request to make a presentation should be made no later than November 15, 1985, to Alan D. Powers, Regional Director, Alaska OCS Region, P.O. Box 101159, Anchorage, Alaska 99510, (907) 261-4010. A request to make an oral statement should be accompanied by a written summary of the oral statement. Written statements should be submitted by November 15, 1985.

Minutes of the meeting will be available 70 days after the meeting for public inspection and copying at the Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Anchorage, Alaska, and at the Office of Offshore Information Services, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

Dated: October 24, 1985.

Alan D. Powers,

Regional Director, Alaska OCS Region.

[FR Doc. 85-25992 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Forest Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Forest Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1980, Block 307, portion, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 22, 1985.

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).

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.

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: October 25, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–26049 Filed 10–30–85; 8:45 am]

BILLING CODE 4310-MR-M

National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; Agenda and Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463.

The Pacific Regional Technical Working Group Committee of the National OCS Advisory Board is scheduled to meet December 13, 1985 from 8:00 a.m. to 4:00 p.m., at the Pacifica Hotel, Laguna Room, 6161 W. Centinela Ave., Culver City, California.

The Agenda for the meeting covers the following topics:

Update: Proposed 5-Year OCS Oil & Gas Leasing Program/Lease Sale 95
Review of Pacific OCS Issues and Activities
Review of November 1985 OCS Policy Committee Meeting
Fiscal Year 1987 Pacific OCS Regional Environmental Studies Plan:
—Monitoring Programs
—Seismic Studies
Update: Strategic & International Minerals Program
December 1985 Pacific OCS Information Transfer Meeting (ITM) Highlights
Conflict Resolution of Fisheries Issues
Update: San Miguel Project

Minutes of the meeting will be available for public inspection and copying at the following locations:

Pacific OCS Region, 1340 West Sixth Street, Room 275, Los Angeles, CA 90017
Office of the Offshore Information Service, Minerals Management Service, Department of the Interior, Washington, DC 20240.

Dated: October 23, 1985.

William E. Grant,

Director, Pacific OCS Region.

[FR Doc. 85–26050 Filed 10–30–85; 8:45 am]

BILLING CODE 4312-MR-M

Bureau of Reclamation

Grand Valley Water Users Association, Grand Valley Project, CO, Colorado River Basin Salinity Control Project; Proposed Amendatory Contract Between the United States and Grand Valley Water Users Association

The proposed amendatory contract is between the United States and the Grand Valley Water Users Association located in west-central Colorado, with their office in Grand Junction, Mesa County, Colorado. This contract will amend the contract executed March 11, 1980, which provided for rehabilitation, operation, and maintenance of Stage I distribution facilities to reduce salinity inflow to the Colorado River.

The amendatory contract is being negotiated under general Reclamation law, and specifically the Colorado River Basin Salinity Control Act (Pub. L. 93–320), amended by Pub. L. 98–569.

The purpose of the amendatory contract is: (1) To provide for operation and maintenance of the water users' portion of Stage II of the Grand Valley Unit for the salinity control project; and (2) incorporate the necessary requirements occurring as a result of the additional legislation, which primarily provides for reimbursement of costs incurred by the water users as a result of the salinity control project. The features involved consist of approximately 38 miles of canals to be lined and 166 miles of laterals to be placed in pipe, 30 miles of detention ditch, four detention ponds and one moss and debris removal structure.

The Grand Valley Project was constructed and the United States contracted with the Grand Valley Water Users Association for repayment, operation and maintenance in 1913. That original contract has been supplemented several times, the most recent being in 1964. Pursuant to Pub. L. 93–320, as amended, the Secretary of the Interior is authorized to construct the Grand Valley Unit of the Colorado River Basin Salinity Control Project, to reduce the salinity contribution from the Grand Valley seepage of irrigation water into the ground water and from there into the Colorado River. This is an effort to protect and enhance the quality of Colorado River water available for use in the United States and the Republic of Mexico.

The negotiation sessions are open to the public as observers, and the proposed contract will be available for public review upon request. All written correspondence concerning the proposed contract is available to the public pursuant to the Freedom of Information Act.

For information, contact Fred Crabtree, Bureau of Reclamation, P.O. Box 1889, Grand Junction, Colorado 81502, telephone (303) 242–8621.

Dated: October 25, 1985.

Joseph B. Marcotte,

Acting Commissioner of Reclamation.

[FR Doc. 85–25990 Filed 10–30–85; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–240 (Final) and 731–TA–249 (Final)]

Oil Country Tubular Goods From Austria

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: October 25, 1985.

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202–523–0339), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION: On June 3, 1985, the Commission instituted final countervailing duty investigation No. 701–TA–240 (Final) (50 FR 27499 July 3, 1985) and on August 14, 1985, the Commission instituted final antidumping investigation No. 731–TA–249 (Final) and established a schedule for the conduct of both the countervailing duty and antidumping investigation (50 FR 38224 September 20, 1985). Subsequently, the Department of Commerce extended the date for its final determinations in these investigations from October 21, 1985 to December 27, 1985 (50 FR 43597 and 50 FR 43602 October 28, 1985). The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: the deadline for filing prehearing briefs is January 2, 1986, the hearing will be held in room 331 of the U.S. International Trade Commission Building on January 8, 1986, and the deadline for filing all other written submissions, including posthearing briefs, is January 13, 1986.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: October 28, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-26008 Filed 10-30-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30734]

Dakota Southern Railway Co.; Modified Rail Certificate

October 24, 1985.

On October 2, 1985, a notice was filed by Dakota Southern Railway Company (DSR) for a modified certificate of public convenience and necessity under 49 CFR Part 1150 Subpart C. DSR is now authorized to operate over a line of railroad known as the Napa-Platte Branch of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW), extending approximately 82 miles between Napa and Platte, SD. In addition, DSR is authorized to interline with Burlington Northern Railroad Company at Napa.

The State of South Dakota acquired this line following an order of abandonment issued by the United States District Court for the Northern District of Illinois, Eastern Division, in proceedings for the reorganization of MILW. Thereafter, the State of South Dakota leased the line to the Napa-Platte Regional Railroad Authority (NPRRA). Operations will be provided by DSR for a period of five years pursuant to an agreement with NPRRA dated September 25, 1985.

This notice shall be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Associaton.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-25887 Filed 10-30-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30735]

Holton Inter-Urban Railway Co.; Southern Pacific Transportation Co.; Merger Exemption

The Holton Inter-Urban Railway Company (HI) and Southern Pacific Transportation Company (SPT) jointly filed a notice of exemption for HI to merge into SPT. HI owns and operates 10.49 miles of track between El Centro and Holtville, CA. It connects with SPT at these points and otherwise is not connected to any other rail carrier.

HI is a wholly-owned subsidiary of SPT and is currently operated and managed by SPT as an integrated part of the SPT system. Consummation of the merger will promote corporate simplification and eliminate the expense and burden associated with maintaining HI's separate corporate entity. Under the merger plan, HI will be dissolved as a separate corporate entity, and all of its assets and liabilities will be vested in SPT. No reduction in transportation facilities are contemplated and no obligations of HI will be impaired.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with cariers outside the corporate family.

As a condition to use of this exemption, any employees affected by the merger shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979).

Decided: October 21, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-25958 Filed 10-30-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-88 (Sub-3X)]

Bessemer and Lake Erie Railroad Co.; Abandonment and Discontinuance of Service; Butler County, PA; Exemption

Applicant, Bessemer and Lake Erie Railroad Company (B&LE), has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*, to discontinue service over and abandon that portion of its hilliards Branch rail line extending from milepost H9.93 to milepost HLO.23, a distance of approximately 0.30 miles, in Butler County, PA.

Applicant has certificated (1) that no local traffic has moved over the line for at least 2 years and that no overhead traffic moves over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective November 30, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by November 12, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 20, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representative: Gray J. Marini, 135 Jamison Lane, Monroeville, PA 15146.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*. A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 23, 1985.

By the Commission, Heber P. Hardy, Director, Office of proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-25956 Filed 10-30-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-269)]

Burlington Northern Railroad Co.; Abandonment; Clay, Fillmore and York Counties, NE; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad to abandon its 11.20-mile rail line between Sutton (milepost 107.60) and Lushton (milepost 118.80) in Clay, Fillmore, and York Counties, NE. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from purblication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-25957 Filed 10-30-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection Activities Under OMB Review

October 28, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Pub. L. 96-511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633-4312.

Existing Collection in Use Without an OMB Control Number

(1) Larry E. Miesse, 202/633-4312
(2) General Services Staff, Justice Management Division, Department of Justice
(3) CERTIFICATION OF IDENTITY
(4) DOJ-361
(5) On occasion
(6) Individuals or households. Completed by individuals who request records relating to themselves under the Privacy Act.
(7) 2,500 respondents
(8) 50 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

New Collection(s)

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) REFUGEE/ASYLEE RELATIVE PETITION
(4) I-730
(5) On occasion
(6) Individuals or households. Used to file petition for applicant's spouse and/or child.
(7) 2,500 respondents
(8) 207.5 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) DOCUMENT VERIFICATION REQUEST
(4) G-845
(5) Recordkeeping
(6) Individuals or households. Form to be tested as part of the Systematic Alien Verification for Entitlement (SAVE) Program.
(7) 25,000 respondents
(8) 2,075 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) National Institute of Corrections, Department of Justice
(3) MANAGEMENT OF DISRUPTIVE MAXIMUM SECURITY INMATES SURVEY
(4) N/A
(5) One time
(6) State or local governments, Federal agencies or employees. Questionnaire solicits information to be used to recommend improved management strategies in the areas of housing, classification, staffing, and programming for disruptive maximum security inmates.
(7) 52 respondents
(8) 52 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

Larry E. Miesse,

Departmental Clearance Officer, Department of Justice.

[FR Doc. 85-25999 Filed 10-30-85; 8:45 am]

BILLING CODE 4410-10-M

City and County of Denver, CO; Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October, 1985, a proposed consent decree in *United States* v. *The City and County of Denver*, Civil Action No. 84-JM-1507, was lodged with the United States District Court for the District of Colorado. The proposed decree requires Denver to pay seven thousand five hundred dollars ($7,500) into the Hazardous Substance Response Trust Fund and to treat all contaminated groundwater resulting from the installation of groundwater monitoring wells at the Lowry Landfill site near Denver, Colorado.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City and County of Denver*, D.J. Ref. 90-11-2-93.

The proposed consent decree may be examined at the Office of the United States Attorney, Attention Janice Chapman, Esq., 1961 Stout Street, Suite 1200, Federal Office Building, Denver, Colorado 80294, and at the Region VIII Office of the Environmental Protection Agency, One Denver Place, 999 18th Street, Denver, Colorado 80202–2413, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1728, Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 ($.10/page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–26052 Filed 10–30–85; 8:45 am]

BILLING CODE 4410-01-M

Colorado Organic Chemical Co., Inc., et al.; Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 7, 1985, a proposed consent decreed in *United States* v. *Colorado Organic Chemical Co., Inc., et al.*, Civil Action No. 85–F–2222, was lodged with the United States District Court for the District of Colorado. The proposed decree imposes a civil penalty of fifty-five thousand ($55,000) dollars upon defendants, Colorado Organic Chemical Co., Inc., (COC), Phillip C. Mozer (Mozer) and First Interstate Bank, as trustee of the Phillip Mozer trust, for their untimely compliance with administrative clean-up orders under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act, and for failure to apply for a permit or for interim status under RCRA. The decree also precludes COC and Mozer from directly engaging in the chemical formulating or manufacturing business for a period of five years from the date of entry of the decree.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Colorado Organic Chemical Company, Inc.*, D.J. Ref. 90–7–1–240.

The proposed consent decree may be examined at the Office of the United States Attorney, 1961 Stout Street, Suite 1200, Federal Office Building, Denver, Colorado 80294, and at the Region VIII Office of the Environmental Protection Agency, One Denver Place, 999 18th Street, Denver, Colorado 80202–2413, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 ($.10/page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–26053 Filed 10–30–85; 8:45 am]

BILLING CODE 4410-01-M

SCM Corp.; Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 18, 1985, a proposed consent decree in *United States* v. *SCM Corporation*, Civil Action No. K–84–2428, was lodged with the United States District Court for the District of Maryland. The proposed decree concerns violations by defendant of the effluent limits and reporting obligations in its Clean Water Act discharge permit. The proposed decree imposes a civil penalty of two hundred forty-five thousand ($245,000) dollars and requires SCM Corporation to reimburse the State of Maryland fifty thousand dollars ($50,000) for administrative and litigation expenses, and to comply with certain effluent limitations until a renewal permit is final and effective.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *SCM Corporation*, D.J. Ref. 90–1–1–2145.

The proposed consent decree may be examined at the Office of the United States Attorney, 8th Floor, U.S. Courthouse, 101 W. Lombard Street, Baltimore, MD. 21201, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA. 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–26054 Filed 10–30–85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Request for Comments on Changes in Local Area Unemployment Statistics (LAUS) Procedures

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Request for Comments on Proposed Change in Local Area Unemployment Statistics Methodology.

SUMMARY: With the availability of final 1980 Census data and the completion of a number of research projects, the Bureau of Labor Statistics intends to introduce updates to and methodological improvements in the procedures for developing local area unemployment statistics. Proposals to update the procedures include the introduction of 1980 Census Data in the estimation of agricultural employment and in the adjustment of State and area employment to place-of-residence. Methodological revisions are proposed in estimation of all-other nonagricultural employment and the estimation of unemployed delayed and never filers.

DATE: Comments must be submitted on or before December 2, 1985.

ADDRESS: Send comments to: U.S. Department of Labor, Bureau of Labor Statistics, 441 G Street NW. Room 2083, Washington, DC 20212.

FOR FURTHER INFORMATION CONTACT: Sharon Brown 202–523–1807.

Dated at Washington, D.C., this 28th day of October 1985.

Janet L. Norwood,

Commissioner.

[FR Doc. 85-25945 Filed 10-30-85; 8:45 am]

BILLING CODE 4510-24-M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Appointment of Members and Notice of Meeting

Notice is hereby given that appointments have been made to fill six (6) vacancies on the National Advisory Committee on Occupational Safety and Health (NACOSH). The vacancies were created by the expiration of terms of six members on June 30, 1985. Three of the vacancies have been filled by members who have been reappointed to continue serving on the Committee, they are:

Ms. Joyce C. Hearn, Public Representative
Mr. B. Gawain Bonner, Safety Representative
Dr. Marcus M. Key, Health Representative

The other three vacancies have been filled by the appointment of new members:

Mr. Thomas F. Evans, Management Representative
Ms. Margaret M. Seminario, Labor Representative
Ms. Gerrie G. Kilburn, Health Representative

Each of these members has been appointed for a term which will end on June 30, 1987.

The Committee will meet on November 14 and 15, 1985 in Room N-5437 at the Frances Perkins Department of Labor Bldg. The meeting will begin at 9:00 a.m. The public is invited to attend.

The agenda will include the swearing in of the members and reports on OSHA and NIOSH activities.

The National Advisory Committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. For additional information contact: Clarence M. Page, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3662, 3rd Street and Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8024.

Signed at Washington, D.C., this 25th day of October 1985.

Patrick R. Tyson,

Acting Assistant Secretary.

[FR Doc. 85-25947 Filed 10-30-85; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Radio Section) to the National Council on the Arts will be held on November 18-19, 1985, from 9:00 a.m.-6:30 p.m. and on November 20, 1985, from 9:00 a.m.-5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Council and Panel Specialist, National Endowment for the Arts.

[FR Doc. 85-25971 Filed 10-30-85; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the visual Arts Panel (Visual Artists Organizations Section) to the National Council on the Arts will be held on November 18-21, 1985, from 9:00a.m.-6:00 p.m. and on November 22, 1985, from 9:00. a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennslyania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by applicants. In accordance with the determination of the Chairman published in the **Federal Register** of Febraury 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Yvonne Sabine,

Council and Panel Specialist, National Endowment for the Arts.

[FR Doc. 85-25972 Filed 10-30-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-335]

Florida Power & Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-67, issued to Florida Power and Light Company (the licensee), for operation of the St. Lucie Plant, Unit No. 1 located in St. Lucie County, Florida.

The amendment would change the Linear Heat Generation Limiting Condition for Operation from a constant value of 15.0 kw/ft to an axially dependent limit. In addition, several other specifications will be changed to reflect the new Limiting Condition for Operation. This involves the Local Power Density Limiting Condition for Operating curve and the associated Bases. It also involves deleting the 1.01 fuel densification and thermal expansion uncertainty factor since this factor is already included in the engineering factor. These changes result from a revised, corrected EXXON ECCS evaluation of the fuel in the facility.

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 request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10C CFR 50.92, this means that operation of the facility in accordance with the proposed

amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for our proposed determination in each of these areas is discussed below.

Standard (1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will not result in any change or modification to the plant design, configuration or methods of operation, therefore, it will not involve an increase in the probability of accidents previously evaluated. The changes resulting from this amendment impose more restrictive operating limits than currently exist in the Technical Specifications; therefore, it will not involve an increase in the consequences of accidents previously evaluated.

Standard (2) create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the proposed amendment will not affect the design, configuration or methods of operation of the plant in any manner, it will note create the possibility of a new or different kind of accident.

Standard (3) involve a significant reduction in a margin of safety.

The acceptance criteria for emergency core cooling system is specified in 10 CFR 50.46. The changes covered by this amendment result from a revised, corrected EXXON ECCS evaluation for the fuel in the facility. Ths input changes (kw/ft limit) that result from this amendment are more restrictive and will provide results that will assure compliance with the acceptance criteria of 10 CFR 50.46.

The requirements to change the Technical Specifications are the direct result of a reanalysis demonstrating compliance with the acceptance criteria of 10 CFR 50.46 which was required as a result of an error found in the previous analysis. This analysis shows that with the changes incorporated by the proposed amendment there is no significant reduction in any margin of safety.

As stated the above, the staff concludes that this proposed change to the Technical Specifications meets the criteria of 10 CFR 50.92 and therefore, propose to determine that the changes involve no 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 Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington D.C. 20555.

By December 2, 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 designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, 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 Edward J. Butcher: (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, DC 20555, and to Harold R. Reis, Esquire, Newman and Holtzinger, P.C., 1615 L Street NW., Washington, DC, 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, 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 dated October 17, 1985 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Dated at Bethesda, Maryland this 25th day of October, 1985.

For the Nuclear Regulatory Commission.

Edward J. Butcher,

Acting Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 85-26025 Filed 10-30-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station Unit 2); Exemption

I

GPU Nuclear Corporation, Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the holders of Facility Operating License No. DPR-73, which has authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

On October 26, 1983, General Public Utilities Nuclear Corporation (GPUNC) submitted a letter to the State of Washington requesting a variance to 10 CFR 61.55 regarding the classification of TMI-2 EPICOR II solid waste liners. This letter proposed that the EPICOR II liners be categorized as Class A waste and, therefore, be buried in an unsolidified and dewatered condition. Accordingly, GPUN proposed to increase the upper Class A limit for Sr-90 form 0.04 uCi/cc to 1.0 uCi/cc for the EPICOR II liners. On July 17, 1985, GPUN received a letter from the State of Washington granting the variance provided that the following restrictive conditions are met: (1) Sr-90 concentrations are not to exceed 1 uCi/cc; (2) Wastes will comply with Class A waste requirements specified in 10 CFR 61.56; (3) Wastes are disposed of at the bottom of the trench and segregated from stable Class B and C wastes; and (4) Wastes do not contain other radionuclides listed in Tables 1 and 2 of 10 CFR 61.55 which exceed the Class A limits by themselves or giving consideration to the partial fractions rule. In order to implement this variance from 10 CFR 61.55, GPUN submitted a letter to the NRC, on June 25, 1985, requesting exemption from certain requirements of 10 CFR 20.311(b) and 20.311(d)(1), (2) and (3) for classifying the TMI-2 EPICOR II liners. However, we have determined that an exemption from the requirements of 10 CFR 20.311 is not necessary but that an exemption from the waste classification requirements of 10 CFR 61.55 is appropriate.

III

10 CFR 20.311(b) in part states: "Wastes classified as Class A, Class B, or Class C in § 61.55 of this chapter must be clearly identified as such in the manifest." 10 CFR 20.311(d)(1) states: "Pepare all wastes so that the waste is classified according to § 61.55 and meets the waste characteristics requirements in § 61.56 of this chapter." 10 CFR 20.311(d)(2) states: "Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste in accordance with § 61.55 of this chapter." 10 CFR 20.311(d)(3) states: "Conduct a quality control program to assure compliance with §§ 61.55 and 61.56 of this chapter; the program must include management evaluation of audits."

The above regulations require the licensee to comply with the waste classification requirements of 10 CFR 61.55. Under 10 CFR 61.55, the TMI-2 liners (approximately 100 liners total, each with 170 $ft.^3$ of spent resin) would be classified as Class B waste. If the licensee proposes to reprocess the EPICOR liner waste to meet Class A classification under 10 CFR 61.55, there would be an increase in waste volume to be disposed of by about 600 percent. Compliance with the Class B conditions of 10 CFR 61.55 would require stabilization of the waste form. This would also result in substantial increases in the volume of EPICOR liner wastes to be disposed and the occupational exposure due to required increased handling of waste. We estimate that the stabilization requirements for Class B wastes would result in a volume increase of 20 percent to 50 percent for the EPICOR liners to be disposed. Additionally, we estimate that occupational exposure resulting from either the stabilization requirement of Class B form or reprocessing to meet the Class A classification condition would increase by at least a factor of two over the exposure which would result from the handling of the EPICOR liners as Class A waste. Accordingly, an exemption from the waste classification requirements of 10 CFR 61.55, which would otherwise require the EPICOR wastes to be classified as Class B and stabilized, is appropriate as required stabilizaiton would result in an adverse impact and GPUN has proposed alternatives for the handling and disposal of the EPICOR wastes.

In lieu of the waste classification requirements of 10 CFR 61.55, GPUN proposed to classify the TMI–2 EPICOR II liners in accordance with a letter submitted by GPUNC to the State of Washington on October 26, 1983, requsting a variance to the requirements of 10 CFR 61.55 to allow a 1 uCi/cc limit on SR–90 as the upper Class A limit for TMI–2 EPICOR II liners. In response to a September 11, 1981 request, the NRC staff performed an evaluation [Letter from B. Snyder, NRC, to J. Barton, Metropolitan Edison Company, dated October 22, 1981) to determine the Sr-90 concentration limit that would be acceptable for burial of an unstabilized EPICOR II liner. The staff's evaluation concluded that dewatered resin wastes with a concentration limit of 24 uCi/cc of Sr-90 would be acceptable for burial at an arid disposal site such as the Hanford site in the State of Washington provided certain restrictions on disposal were met. The acceptability of the disposal was based on pathway analyses that demonstrated that the performance objectives in proposed 10 CFR Part 61 would be met. Disposal as provided in the State variance would meet the performance objectives in final Part 61 and all other aspects of the staff's earlier October 22, 1981 evaluation were reviewed and determined to remain valid for this current exemption request. The staff, therefore, concludes that the licensee's proposal for an upper Class A limit of 1.0 uCi/cc for Sr-90 is acceptable in this instant action and an exemption to the waste classification requirements of 10 CFR 61.55 is appropriate. Alternatively, without the exemption, the licensee would not be able to implement the state variance from 10 CFR 61.55 resulting in a substantial increase of waste volume to be handled and transported for disposal. Such an increase would be detrimental to the public health and safety and would both increase unnecessary exposure to radiation and consumption of burial site capacity without providing any benefit to public health and safety at the burial site.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 61.6, an exemption is authorized by law and will not result in undue hazard to life or property. The Commission hereby grants an exemption from the requirements of 10 CFR 61.55 as discussed in Section III. The exemption is to the Sr-90 concentration limit of 0.04 curies per cubic meter (microcuries per cubic centimeter) in Column 1 of Table 2 in 10 CFR 61.55 for the specific EPICOR II wastes. The wastes must be labeled and identified as Class A. Further, in order to assure that the site operator can identify the special case EPICOR II Class A wastes and meet the prescribed disposal requirements, the licensee is hereby directed to add the following language or equivalent to the manifest required by 10 CFR 20.311: "Class A EPICOR II waste packages must be disposed of as prescribed in the attached variance." (The requirement to attach a copy of the variance to the shipping papers is included in the State approval.)

It is further determined that the exemption does not authorize a change in effluent types or total amounts nor an increase in power level and will not result in any significant environmental impact. In light of this and as reflected in the Environmental Assessment and Notice of Finding of No Significant Environmental Impact prepared pursuant to 10 CFR 51.21 and 51.30 through 51.32, issued on October 3, 1985, it was concluded that the instant action will not have a significant impact on the environment and thus, an environmental impact statement need not be prepared.

Effective Date: October 24, 1985.

Dated at Bethesda, Maryland.

Issuance Date: October 24, 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–26026 Filed 10–30–85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14768 (File No. 812–6212)]

Double Exempt Flex Fund, Inc., et al.; Application for an Order Permitting Certain Offers of Exchange

October 25, 1985.

Notice is hereby given that Double Exempt Flex Fund, Inc. ("Flex Fund"), Double Exempt Capital Conservation Fund, Inc. (formerly Double Exempt Intermediate Term Fund, Inc.) ("Capital Conservation Fund") and Dougherty, Dawkins, Strand & Yost, Inc. (the "Underwriter"), (Flex Fund, Capital Conservation Fund and the Underwiter, collectivley, "Applicants"), each at 100 South Fifth Street, Suite 2300, Minneapolis, Minnesota 55402 filed an application on September 27, 1985, and an amendment thereto on October 18, 1985, for an order of the Commission pursuant to section 11(a) of the Investment Company Act of 1940 (the "Act") approving certain offers of exchange. Applicants also request that such approval be made applicable to future open-end investment companies ("Additional Funds") for which the Underwriter serves as principal underwriter or distributor (Flex Fund, Intermediate Term Fund and Additional Funds, collectively, the "Funds"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicants represent that Flex Fund and Capital Conservation Fund are open-end investment companies that have filed registration statements with the Commission on Form N1–A under the Securities of Act of 1933 and the Act. The application states that the registration statement filed by Flex Fund is currently effective and that registered shares of Flex Fund are offered for sale to the public on a continuous basis. The application also states that the registration statement of Capital Conservation Fund was filed with the Commission on July 26, 1985, but is not yet effective. According to the application, upon effectiveness of Capital Conservation Fund's registration statement, shares of said Fund will be registered and offered for sale to the public on a continuous basis.

Applicants state that Flex Fund currently acts as its own transfer agent and that the Capital Conservation Fund proposes to act as its own transfer agent upon effectiveness of its registration statement. The application states that the Underwriter serves as principal underwriter for both Funds and intends to maintain a continuous public offering of shares of the Funds at their respective net asset values per share plus a sales load. According to the application, the sales load for shares of Flex Fund is assessed as a percentage of the public offering price of such shares, and the percentage varies with the amount of the purchase in accordance with the following table:

Amount of purchase	Sales charge as percentage of public offering price (percent)
Less than $25,000	4.00
$25,000 but less than $100,000	3.50
$100,000 but less than $250,000	2.25
$250,000 but less than $500,000	1.75
$500,000 or more	1.25

According to the application, the sales load for shares of Capital Conservation Fund is also a percentage of the public offering price that varies with the amount of the purchase of such shares and is assessed in accordance with the following table:

Amount of purchase	Sales charge as percentage of public offering price (percent)
Less than $25,000	1.25
$25,000 but less than $100,000	1.13
$100,000 but less than $250,000	.88
$250,000 but less than $500,000	.75
$500,000 but less than $1,000,000 or more	.63 .50

In addition, the application states that the Underwriter proposes to maintain a continuous public offering price of shares of Additional Funds either (i) at their respective net asset values per share plus a sales charge not in excess of 8.5% of the public offering price of such shares or (ii) at their respective net asset values per share without a sales charge.

The Applicants seek authority to permit the following offers of exchange:

1. Share of any Fund may be exchanged for (a) shares of any other Fund with an equivalent, lower or no sales charge on the basis of the relative per share net asset values of the respective Funds at the time of the exchange without a sales charge or (b) shares of any other Fund with a higher sales charge on the basis of the relative per share net asset values of the respective Funds at the time of the exchange plus the difference between the sales charge applicable to the Fund whose shares are being acquired and the sales charge previously paid with respect to the shares being exchanged.

2. In cases in which shares of a Fund have been acquired by exchange from a Fund having a higher sales charge, the higher sales charge shall be considered to have been previously paid in determining whether any additional sales charge should be assessed in the vent such shares are further exchanged for shares of another Fund.

3. Where fewer than all of a shareholder's shares are exchanged, those for which no or a lower additional sales charge would be payable will be deemed exchanged first.

4. Rights of accumulation and other arrangements described in the respective prospectuses allowing for reduced sales charges are applied to determine the sales charge applicable to shares of a Fund being acquired by exchange.

5. An exchanging shareholder is charged an administrative fee of $5.00 by the transfer agent of the Fund whose shares are being acquired.

Applicants assert that the purpose of the exchange offers is to permit a shareholder of any one of the Funds to transfer to another Fund in the event that the shareholder's investment objectives change and to receive credit for any sales charge previously paid. Applicants further assert that the proposal provides an equitable basis for an exchange of shares which does not discriminate unjustly against any class of investors. Applicants undertake to limit any future offers of exchange involving any Additional Funds to the same terms and conditions described in the application.

Applicants state the Underwriter has the exclusive right to distribute shares of each of the funds directly and through unaffiliated dealers who have sales agreements with the Underwriter. Where the shareholder is charged a differential in sales charge, the commission to the sales representative is less than it would be on a direct purchase of the shares being acquired.

Thus, Applicants believe that there is not sufficient financial incentive for a sales representaive of the Underwriter to initiate such exchanges for his or her own benefit. Applicants represent that the Underwriter has established sufficient internal monitoring and review procedures to ensure that such exchanges are made at the request of the shareholder and not for the Underwriter's sales representative's personal gain.

Notice is further given that any interested person wishing to request a hearing on the application, may, not later than November 18, 1985, at 5:30 p.m., do so by submitting a request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-26029 Filed 10-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14769 (File No. 812-6175)]

FPA Paramount Fund, Inc., et al.; Application for Exemptive Order Permitting Imposition and Waiver of a Contingent Deferred Sales Load

October 25, 1985.

Notice is hereby given that FPA Paramount Fund, Inc., FPA Capital Fund, Inc., FPA New Income, Inc. ("New Income") (collectively, the "Funds") registered under the Investment Company Act of 1940 (the "Act") as open-end, diversified, management investment companies, and the Funds' principal underwriter Angeles/Quinoco Securities, Inc., registered under the Securities Exchange Act of 1934 as a broker-dealer ("AQSI", collectively with the Funds, "Applicants"), each at 10301 West Pico Boulevard, Los Angeles, CA 90064, filed an application on August 14, 1985, and an amendment thereto on October 22, 1985, requesting an order of the Commission pursuant to section 6(c) of the Act, exempting the Funds, AQSI, and other existing or future registered open-end investment companies for which AQSI serves as distributor, and which are sold on the same basis as the Funds, from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder to the extent necessary to permit the assessment (and waiver) of a contingent deferred sales load ("CDSL") on certain redemptions of the Funds' shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicants state that the Funds will impose traditional front-end sales charges on sales of shares purchased in single transactions involving less than $1,000,000 ($2,500,000 in the case of New Income), but propose not to impose front-end sales charges on purchases in single transactions of $1,000,000 or more ($2,500,000 in the case of New Income). Consequently, in such large transactions ("Qualifying Purchases") investors will be able to have the entire proceeds of their purchase payments fully invested from the time they are made. However, Applicants also propose to impose a CDSL on certain redemptions of shares

initially bought in Qualifying Purchases. According to the application, the CDSL will only be imposed in the event of a redemption made within one year following a Qualifying Purchase of the shares redeemed and would be a specified fixed percentage of not more than 1% of the aggregate purchase payments made by the investor.

Applicants represent that the CDSL would be imposed only if an investor redeems an amount which causes the value of the investor's account to fall below the total dollar amount of the Qualifying Purchases made during the one year period prior to redemption. No CDSL will be imposed when an investor redeems amounts derived from (1) increass in the value of the account above the total dollar amount of purchase payments made during the year (either through growth in net asset value per share of a Fund or through reinvestment of dividends and capital gains distribution in additional shares of a Fund), or (2) Qualifying Purchases made more than one year prior to redemption. Applicants state that in determining whether to assess a CDSL, shares held the longest are assumed the first to be redeemed.

Applicants assert that the CDSL does not restrict an investor from receiving his proportionate share of the current net assets of any Fund, but rather, merely defers the deduction of a sales charge and makes it contingent upon an event which may never occur. Applicants allege that the CDSL functionally qualifies as a "sales load" under section 2(a)(35) of the Act because it is paid to AQSI to reimburse it for expenses related to the sale of shares of the Funds to the public, and making the charge contingent upon an event which may never occur does not change its nature. Applicants also argue that the imposition of a CDSL upon redemption instead of a sales charge at the time of purchase does not cause an investor to receive less than a price based on the current net asset value of the shares redeemed. Therefore, Applicants further assert that the proposed transactions do not cause the Funds' securities to fall outside the meaning of "redeemable securities" under section 2(a)(32) of the Act. Similarly, Applicants submit that implementation of the proposed CDSL is not violative of section 22(c) of the Act or Rule 22c-1 thereunder. According to the application, the price of a Fund's shares upon redemption will always be based on current net asset value. The CDSL will merely be deducted at the time of redemption in arriving at the shareholder's proportionate redemption proceeds. However, in order to avoid any possibility that questions might be raised as to the potential applicability of sections 2(a)(32), 2(a)(35), and 22(c) of the Act and Rule 22c-1 thereunder, Applicants request an exemption from those provisions to the extent necessary to permit Applicants to impose the proposed CDSL.

Applicants also request an exemption from section 22(d) in order to allow the Funds to waive the CDSL on redemptions by investors who made Qualifying Purchases more than one year prior to redemption. Applicants represent that such waivers will be fully disclosed in each Fund's prospectus and that there will be no discrimination among the members of each class who would benefit from the waivers. With respect to the relief sought on behalf of future funds for which AQSI serves as distributor, Applicants represent that the CDSL would be imposed and waived under terms identical to those described in the application.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 18, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-26030 Filed 10-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14770; File No. 812-6197]

Application and Opportunity for Hearing; Fidelity Standard Life Insurance Company et al.

October 25, 1985.

Notice is hereby given that the Fidelity Standard Life Insurance Company (the "Company") and Fidelity Standard Life Separate Account ("Separate Account"), (hereinafter collectively referred to as "Applicants"), at 11365 West Olympic Boulevard, Los Angeles, California 90064, filed an application on September 11, 1985, and an amendment thereto on October 9, 1985, for an order of the Commission purusant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting the Applicants from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act. All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant statutory provisions.

Applicants state that the Company is a stock life insurance company organized under the laws of the State of Delaware in 1981, and the Separate Account was established by the Company on May 13, 1985, under the laws of the State of Delaware and registered as a unit investment trust under the Act. Applicants state that the Separate Account proposes to issue group flexible payment deferred variable annuity contracts ("Contracts"), which are designed to be used both in connection with retirement plans that qualify for special tax treatment under the Internal Revenue Code and in connection with non-qualified plans. A registration statement under the Securities Act of 1933, as amended, has been filed to register the offering of the Contracts. According to the application, the Separate Account consists of three Series, each of which invests solely in the shares of one of the following open-end, diversified, management investment companies: Security First Legal Reserve Fund, Inc.; Security First Variable Life Fund, Inc.; and Security First Money Market Fund, Inc. (hereinafter collectively referred to as the "Funds"). According to the application, the Company will allocate all of the purchase payments to the General Account. Thereafter, up to 93% of the purchase payments (reflecting a 7% charge) may be transferred from the General Account to the Separate Account. Applicants state that the charge will be deposited in a holding account and all or part may be refunded upon annuitization or transfer back to the General Account. Applicants recognize that the Commission may deem the 7% charge to be a sales charge insofar as it represents a reduction in the amount paid by the purchaser prior to investment in the Separate Account.

Applicants propose to assess against and deduct daily from the assets of each series in the Separate Account a percentage charge at a rate of .89% annually (.40% for mortality risks and

.49% for expense risks). The Applicants hereby request that exemptions be granted from sections 26(a)(2)(C) and 27(c)(2) of the Act to allow the Separate Account to deduct the mortality and expense risk charges.

Applicants represent in support of the request: that the level of risk charge is both within the range of industry practice for comparable annuity contracts and is reasonable in relation to the risks assumed under the Contract; that the Company bears a mortality risk that the death benefit under the Contract may exceed the series values credited to a participant and that the annuitant may live longer than assumed in the annuity purchase rates guaranteed in the certificates; that the Company guarantees the annual administration charge ($27.50 plus $2.50 for each series for which there are accumulation units included in the value of a participant's account) will not increase, regardless of actual expenses incurred; that the Company will bear the loss if either the mortality or expense risk charges are insufficient to cover the actual costs; that, to the extent the charges are in excess of actual costs, the Company, at its discretion, may use the excess to offset losses when the charges are not sufficient to cover expenses; that the Company will undertake to maintain and make available to the Commission upon request the memorandum or other documentation setting forth the methodology used in determinign that the level of risk charge is within the range of industry practice; that the Company has determined there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and contractowners and that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion; that the Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management investment company, formulate and approve any plan pursuant to Rule 12b-1 under the Act to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the Application may, not later than November 19, 1985 at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the Application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-26031 Filed 10-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23877; 70-7166]

Louisiana Power & Light Co.; Proposal To Issue and Sell up to $75 Million of First Mortgage Bonds for Refunding Purposes

October 25, 1985.

Louisiana Power & Light Co. ("Company"), 142 Delaronde Street, New Orleans, Louisiana 70174, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a), 7 and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

The Company proposes to issue and sell pursuant to a negotiated private placement(s) with an institutional investor(s), not to exceed $75 million aggregate principal amount of its first mortgage bonds in one or more series at one time, or from time to time, not later than March 31, 1986 ("Bonds"). The Company proposes to use the net proceeds derived from the issuance and sale of the bonds for the refunding of $75 million aggregate principal amount of its First Mortgage Bonds, 9% Series due January 1, 1986, or for the payment of short term borrowings incurred for that purpose.

The Bonds are to be issued under the Company's Mortgage and Deed of Trust ("Mortgage") and as proposed to be further supplemented by Supplemental Indenture(s) relating to each series of Bonds. Each series of Bonds will be sold at such price, will bear interest at such rate and mature date as will be determined at the time of sale. One or more series of Bonds may include provisions for optional redemption prior to maturity at various percentages of the principal amount, and may include certain restrictions on optional redemption for a given number of years. In addition, one or more series of Bonds may include provisions for the retirement of all or varying percentages of such series prior to majority pursuant to the sinking or improvement fund, the replacement fund or with certain deposited cash or proceeds of released property. Information with respect to the price to be paid to the Company, interest rate, maturity, redemption provisions and restrictions (if any) on redemption, sinking or improvement fund and replacement fund (if any) with respect to each series of Bonds will be supplied by amendment in this proceeding.

The Company's Mortgage provides that additional first mortgage bonds may not be issued unless the adjusted net earnings of the Company for the 12 consecutive months out of the 15 months immediately proceeding the issuance of the additional first mortgage bonds shall have been at least twice the amount of the annual interest requirements on all first mortgage bonds at the time outstanding, including the additional first mortgage bonds. The adjusted net earnings of the Company for the 12 months ended August 31, 1985 were inadequate to meet this minimum earnings test, but the Company intends to issue each series of Bonds under the provisions of the Mortgage, which provides for refunding an outstanding series of bonds issued under the Indenture within 2 years of maturity without meeting this earnings test. Such provision is consistent with the Commission's Statement of Policy regarding first mortgage bonds (HCAR No. 13105, February 16, 1956).

The Company is facing a period of financial crisis due primarily to (i) the Company's capital requirements associated with the construction of Unit No. 3 ("nuclear") of its Waterford Steam Electric Generating Station, which was placed in commercial operation on September 24, 1985 at a total cost of approximately $2.84 billion and (ii) the Company's financial obligations to its affiliate Middle South Energy, Inc. ("MSE") for the purchase of its 14% share of the capacity and energy from MSE's 90% ownership interest in Unit No. 1 of the Grand Gulf Nuclear Electric Generating Station. Due to the Company's current financial problems, complex and lengthy regulatory and legal proceedings, the limited market for the Company's securities and investors' concern over the Company's regulatory environment and financial condition, the Company believes that the Bonds will be difficult to market to the public. Consequently, the interests of the

Company, its investors and consumers require that the Company have the flexibility to sell each series of Bonds by means of a negotiated private placement with institutional investors in order to secure the advantages of an advance marketing effort and the best available terms. The Company, therefore, requests, pursuant to Rule 50(a)(5) of the Act, that the proposed issuance and sale of each series of Bonds be exempt from the competitive bidding requirements of Rule 50, and that the Company may proceed to select for each series of Bonds an investment banking firm or firms to act as manager or co-manager, as the case may be, and to form a group of underwriters to proceed to negotiate a private placement(s) with an institutional investor or investors. It may do so.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 18, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the delcarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-26033 Filed 10-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22561; File No. S7-39-85]

Order Granting Approval of Plan Allocating Regulatory Responsibility; Midwest Stock Exchange, Inc., and Cincinnati Stock Exchange, Inc.

In the matter of the Midwest Stock Exchange, Inc. ("MSE") and the Cincinnati Stock Exchange, Inc. ("CSE").

Notice is hereby given that the Securities and Exchange Commission (the "Commission") has issued an Order, pursuant to section 17(d)(1) of the Securities Exchange Act of 1934 ("the Act") (15 U.S.C. 78q(d)(1)) and Rule 17d-2 under the Act (17 CFR 240.17d-2), granting approval of a plan for allocating regulatory responsibility (the "plan") filed pursuant to Rule 17d-2 under the Act by the MSE and the CSE. The plan allocates certain regulatory responsibilities to the MSE with respect to a broker or dealer which is a member of both the MSE and CSE ("dual member") and for which the MSE has been appointed the designated examining authority ("DEA") pursuant to Rule 17d-1 under the Act, 17 CFR 240.17d-1.

Accordingly, the MSE shall assume, in addition to the regulatory responsibilities it otherwise has under the Act, regulatory responsibilities allocated to it by the plan with respect to a dual member for which the MSE in the DEA. At the same time, the CSE will be relieved of the regulatory responsibilities which have been allocated to the MSE.

I. Introduction

Section 19(g)(1) of the Act, among other things, requires every national securities exchange and registered association ("SRO") to examine for and enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder and the SRO's own rules unless the SRO's is relieved of this responsibility pursuant to section 17(d) or 19(g)(2) of the Act. For a broker or dealer that maintains membership in more than one SRO ("common member"), the statutory obligation of the individual SROs, without this relief, could result in a pattern of multiple examinations of a common member. This would create unnecessary regulatory duplication and added expenses for a firm and the SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate overlaps and gaps in the regulatory pattern.[1] With respect to a common member, section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

Rule 17d-1 under the Act was adopted by the Commission on April 20, 1976. The rule authorizes the Commission to name a single SRO as the designated examining authority to examine common members for compliance with the Act and Commission and SRO rules and regulations relating to financial responsibility. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d-1 deals with financial responsibility compliance and no other aspect of SRO's responsibilities. Thus, every SRO continues to be obligated, whether or not it is the DEA for the common member, to examine a common member, to examine a common member for compliance with its own rules and provisions of the Act and rules and regulations thereunder governing matters other than financial responsibility.

On October 28, 1976, the Commission adopted Rule 17d-2 under the Act.[2] The rule permits SROs to join in proposing plans for allocating the regulatory responsibilities imposed by the Act with respect to common members. Rule 17d-2(c) provides that the Commission will publish notice of the filing of the proposed plan and provide an opportunity for comment on the plan. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

On August 29, 1985, the Commission published notice of the filing of the MSE/CSE plan [3] as required by Rule 17d-2(c). No comments were received.

II. The Plan

The plan filed by the MSE and CSE is intended to reduce reguatory duplication for firms that are currently members of the MSE and CSE ("dual members"). A brief description of the general operation of the plan follows. The plan is applicable to those dual members for which the MSE has been appointed the DEA pursuant to Rule 17d-1.

A. Examination and Disciplinary Proceeding

The MSE will be responsible for examining for,[4] and enforcing

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[1] Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Sess. 32 (1975).

[2] Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49093 (November 8, 1976).

[3] Securities Exchange Act Release No. 34-22387 (August 29, 1985), 50 FR 36173 (September 5, 1985).

[4] The MSE is responsible for conducting routine and cause on-site examinations, but the CSE reserves the right to participate in cause examinations.

Each exchange will retain responsibility for the granting and denying of extension requests received by it pursuant to Regulation T and Rule 15c3-3 under the Act, 17 CFR 240.15c3-3, and will make information regarding its action on extension requests available in writing to the other exchange on a periodic basis.

compliance with the provisions of the Act, the rules and regulations thereunder, its own rules and comparable rules of the CSE ("comparable rules").[5] Each exchange will retain responsibility for marketplace surveillance. The MSE, however, will examine for compliance with, but not enforce, certain marketplace surveillance rules of the CSE.

Disciplinary investigations and proceedings involving dual members' and/or their associated persons' compliance with the provisions of the Act, the rules and regulations thereunder, the rules of the MSE and comparable rules of the CSE will be the responsibility of the MSE. Each exchange retains responsibility for conducting disciplinary investigations and proceedings related to marketplace surveillance rules. The MSE shall report to the CSE any apparent violations by dual members and/or their associated persons of CSE's marketplace surveillance rules.

B. Membership Services

The MSE will be responsible for processing and approving or disapproving applications submitted by dual members on behalf of persons requiring approval by the rules of both the MSE and CSE. The MSE will be responsible for conducting appropriate examinations of a person subject to a statutory disqualification and for taking any action required. The MSE will be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices of dual members and any other applications required of dual members under the rules of both exchanges. The MSE will keep the CSE advised of its actions on branch offices and persons subject to a statutory disqualification. However, applications to become a proprietary or access participant member of the CSE will continue to be the responsibility of, filed with and processed by, the CSE.

The MSE will be responsible for conducting appropriate investigations, and taking appropriate action, regarding the termination of associated persons for cause unless the termination relates to activities involving trades executed and other activities on the CSE in which case the CSE will be responsible for handling the matter.

The MSE will be responsible for reviewing advertisements, market letters, research reports, sales literature and other instances of public communication by dual members. The MSE will also be responsible for taking appropriate action with respect to all inquires and complaints involving dual members, except for those inquiries or complaints involving trades executed and other activities on the CSE for which CSE will be responsible.

C. Exchanges Based Examinations

The MSE will be responsible for reviewing and subsequent action on dual members' Financial Operations Combined Uniform Single (FOCUS) Reports and any other generally applicable financial reporting requirements imposed by the Commission, the MSE or the CSE. The MSE will be responsible for the review, approval and retention of partnership agreements, corporate certificates and by-laws, subordinated loan agreements and clearance arrangements.

D. Administration of the Plan

Each exchange agrees to keep the other informed on a timely basis regarding any information discovered by or made available to it which is of interest to the other exhange in fulfilling its regulatory obligations. Each exchange agrees to provide to the other exchange access to its files regarding dual members. Each exchange will give prompt notice to the other exchange when an adoption or amendment to the Constitution, rules or policies of that exchange or interpretation thereof becomes effective which will affect the plan. Whenever a change in the CSE provisions becomes effective, the MSE and CSE shall agree in writing as to which party or parties will be responsible for examining for and enforcing compliance with such a change. No reimbursement of costs shall be required in the ordinary course of discharging allocated responsibilities under the plan. The MSE and the CSE will send out a joint notice to all persons affected by the plan.

Neither exchange assumes any liability to the other party to the plan for any loss or damage resulting from any delays, inaccuracies, errors or ommissions with respect to the provision of regulatory functions provided in the plan, except in instances where the loss or damage is the result of willful misconduct. Both parties disclaim all warranties regarding pefomance of their respective responsibilities under the plan.[6]

Disputes under the plan between the MSE and CSE will be settled through binding arbitration. Termination of the plan will occur only after prior written notification to the other party to the plan and upon the Commission relieving the MSE of the responsibilities allocated to it under the plan.

III. Discussion—Conclusion

The Commission believes that the plan is an achievement in cooperation between the SROs. The Commission believes that the plan reduces unnecessary regulatory duplication by allocating to the MSE certain responsibilities for dual members for which the MSE has been appointed the DEA which otherwise would be performed by both SROs. The plan promotes efficiency by reducing costs to both the members subject to the plan and the SRO which has been granted relief from responsibility under it. Furthermore, by coordinating their regulatory functions in accordance with the plan, the SROs will promote investor protection.

This order gives effect to the plan filed with the Commission which is contained in File No. S7–39–85. The parties to the plan shall notify all members affected by the plan of their rights and obligations under the plan.

It is therefore ordered, pursuant to section 17(d) of the Act and Rule 17d–2 thereunder, that the plan of the MSE and CSE filed pursuant to Rule 17d–2 is approved.

It is further ordered that the CSE is relieved of those responsibilities allocated to the MSE under the plan with respect to a dual member for which the MSE is the DEA.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

October 25, 1985.

[FR Doc. 85–26027 Filed 10–30–85; 8:45 am]

BILLING CODE 8010–01–M

[5] The plan provides that dual members of the CSE and MSE that are also members of other self-regulatory organizations ("SROs") will be subject to the provisions of the allocation plans entered into by the MSE and CSE with other SROs.

[6] This disclaimer provision shall have no impact on the rights of third parties under the Federal securities laws.

[Release No. 34-23878; 70-7169]

The Narragansett Electric Co.; Proposal To Issue and Sell up to $40 Million of First Mortgage Bonds

October 25, 1985.

The Narragansett Electric Company ("Narragansett"), 280 Melrose Street, Providence, Rhode Island 02901, a subsidiary of New England Electric System, a registered holding company, has filed an application-declaration pursuant to section 6(a), 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 thereunder.

Narragansett proposes to issue and sell, prior to September 30, 1987, one or two series of first mortgage bonds (New Bonds) in an aggregate principal amount not exceeding $40 million. The number of separate issues of New Bonds, and the amount and timing of each issue, will depend on Narragansett's decision as to whether and when it should redeem its Series M Bonds. The interest rate and price of each series of New Bonds will be determined by competitive bidding. If market conditions exist which make competitive bidding impracticable or undesirable, Narragansett will seek a supplemental order from the Commission authorizing either a negotiated sale through underwriters or a private placement with institutional investors.

The terms and conditions relating to bids for any series of New Bonds will require each bid to specify the interest rate to be borne by that series of New Bonds, and the price to be paid to Narragansett for that series of New Bonds, which price shall be within a specified range which is not less than 95% nor more than 105% of the principal amount of that series of New Bonds. Each series of New Bonds will bear interest, payable semi-annually from the date as of which that series of New Bonds is first certified. Narragansett intends to invite bids for the purchase of each series of New Bonds in accordance with Rule 50 under the Act. In the case of a delayed or continuous offering and sale pursuant to Rule 415, the alternate bidding procedures authorized in HCAR No. 22823 (Sept. 2, 1982) may be utilized.

Each series of New Bonds will be redeemable at general redemption prices, although they may not be redeemed during the first five years of their term through refunding which would result in a lesser effective interest cost to Narragansett. Narragansett believes that the New Bonds can be sold with general redemption prices, or at prices adjusted to conform to the standards of HCAR No. 16369 (May 8, 1969). Each series will also be redeemable in limited amounts at special redemption prices through the sinking or improvement funds, and for other limited purposes.

Each series of New Bonds will be issued pursuant to a supplement to the Indenture, and a maturity date of not less than five nor more than thirty years from the first day of the month of issuance will be determined at that time.

The proceeds from the issue and sale of New Bonds will be applied (a) to retire at maturity the First Mortgage Bonds Series E, 3½%, due March 1, 1986 (Series E Bonds), (b) to redeem, if Narragansett so elects, any or all outstanding First Mortgage Bonds Series M, 13%, due August 1, 2010 (Series M Bonds), (c) to pay or reimburse the treasury for capitalizable expenditures, (d) to retire short-term indebtedness incurred for capitalizable expenditures, (e) to retire short-term indebtedness incurred for the retirement of Series E Bonds or the redemption of Series M Bonds, or (f) to any combination of the foregoing. The Series E Bond will be retired at maturity. The Series M Bonds will be redeemed at general redemption prices in accordance with the Indenture, if and when market conditions permit the issuance of New Bonds at an interest rate lower that the Series M Bonds which would result in a reduction of Narragansett's capital costs. At June 30, 1985, there were $9.75 million of Series E Bonds outstanding and $20 million of Series M Bonds outstanding.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 18, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit, or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-26036 Filed 10-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23879; 70-6656]

New England Electric System; Proposal To Extend the Period in Which To Issue and Sell Common Shares Pursuant to Stock Purchase Plan

October 25, 1985.

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a post-effective amendment to the declaration in this proceeding with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(1)(a) and 50(a)(5) thereunder.

By orders dated August 1, 1977, June 7, 1979, December 22, 1981, and September 28, 1982 (HCAR Nos. 20121, 21091, 22333, and 22649, respectively) the Commission permitted to become effective an application-declaration under which NEES proposed to issue and sell from time to time through December 31, 1985, up to 5,000,000 shares of its authorized but unissued common shares, $1 par value, pursuant to the NEES Dividend Reinvestment and Common Share Purchase Plan ("the Plan"). NEES has issued, on a monthly basis through September 30, 1985, 3,978,541 of the authorized shares and continues to issue shares monthly.

NEES now proposes to extend the period for issuing common shares pursuant to the Plan through December 31, 1988.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 18, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit, or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date,

such declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-26037 Filed 10-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22562; File Nos. 4-281 and S7-433]

Joint Industry Plan; Filing of Amendment to the Consolidated Quotation Plan Relating to Concurrent Use Indemnification

The participants in the Consolidated Quotation Plan ("CQ Plan") and the Consolidated Tape Association Plan ("CTA" Plan") on October 16, 1985 submitted copies of an amendment[1] to the Plan governing the operation of the consolidated quotation reporting system ("CQS") and to the Plan governing the operation of the consolidated transaction system ("CTS").[2]

I. Description of the Amendment

The purpose of the amendments is to amend section XI of the CQ Plan and section XI(d) of the CTA Plan to provide indemnification to Plan participants and others from claims with respect to a participant's concurrent use of the CQS or CTS high speed line to make available market data other than as part of the consolidated dissemination of equities quotation or last sale information.

Since 1978, the CQ Plan and CTA Plan have permitted a participant to provide market data not subject to consolidated dissemination to vendors and others over the CQS or CTS high speed line. This avoids the need to maintain separate transmission facilities to vendors and others. In 1983, the Options Price Reporting Authority ("OPRA"), an organization similar to the CTA and CQ for options information, amended the OPRA Plan to add a provision similar to the concurrent use provisions of the CQ Plan and the CTA Plan. However, the OPRA Plan amendment also included a requirement whereby each OPRA participant indemnifies each other OPRA participant for losses resulting from dissemination of its own market data over OPRA transmission facilities. The proposed amendments to the CQ Plan and the CTA Plan follow a similar approach.

II. Request for Comment

Interested persons are invited to submit written comments on the amendment. Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC All communications should refer to File Nos. 4-281 and S7-433 and should be submitted by December 2, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

October 25, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-26032 Filed 10-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22558; File Nos. SR-CBOE-85-26 and 27]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval of Proposed Rule Changes

On June 26, 1985, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Commission proposed rule changes pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 under the Act[2] to (1) trade options on the Standard and Poor's ("S&P") Over-the-Counter ("OTC") Industrial Index ("S&P OTC Industrial Stock Index" or "the Index")[3] and (2) modify CBOE Rule 6.49 ("Transactions off the Exchange") to accommodate options on indexes composed entirely of National Market System ("NMS") Securities.[4]

The S&P OTC Index is a price weighted[5] index composed of 250 of the largest industrial common stocks traded in the OTC market. The Index contains stocks from a variety of industry groups, including transportation, utilities, communications, food and computers. The purpose of the Index is to reflect the pattern of price movements of common stocks traded in the OTC market.

Standard and Poor's from whom CBOE has obtained the rights to trade options on the Index, has reserved the right to vary the composition of the Index. The S&P expects that any stock selling at more than five times or less than one-fifth the average price of an NMS issue will be closely monitored and subject to review. The S&P also will monitor any stock whose trading volume falls below 75,000 shares a month for an extended period and will eliminate from the Index any stock that trades less than 40,000 shares a month for a six month period.

The mid-point between each component stock's inside bid (*i.e.*, the highest bid) and offer (*i.e.*, the lowest offer) as displayed on NASDAQ, will be used to calculate the index value. Index values will be calculated by S&P at one minute intervals during trading hours and this value will be disseminated continuously during the day. The Index multiplier[6] will be 100, and the base value of the Index, set as of December 31, 1984, is 150.

Options on the index will be cash-settled, and will be European style.[7] The CBOE will trade the options on four consecutive expiration months.[8] CBOE's

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[1] These amendments were submitted pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act").

[2] The CQ Plan and subsequent amendments are contained in File No. 4-281. The Commission approved the CQ Plan in Securities Exchange Act Release No. 16518 (January 22, 1980), 45 FR 6528. The CTA Plan and subsequent amendments are contained in File No. S7-433. The Commission approved the 1980 Restated and Amended CTA Plan in Securities Exchange Act Release No. 16983 (July 16, 1985), 45 FR 49414.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] File No. SR-CBOE-85-27, notice in Securities Exchange Act Release No. 22455 (September 25, 1985), 50 FR 40096 (October 2, 1985). Amendment No. 1 to the filing submitted on September 19, 1985 supplemented the description of the Index and established the guidelines used by S&P for the inclusion of stocks in the Index.

[4] File No. SR-CBOE-85-26, noticed in Securities Exchange Act Release No. 22453 (September 24, 1985), 50 FR 40095 (October 1, 1985).

[5] A stock's proportional value in a price weighted index is determined by its price per share, as opposed to its total capitalization, *i.e.*, price per share times shares outstanding.

[6] This is the amount by which the index value is multiplied to determine the contract value and settlement amounts.

[7] A European style option is one that can be exercised only at expiration. *See* Securities Exchange Act Release No. 22390 (August 9, 1985), 50 FR 32934 (approving European expirations for CBOE's S&P 500 index options).

[8] In its filing, the CBOE retained discretion to use either European-style or American-style options and to use quarterly or consecutive month expirations. The CBOE has elected European options and consecutive month expirations. Letter from Frederic M. Krieger, Associate General Counsel, CBOE, to Alden Adkins, Division of Market Regulation, dated October 17, 1985. Accordingly, if CBOE sought to change either of these determinations it would require a new filing under section 19(b) of the Act.

proposed changes to Rule 6.49 are intended to comply with the Commission's previously announced requirement that barriers to the multiple trading of OTC index options be removed before an exchange can list and trade any such products.[9]

The proposed S&P OTC Index is in most material respects similar to broad-based indexes on which the Commission previously has approved options trading. Thus, the Commission previously has approved options on indexes composed entirely of OTC stocks; [10] price weighted indexes; [11] and European-style index options.[12]

The chief respect in which this Index differs from indexes on which the Commission previously-has approved options trading is that the value of the index is derived from the mid-point of the best bid and ask quotations for each component stock, rather than from last sale transactions. The Commission, in commenting on the application of the Chicago Mercantile Exchange ("CME") for designation as a contract market to trade futures based on the S&P OTC Index, indicated that the combination of price-weighting and use of quotations instead of last sale reports raised certain manipulative concerns, particularly because the index includes stocks with relatively low capitalizations and public float.[13] Nevertheless, the Commission determined that price weighting can ensure that no single stock or group of stocks comprises a significant percentage of an index, particularly if the index, like the S&P OTC Index, contains a large number of stocks. Thus, any manipulative scheme would have to affect the quotations either of a large number of securities or of a small number of securities by a substantial amount. The Commission concluded that any such manipulative scheme should be detectable, if proper surveillance procedures are in place.[14]

Furthermore, the Commission indicated that factors such as the large number of market makers in many of the stocks in the Index can act as an effective market discipline on the market makers, thus reducing manipulative concerns. A manipulation of the Index could prove costly if a potential manipulator of the Index could prove costly if a potential manipulator is forced by other market makers to honor his artifically high quotes and if he must take out a large number of market makers with identical inside bids or offers to establish a new quotation price. This factor, coupled with the large number of stocks that would need to be manipulated in the S&P OTC Index, could act as a deterrent to such activity. Finally, the Commission indicated that S&P's requirements relating to the capitalization and trading volume of each component stock are designed to reduce manipulative concerns by assuring that component stocks are selected from among the most highly capitalized and actively traded NMS Securities. The Commission believes that these findings are as applicable to options on the Index as they are to futures on the Index. Thus, so long as the CBOE has adequate surveillance procedures in place, the price weighting and use of quotations to calculate the value of the Index should not raise undue manipulative concerns.

For similar reasons, the Commission also believes that the Index is properly designated as broad-based.[15] The Index is composed of stocks representing a broad diversity of industry groups. Furthermore, because the Index is price-weighted and contains a large number of stocks, it is not dominated by one stock or a small group of stocks. For these reasons, the Commission finds that the Index is broad-based.[16]

For these reasons, the Commission finds that the proposal to trade S&P OTC Index options (File No. SR–CBOE–85–27) is consistent with the requirements of the Act applicable to a national securities exchange, and, in particular, with Section 6 of the Act.[17]

The Commission also believes that CBOE's proposed change to Rule 6.49 to accommodate options on indexes composed entirely of NMS stocks (File No. SR–CBOE–85–26) is consistent with the Act. As CBOE points out in its filing, the Commission previously has approved the multiple trading of index options and has indicated that the removal of barriers to such multiple trading is a precondition to the approval of OTC index options proposals.[18] While the CBOE states in its filing that it is not, by making the filing at the Commission's insistence, waiving any of its or S&P's proprietary or other rights in the Index, the Commission finds it unnecessary to address this aspect of CBOE's filing because the Commission is not at this time confronted with any proposals that might infringe on CBOE's or S&P's claimed rights.[19]

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[9] Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310.

[10] Securities Exchange Act Release No. 22044 (May 17, 1985), 50 FR 21532 (approving a Philadelphia Stock Exchange, Inc. proposal to trade options on the 100 stock "National OTC Index"); and Securities Exchange Act Release No. 22404 (September 13, 1985), 50 FR 38235 (approving National Association of Securities Dealers ("NASD") a proposal to trade options on the 100 stock NASDAQ 100 and NASDAQ Financial Indexes).

[11] Securities Exchange Act Release No. 21032 (June 8, 1984), 49 FR 24964 (Pacific Stock Exchange's ("PSE") High Technology Index); and Securities Exchange Act Release No. 19709 (April 27, 1983), 48 FR 20179 (American Stock Exchange's Major Market Index).

[12] Securities Exchange Act Release No. 22309 (August 9, 1985), 50 FR 32934 (CBOE's S&P 500 Index option).

[13] Letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Paula Tosini, Director, Division of Economic Analysis, Commodity Futures Trading Commission, dated July 19, 1985.

[14] The Commission specifically indicated that adequate surveillance would require monitoring of the quotations submitted by market makers in the component stocks of the Index. *Id.*, at 6, n.15.

[15] The designation of an index as broad or narrow-based determines what margin and position and exercise limit rules apply. In this regard, the Commission notes that the CFTC has required, as a condition of contract market designation with respect to futures on Indexes of OTC stocks, that the contract markets adopt position limits which decline before the last trading day of the contract. For example, in the case of futures on the S&P OTC Index, as general matter, the CFTC has required that position limits be reduced from 5,000 contracts to 500 contracts on the final day of trading.

While the Commission shares the concerns of the CFTC regarding the impact of various arbitrage and related Index product trading strategies on stock market volatility at expiration, it is pursuing a generic inquiry to determine whether reducing position limits in near-term Index options series as they approach expiration, as well as other possible structural approaches, would help reduce such volatility. *See* letter from Richard T. Chase, Associate Director, Division of Market Regulation, to Richard Scribner, Executive Vice President, Amex, *et al.*, dated October 16, 1985. Accordingly, the Commission has determined not to impose such declining position limits on just those new Index options that have been proposed since the Commission commenced its inquiry.

[16] *See* Securities Exchange Act Release No. 21032 (June 8, 1984), 49 FR 24964 (approving the designation of PSE's High Technology Index as broad-based).

[17] 15 U.S.C. 78f (1982).

[18] While the NASD has commented that proposals such as CBOE's are inadequate because they fail to cover indexes composed partially of OTC stocks (NASD Petition for Reconsideration of and Statement of Comments on Securities Exchange Act Release No. 22026), the Commission continues to require that new proposals to trade options on additional indices be submitted as proposed rule changes under section 19(b)(2) of the Act. Thus, the Commisson can address the NASD's concerns if and when an exchange proposes to trade options on an index composed substantially, but not entirely, of OTC stocks. Securities Exchange Act Release No. 22439 (September 20, 1985), 50 FR 39191, at n. 61.

[19] The Commission previously has pointed out that the primary effect of the Commission's policy of approving the multiple trading of index options is to allow more than one self-regulatory organization to trade options on similar indexes, and that the Commission in adopting this policy has not been faced with proposals to trade options on identical indexes or claims of infringment of proprietary rights. Securities Exchange Act Release No. 22439 (September 20, 1985), 50 FR 39191.

The Commission finds good cause for approving the proposed rule change contained in File No. SR–CBOE–85–26 prior to the thirtieth day after the date of publication of notice of filing thereof in that the proposal has been published for comment for over 20 days and the Commission has received no comments on it; the proposal is being submitted to fulfill a previous Commission determination that such a proposal is both necessary and appropriate; the proposal is somewhat similar to one previously approved by the Commission without material adverse comment;[20] the proposal relieves a competitive restriction and is essentially exemptive in nature; [21] and the CBOE desires to commence trading the index option by October 25, 1985, when the CME expects to commence trading futures on the same index.[22]

The Commisson finds good cause for approving the proposed rule change contained in File No. SR–CBOE–85–27 prior to the thirtieth day after the date of publication of notice of filing thereof in that the proposal has been published for comment for over 20 days and the Commission has received no comments on it; the S&P OTC Index was noticed for comment, and reviewed by the Commission, in the course of CME's application to the CFTC for designation as contract market for futures on the Index; [23] and the CBOE desires to commence trading the Index option by October 25, 1985, when the CME expects to commence trading futures on the Index.[24]

For the Commisson, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 25, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–26028 Filed 10–30–85; 8:45 am]

BILLING CODE 8010–01–M

[20] Securities Exchange Act Release No. 22044 (May 17, 1985), 50 FR 21532 (approving a similar amendment to Phlx's rules in conjunction with approval of Phlx's National OTC Index option).

[21] *Cf.* 5 U.S.C. 553(d)(1) (1982).

[22] Letter from Frederic M. Krieger, Associate General Counsel, CBOE, to Eneida Rosa, Branch Chief, Division of Market Regulation, SEC, dated September 27, 1985.

[23] No public comments were received by the CFTC in the course of those proceedings.

[24] In this regard, the CBOE already has submitted an adequate plan for the surveillance of trading of the Index option, including surveillance sharing agreements with the CME and the NASD.

[Release No. 34–22563; File No. SR–MSTC–85–5]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Company Relating to Underwriting Services Fees

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 27, 1985, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A is the MST System Administrative Bulletin dated July 25, 1985 announcing an increase in underwriting service fees.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change.

The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of and Statutory Basis for, the Proposed Rule Change

During the past year, MSTC's underwriting service volumes have steadily increased. Because of this increase, MSTC had to reevaluate the operational expenses and other fixed costs associated with this service. The increased costs are being passed on to the Participants who use this service.

The proposed fee change is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of dues, fees and other charges among MSTC's Participants.

[1] Certificated issuance: $350.00 plus $2.00 per million of par value. Non-certificated or global certificated issuance: $350.00 per issue.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Securities Trust Company does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 21, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 25, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-26034 Filed 10-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22559; File No. SR-MSRB-85-16]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB") on August 13, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The MSRB's proposal establishes standard settlement timeframes for all "when-issued" inter-dealer municipal securities transactions. The Commission published notice of the proposal on August 16, 1985, to solicit public comment.[1] Two comments were received.[2] On October 7, 1985, the MSRB filed with the Commission a clarifying amendment to the proposal.[3] Moreover, on October 16, 1985, the MSRB requested the Commission to delay until January 1, 1986, effectiveness of its approval Order. This Order approves the proposal consistent with that MSRB request.

Under current MSRB Rule G-12, parties to a when-issued municipal securities transaction agree to that transaction's settlement date. That date, however, generally must be no earlier than: (1) Five business days after the confirmation indicating the final settlement date is sent; or (2) for transactions between the managing underwriter and syndicate members (or an account formed to purchase the new issue), six business days after that confirmation is sent.[4] If the issuer gives notice to the managing underwriter of pending delivery within less than six business days before delivery, however, related settlement dates may be accelerated. The manager can decide to accelerate settlement of transactions between itself and syndicate members or the syndicate account; each selling syndicate member or account in turn can decide to accelerate settlement of transactions among themselves (with such accelerated settlement not to occur before the time for accelerated delivery as determined by the manager); and parties to other transactions can agree to accelerate settlement.

The MSRB's proposal changes the Rule in several ways. First, if the issuer chooses to accelerate delivery of the issue and the managing underwriter agrees to accept that delivery, the manager, syndicate members, accounts and other parties to when-issued transactions no longer will be able to accelerate their respective settlement dates. Second, for when-issued transactions compared through the automated comparison facilities of a registered clearing agency, managing underwriters must provide the clearing agency with at least six business days notice of settlement for the issue. Moreover, the settlement date for that issue must be at least five business days after the clearing agency is provided notice of the final settlement date. Thus, all compared when-issued inter-dealer trades, whether processed within or outside the clearing agency environment, will have a minimum, uniform five business day settlement period.

The MSRB believes that the proposal will enable the municipal securities industry to achieve substantial cost savings by conforming industry practice regarding when-issued transaction settlement dates to clearing agency automated processing systems. Although the MSRB recognizes that the acceleration provisions of the Rule in its current form provide flexibility to the municipal securities industry in timing the settlement of when-issued transactions, the MSRB believes that a degree of standardization is necessary for the industry to enjoy the efficiencies and cost savings of automated securities processing. National Securities Clearing Corporation ("NSCC") is planning to act as the central facilities manager for an automated comparison and settlement service for when-issued municipal securities transactions.[5] The MSRB's proposal is intended to help ease those transactions into that automated service by standardizing when-issued settlement municipal securities dates. The MSRB further believes that the proposal will not impose any material hardships on the municipal securities industry because accelerated municipal securities settlements occur infrequently. Moreover, even when settlements have been accelerated, issuers usually have given managing underwriters more than six business days notice.

The MSRB therefore believes that the proposal is consistent with section 15B of the Act because it fosters coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, municipal securities. In addition, the MSRB believes that the proposal is consistent with section 17A of the Act because it promotes efficiency and the development of uniform standards and procedures for the processing of municipal securities transactions within the National Clearance and Settlement System.

The Commission received two comment letters concerning the proposal. One commenter noted the importance of harmonizing procedures throughout the municipal securities industry in connection with automated processing of when-issued trades.[6] The other commenter suggested that the proposal should prohibit managing underwriters from accepting accelerated delivery from issuers.[7] In that commenter's view, such a prohibition would enhance competition among managing underwriters because, under the proposal, better capitalized managers could accept accelerated delivery from issuers without making deliveries down the distribution chain.

The Commission agrees with the MSRB that the proposal is consistent with the Act and should be approved. The Commission agrees that the proposal will help facilitate automated comparison and settlement of when-issued municipal securities transactions, which should provide substantial cost savings and processing efficiencies to the municipal securities industry. While the proposal reduces somewhat managing underwriters' flexibility by eliminating the option of accelerating inter-dealer settlements, the Commission agrees with the MSRB that this change should not significantly

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[1] *See* Securities Exchange Act Release No. 22339 (August 20, 1985), 50 FR 34569 (August 26, 1985).

[2] *See* letters in File No. SR-MSRB-85-16 from Alexander Brown & Sons, Inc. and Dain Bosworth, Inc.

[3] The amendment provides that the settlement date for when-issued municipal transactions will be at least five business days after the clearing agency is provided notice of that date. The proposal previously provided that such settlement date would be at least five business days after the clearing agency provides notice of that date.

[4] The proposal does not change this provision. The settlement date for "regular way" municipal securities transactions is the fifth business day after trade date. MSRB Rule G-12(b)(ii)(B).

[5] *See* Securities Exchange Act Release Nos. 22004, (May 1, 1985), 50 FR 19510 (May 6, 1985) and 22116 (June 5, 1985), 50 FR 24730 (June 12, 1985), approving File No. SR-NSCC-85-3. *See also*, Securities Exchange Act Release No. 22392 (September 9, 1985), 50 FR 37754 (September 17, 1985), giving notice of proposed rule changes of Midwest Clearing Corporation and Midwest Securities Trust Company that provide automated comparison and settlement services for when-issued municipal securities transactions.

[6] *See* letter from Dain Bosworth, Inc.

[7] *See* comment letter from Alexander Brown & Sons, Inc.

burden the industry. Indeed, as noted by the MSRB, issuers almost always have given managers sufficient notice of accelerated settlement to accommodate the standard five business day settlement cycle. On those rare occasions when issuers will not give sufficient notice, managers still can seek to accommodate issuers by accepting accelerated delivery from the issuer and waiting the five day settlement period for inter-dealer settlements.

The Commission at this time does not believe that the MSRB should prohibit syndicate managers from accepting accelerated delivery from issuers. In the Commission's view, whether a manager can take accelerated deliveries into inventory for later delivery to syndicate members and other broker-dealers is a function of the manager's financial wherewithal, a factor which is likely to be of relevance in the selection of a syndicate manager independent of automated municipal securities comparison processing. Moreover, the Commission believes that manager acceptance of accelerated delivery can be valuable to municipal securities issuers and is reluctant, in effect, to deny that alternative to issuers without a clear basis that serious competitive injury will result to less capitalized underwriters. In this regard, however, the Commission will, and the MSRB has indicated that it intends to, monitor closely any effects that the proposal may have on competition among syndicate managers.

For these reasons, the Commission finds that the proposal promotes efficiency, coordination and uniformity with respect to municipal securities transactions and within the national clearance and settlement system, and that the proposal therefore is consistent with sections 15B and 17A of the Act. As noted above, the MSRB recently requested that the Commission delay the proposal's effective date until January 1, 1986, which would coincide with NSCC's plans to implement its when-issued municipal securities processing system. Because the MSRB proposal is integrally related to that system, the Commission believes it unnecessary to seek further comment of the MSRB's request, and, accordingly, believes good cause exists for approving, without further notice, the proposal as amended to provide for a delayed effective date of January 1, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-MSRB-85-16) be, and it hereby is, approved, such approval to be effective on January 1, 1986, consistent with the MSRB's October 16, 1985 request for delayed effectiveness.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: October 25, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-26035 Filed 10-30-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 25, 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 stock:

Rollins Environment Services, Inc.

Common Stock, $1.00 Par Value (File No. 7-8642)

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 November 15, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privilege 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. 85-26038 Filed 10-30-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2213]

Declaration of Disaster Loan Area; NY

The County of Nassau and the adjacent County of Suffolk in the State of New York constitute a disaster area because of damage caused by Hurricane Gloria which occurred on September 27, 1985. Applications for loans for physical damage may be filed until the close of business in December 23, 1985, and for economic injury until the close of business on July 22, 1986, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, NJ 07410

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)	10.500

The number assigned to this disaster is 221308 for physical damage and for economic injury the number is 634900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 22, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-25913 filed 10-30-85; 8:45 am]

BILLING CODE 8025-01-M

Las Vegas District Advisory Council; Public Meeting

The Small Business Administration, Las Vegas District Advisory Council will hold a public meeting on November 12, 1985, at the Small Business Administration Office, located at 301 East Stewart Avenue, Downtown Station, Post Office, 3rd Floor, Las Vegas, Nevada, from 9:00 a.m. to 11:00 a.m., to discuss such matters as may be presented by Council members, staff of the Small Business Administration, or others present.

For further information, write or call Elizabeth Sutton, Secretary for the Advisory Council, U.S. Small Business

Administration, 301 East Stewart, Post Office Box 7527, Las Vegas, Nevada 89125, or call (702) 388–6616.

Jean M. Nowak,

Director, Office of Advisory Council.

October 23, 1985.

[FR Doc. 85–25916 Filed 10–30–85; 8:45 am]

BILLING CODE 8025–01–M

Louisiana; Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of New Orleans, will hold a public meeting at 10:00 a.m. on Friday, November 22, 1985, at 333 St. Charles Avenue, Room 900. The meeting will be held to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call H.A. McMullen, Acting District Director, U.S. Small Business Administration, 1661 Canal Street, Suite 2000—New Orleans, Louisiana 70112–2890 (504) 589–2744.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 23, 1985.

[FR Doc. 85–25915 Filed 10–30–85; 8:45 am]

BILLING CODE 8025–01–M

Missouri; Region VII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Kansas City, will hold a public meeting at 10:00 a.m., on Tuesday, December 10, 1985, at the Kansas City District Office, 1103 Grand Avenue, 5th Floor, Kansas City, Missouri, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Glenn Davis, District Director, U.S. Small Business Administration, 1103 Grand Avenue, 6th Floor, Kansas City, Missouri 64106—(816) 374–5557.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 23, 1985.

[FR Doc. 85–25914 Filed 10–30–85; 8:45 am]

BILLING CODE 8025–01–M

Vermont; Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, Vermont, will hold a public meeting at 10:00 a.m., Thursday, November 21, 1985, at Holiday Inn, Waterbury, Vermont, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call David C. Emery, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602. (802) 229–0538.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 23, 1985.

[FR Doc. 85–25917 Filed 10–30–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 85–16]

Commercial Space Transportation Advisory Committee; Announcement of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. I), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee. The meeting will take place on Monday, November 18, 1985, from 9:00 a.m. to 5:00 p.m. ET, and Tuesday, November 19, 1985 from 8:30 a.m. to 12:00 noon ET, in Room 2230 of the Department of Transportation Headquarters Building, 400 Seventh Streets, SW., Washington DC. This will be the third meeting of the Committee which will address insurance, economic and policy issues related to the commercial development of expendable launch vehicles, as well as a regulatory update. The members of the committee are:

William Rector, Vice President, General Dynamics;
Norman Augustine, Executive Vice President, Martin-Marietta;
Adolph Medica, Executive Vice President, Chemical Systems, United Technology/Aerojet;
Lionel Alford, Vice President for Aerospace, Boeing;
Donald (Deke) Slayton, President, Space Services, Inc., and former astronaut;
David Grimes, Chairman and Chief Technical Officer, Transpace Carriers;
Leonard Cormier, President, Third Millinneim (MMI);
Jerry Simonoff, Vice President, Citicorp Industrial Credit, Inc.;
Jonathan Conrad, Sconset Group;
Robert Roney, Vice President, Space and Communications, Hughes;
Bernard Schriever, General, United States Air Force (Retired), consultant to the aerospace industry;
Gregg Fawkes, National Chamber Foundation;
George Robinson, Smithsonian Institution;
Kip Hawley, White House liaison to state and local governments;
Gerald Mossinghoff, Pharmaceutical Manufacturers Association;
Dr. Jerry Grey, Editor, American Institute of Aeronautics and Astronautics, and consultant to the space industry;
Joel Alper, President, Comsat World Systems Division, Communications Satellite Corporation;
Ronald F. Stowe, Vice President, Government and Commercial Affairs, Satellite Business Systems;
Daniel A. Ruskin, Vice President, Government Requirements, Lockheed Missiles;
T. Allan McArtor, Vice President, Satellite Systems Division, Federal Express Corporation;
Alton Slay, President, Slay Enterprises, Inc.; and
Professor Lou Howard, Chairman, Aerospace Technology Dept, State University of New York.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained from the DOT Office of Commercial Space Transportation, Room 10401, 400 Seventh Street, SW. 20590, Contact: Leah G. Levy, Telephone 202/426–6170.

Please Note: New security procedures restrict admittance to the Department of Transportation Building. Your admittance will be facilitated if you call the telephone number above before arrival.

Issued in Washington, DC, on October 25, 1985.

Jennifer L. Dorn,

Director, Office of Commercial Space Transportation.

[FR Doc. 85–26000 Filed 10–30–85; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–85–26]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing and disposition of petitions for exemption (14 CFR Part

11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 20, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on October 25, 1985.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24783	Federal Prison Camp Big Spring	14 CFR 63.37	To permit petitioner to administer airmen written examinations to certain inmates even though the applicants do not hold a current commercial pilot certificate with an instrument rating.
22635	Sierra Academy of Aeronautics	14 CFR Portions of Part 63, Appendix C, paragraph (a)(3)(iv)(a).	Extension of Exemption 3564 to allow petitioner to reduce the required 5 hours of flight training in an airplane to not less than 2 hours of intensive flight training in an airplane by incorporating the remaining time in a static airplane for applicants who do not posses a commercial flight certificate with an instrument rating, subject to certain conditions and limitations.
21991	United Airlines	14 CFR 63.39(b)(2) and 121.425(a)(2)(i)	Extension of Exemption 3463 to allow petitioner its flight engineers and flight engineer applicants to continue to use FAA-approved pictorial means and an approved simulator instead of a static airplane for demonstrating satisfactory performance of a preflight inspection and flight engineer duties.
20618	Ransome Airlines	14 CFR 135.429(a)	Extension of Exemption 3166B to permit petitioner to employ Societe Nationale Industrielle Aerospatiale, Sasmat Roussean Aviation, Turbomeca, and Rafier-Figeac, all located in France, and Lucas Aerospace Limited, located in England, to overhaul and repair its Nord 262 aircraft components, asscessories, engines, and propellers even though the companies and their employees performing that work do not hold appropriate U.S. certificates.
24761	Executive Jet Aviation, Inc	14 CFR 91.191(a)(4) 135.165(b)	To allow petitioner to operate its turbojet/fanjet aircraft in extended overwater operations with one Omega/VLF Long-range navigations system (LRNS) and one high-frequency (HF) communication system.
24760	University of Florida Athletic Association	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24757	Goodyear Tire and Rubber Company	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24771	Blueslown Coal Co.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24764	Stephens, Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24768	Ford Motor Company	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24769	Gerber Products Co.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24753	Burnside-OTT Aviation	14 CFR 147.21 and 147.31	To allow credit for certain courses taken by students before the approval of the school's established curriculum.
24775	K Mart Corporation	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing a minimum equipment list.
24762	George Lee	14 CFR 65.91(c)(2)	To allow petitioner to apply for an Inspection Authorization Certificate prior to completing the required two years of actively maintaining aircraft.
24679	Executive Helicopters, Inc.	14 CFR 91.169(a)(b)	To allow petitioner to substitute a continuous airworthiness maintenance and inspection program for the required annual or 100-hour inspection, whichever first occurs.
24772	The Dow Chemical Co.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24700	San Juan Airlines	14 CFR 135.225(a)(1)	To allow permit pilots employed by petitioner to operate certain aircraft from Canadian airports using less than 1 mile takeoff visibility minimums.
23715	American Cyanamid Co.	14 CFR 135.165(a)(5), (a)(6), (b)(5), and (b)(7).	To allow petitioner to dispatch its G1159A and two Learjet Model 55 airplanes over water with a minimum of one HF radio and one long range navigation system installed and operating for flights to and from Bermuda and Puerto Rico.
24530	Kansas City Warbirds, Inc.	14 CFR 45.29	To allow petitioner to fly its B25J aircraft, N6123C, Serial Number 44 86863A with 3 inch indentification numbers instead of the required 12-inch numbers.
24743	Donald Johnson	14 CFR 61.151(a)	To allow petitioner to apply for an Airline Transport Pilot certificate without meeting the regulation's minimum age requirement.
19634	Douglas Aircraft Co.	14 CFR 121.310(d)(4)	Extension of Exemption 3655 to allow petitioner's operators of DC-8 series aircraft to operate those aircraft in passenger-carrying operations without a cockpit control device for each emergency light that complies, provided the number one emergency electrical control switch and circuit breaker used for the manual emergecy light system "on" control function are incoporated into the operator flightcrew training program.
23921	Flight Safety Int'l	14 CFR 61.57	To allow pilots contracting with petitioner to use approved Phase 1 simulators to meet the takoffs and landings requirements.
24760	Diane C. Heckman	14 CFR 65.5(e)	To allow petitioner to apply for a dispatchers certificate before reaching her 23rd birthday.
21960	Florida Aircraft Leasing Corporation	14 CFR 91.31	To allow petitioner to operate its DC-8 at a 5 percent increased zero fuel and landing weight for the purpose of operating as an all-cargo aircraft under Part 125.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
21350	Coastal Corporation	14 CFR 61.58(c)	To allow petitioner's pilots to complete all of their 24-month pilot-in-command checks in an FAA-approved simulator under certain conditions and limitations.
24776	Eagle Jet Charter	14 CFR 43.3	To allow polits of the petitioner who have been properly trained to remove or install aircraft seats on its Cessna and Learjet aircraft.
23543	Arnautical, Inc.	14 CFR 61.63(d)(2)	To allow trainees of petitioner who are applicants for a rating to be added to a private or commercial pilot certificate to substitute the practical test requirement of § 61.157(a) and to complete a portion of that practical test in a simulator in accordance with § 61.157(d), subject to certain conditions.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24383-1	National Airlines	14 CFR 91.303	Relief from the January 1, 1985, noise compliance date. *Partial Grant 9/13/1985.*
24326	Hawaiian Airlines	14 CFR 91.303	Relief from the January 1, 1985, noise compliance date. *Amended Grant 9/16/85.*
23982-1	Independent Air, Inc.	14 CFR 91.303	To allow petitioner to operate two B-707-300 aircrafts until hush kits are installed. *Partial Grant 9/24/85.*
24288-1	Caribbean Air Cargo, Co.	14 CFR 91.303	To allow petitioner to operate two Stage 1 Boeing 707 aircraft in the U.S. until hush kits are installed. *Granted 9/26/85.*
23956-1	Carefree Vacations/Worldwide Airlines	14 CFR 91.303	Relief from the January 1, 1985, noise compliance date. *Partial Grant 9/24/85.*
24460	Frakes Aviation	14 CFR 21.19(b)(1)	To allow petitioner to remove the two Wright 1820 piston engines and install four turbojet engines on the Grumman Albatross aircraft without obtaining a new type certificate. *Granted 8/16/85.*
24673	Rynes Aviation Inc.	14 CFR Portions of Part 93, Subpart K	To exempt petitioner from airport reservation requirements of FAR Part 93, Subpart K in order to operate its home-based on-demand charter flights into/out of Chicago O'Hare Airport. *Denied 10/1/85.*
24135-1	Icelandair	14 CFR 91.303	To allow petitioner to operate four Stage 1 DC-8 aircraft until hush kits are installed. *Granted 10/10/85.*
24130-1	Worldways Canada	14 CFR 91.303	Relief from the January 1, 1985, noise compliance date. *Granted 10/10/85.*
24052	Blue Angel's (USN)	14 CFR 91.70(a) and (b), 91.71(c) and (d) 91.79(c).	To permit petitioner to conduct airshow rehearsals at Choctaw, FL, and Pensacola, FL, Naval Air Stations (NAS) and El Centro, CA, NAF, in noncompliance with the cited sections. *Granted 9/11/85.*
24542	General Motors, Corp.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted 10/9/85.*
24532	Rochester Telephone Corp.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted 10/9/85.*
24531	Southwestern Bell	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted 10/9/85.*
24588	Wendy's International, Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted 10/9/85.*
24619	American Continental Aviation	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted 10/9/85.*
24610	Gannett	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted 10/2/85.*
24618	Kalair USA Corporation	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted 10/9/85.*
24653	Allegheny International Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted 10/9/85.*
22192	Richmor Aviation, Inc.	14 CFR 141.91(a)	Extension of Exemption 3398 to permit petitioner to conduct flight training and instruction in its approved courses of training at its satellite bases located at Ballston Spa, New York; Scotia, New York; and Poughkeepsie, New York, provided the facilities continue to be available to the chief instructor. *Granted 10/9/85.*
24698	Warner-Lambert Co.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted 10/9/85.*
23361	Japan Air Lines	14 CFR Portions of Parts 21 and 91	To allow petitioner to operate three leased U.S.-registered Boeing 747 aircraft using a Federal Aviation Administration (FAA)-approved minimum equipment list and an FAA-approved continuous airworthiness maintenance and inspection program. *Granted 9/27/85.*
20520	KLM Royal Dutch Airlines	14 CFR Portions of Part 21 and 91	To permit petitioner to operate three U.S.-registered B-747 aircraft using the FAA-approved master minimum equipment list. *Granted 10/3/85.*
23667	Idaho Helicopters	14 CFR 43.3g	To allow petitioner to continue to use trained and certificated pilots to remove, clean, inspect, and reinstall magnetic chip detector plugs on petitioner's helicopters. *Granted 9/26/85.*
23155	Central Flying Service, Inc.	14 CFR 141.91(a)	To allow petitioner to conduct pilot training operations at a satellite base that is more than 25 nautical miles from its home base of operations. *Granted 10/9/85.*
23521	Singapore Airlines, Ltd.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing a minimum equipment list. *Granted 10/9/85.*
23694	Cayman Airways, Ltd.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing a minimum equipment list. *Granted 10/9/85.*
24367	Empressa Ecuatoriana De Aviacion	14 CFR 91.303	To extend the January 1, 1985, noise level compliance date. *Amended Grant 10/16/85.*

[FR Doc. 85-25936 Filed 10-30-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: October 23, 1985.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed.

Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0090

Form Number: ATF F 1643 (5100.18)
Type of Review: Extension
Title: Application for Amended Basic Permit Under the Federal Alcohol Administration Act
OMB Number: 1512–0127
Form Number: ATF F 3065 (5210.4)
Type of Review: Extension
Title: Record of Large Cigars
Clearance Officer: Howard Hood (202) 566–7077, bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue, 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.

U.S Customs Service

OMB Number: 1515–0113
Form Number: None
Type of Review: Extension
Title: Certificate of Payment of Tonnage Tax (Recordkeeping)
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.

Joseph F. Maty,
Departmental Reports, Management Office.
[FR Doc. 85–25965 Filed 10–30–85; 8:45 am]
BILLING CODE 4810-25-M

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6–8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 8% for calendar year 1986.

DATES: The rate will be in effect for the period beginning on January 1, 1986 and ending on December 11, 1986.

Notice of change: Effective October 31, 1985, the Current Value of Funds Rate will be published annually instead of quarterly. This rate will be computed and published each year by October 31, for applicability effective January 1. The Current value of Funds Rate is subject to quarterly revisions as prescribed by the Debt Collection Act of 1982. If revised, the new rate will be published in the **Federal Register** on or around the end of the first month of a calendar quarter and is to be applied to overdue payments arising during the succeeding calendar quarter.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Cash Management Division (Agency Programs Branch), Financial Management Service, Department of the Treasury, Treasury Annex No. 1, PB–711, Washington, D.C. 20226 (Telephone: 202/643–5131).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal cash management systems and is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the twelve-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 per centum. The rate in effect for calendar year 1986 reflects the average investment rates for the twelve-month period ended September 30, 1985.

Dated: October 15, 1985.

Michael T. Smokovich,
Director, Working Capital Group.
[FR Doc. 85–25998 Filed 10–30–85; 8:45 am]
BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 1010 of the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, D.C. 20402, January 14 and 15, 1986. The sessions will begin at 9 a.m. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and provide recommendations to the Administrator.

The meeting will be open to the pubic up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202–389–2886) prior to January 3, 1986.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after meeting. Oral statements will be heard at 11:30 a.m. on January 15, 1986.

Dated: October 24, 1985.

Rosa Maria Fontanez,
Committee Management Officer.
[FR Doc. 85–25961 Filed 10–30–85; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 211
Thursday, October 31, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Commodity Futures Trading Commission	1-5
Consumer Product Safety Commission	6, 7
Equal Employment Opportunity Commission	8
Federal Deposit Insurance Corporation	9, 10
Federal Election Commission	11
Federal Reserve System	12
Legal Services Corporation	13-16
Occupational Safety and Health Review Commission	17
Pacific Northwest Electric Power and Conservation Planning Council	18, 19

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 1, 1985.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market-Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-26071 Filed 10-29-85; 10:35 am]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 8, 1985.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market-Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-26072 Filed 10-29-85; 10:36 am]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 1, 1985.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market-Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-26073 Filed 10-29-85; 10:37 am]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 22, 1985.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-26074 Filed 10-29-85; 10:38 am]

BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 29, 1985.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-26075 Filed 10-29-85; 10:39 am]

BILLING CODE 6351-01-M

6

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, November 6, 1985. See Times Below.

LOCATION: Room 456, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Open to the Public

8:30 a.m.

1. *Commission/Staff Briefing*

The staff and the Commission will discuss various general CPSC matters.

Closed to the Public

9:30 a.m.

2. *Enforcement Matter OS#* 5541

The staff will brief the Commission on issues related to enforcement matter OS# 5541.

3. *Enforcement Matter OS#* 3677

The staff will brief the Commission on issues related to enforcement matter OS# 3677.

4. *Compliance Status Report*

The staff will brief the Commission on various enforcement matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: October 29, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-26151 Filed 10-29-85; 3:43 p.m.]

BILLING CODE 6355-01-M

7

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, November 7, 1985.

LOCATION: Third Floor Hearing Room, 1111-18th Street NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Methylene Chloride: Remedial Options

The staff will brief the Commission on possible remedial options and the staff recommendations for Commission action concerning the potential risks to users of consumer products containing methylene chloride.

2. Upholstered Furniture

The staff will brief the Commission on the progress of industry voluntary efforts through the Upholstered Furniture Action Council (UFAC) to improve the cigarette ignition resistance of upholstered furniture.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Dated: October 29, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85–26152 Filed 10–29–85; 3:43 pm]

BILLING CODE 6355–01–M

8

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:00 a.m. (eastern time), Tuesday, October 29, 1985.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Closed

1. Proposed Amicus Curiae Participation

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required that no earlier announcement was possible:

In favor of the meeting: Clarence Thomas, Chairman; Fred W. Alvarez, Commissioner; R. Gaull Silberman, Commissioner.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748.

Dated: October 25, 1985.

Cynthia C. Matthews,

Executive Officer.

Issued October 25, 1985.

[FR Doc. 26089 Filed 10–29–85; 11:01 am]

BILLING CODE 6572–01–M

9

FEDERAL DEPOSIT INSURANCE CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, November 4, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Frontier Savings and Loan Association, an operating noninsured savings association located at 301 Cushman, Fairbanks, Alaska.

Guardian Thrift and Loan Association, a proposed new industrial bank to be located at 540A Westminister Mall, Westminster, California.

Application for consent to purchase assets and assume liabilities:

Society Bank of Eastern Ohio, National Association, Canton, Ohio, for consent to purchase certain assets of and assume the liability to pay certain deposits made in the New Philadelphia, Ohio, branch of Midland-Buckeye Savings & Loan Association, Alliance, Ohio, a non-FDIC-insured institution.

Application for consent to purchase assets and assume liabilites and establish three branches:

Hagerstown Trust Company, Hagerstown, Maryland, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay certain deposits made in three Hagerstown, Maryland, branches of Maryland National Bank, Baltimore, Maryland, and for consent to establish those three offices as branches of Hagerstown Trust Company.

Application for consent to transfer assets in consideration of the assumption of deposit liabilities:

Cameron State Bank, Cameron, Missouri, and Farmers and Merchants Bank of Memphis, Missouri, Memphis, Missouri, insured State nonmember banks, for consent to transfer certain assets to Missouri Federal Savings Bank, F.S.B., Cameron, Missouri, a non-FDIC-insured institution, in organization, in consideration of the assumption of the liability to pay deposits made in Cameron State Bank and Farmers and Merchants Bank of Memphis, Missouri.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,350–L

The First National Bank of Midland, (Amendment) Midland, Texas

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Divison of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors, pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: Loan Sales—Reports Due Under Delegated Authority.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: October 28, 1985.

Federal Deposit Insurance Corporation.

Janet M. Reddish,

Assistant Executive Secretary.

[FR Doc. 85–26103 Filed 10–29–85; 11:29 am]

BILLING CODE 0714–01–M

10

FEDERAL DEPOSIT INSURANCE CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, November 4, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: October 28, 1985.

Federal Deposit Insurance Corporation.

Janet M. Reddish,

Assistant Executive Secretary.

[FR Doc. 85–26104 Filed 10–29–85; 11:29 am]

BILLING CODE 6714–01–M

11

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO. 85–25561

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 31, 1985, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN CONTINUED FROM THE MEETING OF OCTOBER 24, 1985: Draft AO 1985–27, Loren D. McManus, on behalf of R.J. Reynolds Industries, Inc.

* * * * *

DATE AND TIME: Tuesday, November 5, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday November 7, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC. (Fifth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Status Report on Common Cause Petition for Rulemaking Regarding Soft Money
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85–26113 Filed 10–29–85; 1:25 pm]

BILLING CODE 6715–01–M

12

FEDERAL RESERVE SYSTEM

Committee on Employee Benefits

TIME AND DATE: 2:30 p.m., Tuesday, November 5, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific items include: (1) Office of Employee Benefits' expense budgets for 1985 and 1986; (2) changes to the actuarial assumptions for the Retirement Plan; (3) administrative changes to Thrift Plan payment methods; and (4) proposed health care trust and flexible benefits plan.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–26084 Filed 10–29–85; 10:44 am]

BILLING CODE 6210–01–M

13

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: An executive session will be held at 7:30 p.m., Wednesday, November 6, 1985. The public portion of the meeting will commence at 10:15 a.m., Friday, November 8, 1985, and continue until all official business is completed.

PLACE: Holiday Inn, A&B Room, 1850 S. Harbor Blvd., Anaheim, CA 92802.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act [5 U.S.C. 552b (c)(2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5(a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Personal and Personnel Matters (Closed)
2. Litigation and Investigation Matters (Closed)
3. Adoption of Agenda
4. Adoption of Minutes
   —October 11, 1985
5. Report of the President
6. Discussion and Action on the Recommendations of the Audit and Appropriations Committee
   —Audit and Accounting Guide
   —FY 1986 Consolidated Operating Budget
7. Discussion and Action on the Recommendations of the Operations and Regulations Committee
   —45 CFR 1630 (Question Costs)

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863–1839.

Dated: October 29, 1985.

Timothy H. Baker,

Secretary.

[FR Doc. 85–26159 Filed 10–29–85; 3:56 pm]

BILLING CODE 6820–35–M

14

LEGAL SERVICES CORPORATION

Committee on Audit and Appropriations

TIME AND DATE: Meeting will commence at 8:00 a.m., Thursday, November 7, 1985, and continue until 3:00 p.m. or all official business is completed.

PLACE: Holiday Inn, A & B Room, 1850 S. Harbor Blvd., Anaheim, CA 92802.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Draft Minutes
   —October 10–11, 1985
3. Revision of Appendix VI of the Audit and Accounting Guide
4. FY 1986 Consolidated Operating Budget
5. FY 1987 Budget Mark

CONTACT PERSON FOR MORE INFORMATION: Joel Thimell, Policy Development, (202) 863–1842.

Dated: October 29, 1985.

Timothy H. Baker,

Secretary.

[FR Doc. 85–26158 Filed 10–29–85; 3:56 pm]

BILLING CODE 6820–35–M

15

LEGAL SERVICES CORPORATION

Committee on the Provisions for the Delivery of Legal Services

TIME AND DATE: Meeting will commence at 3:30 p.m., Thursday, November 7, 1985, and continue until 5:30 p.m. or all official business is completed.

PLACE: Holiday Inn, A & B Room, 1650 South Harbor Blvd., Anaheim, California 92082.

STATUS OF MEETING: Open.

1. Approval of Agenda
2. Approval of Minutes
   —September 5, 1985
3. Discussion of the Interest on Lawyers' Trust Accounts Program

CONTACT PERSON FOR MORE INFORMATION: Dan Rathbun, Policy Development, (202) 863–1842.

Dated: October 29, 1985.

Timothy H. Baker,

Secretary.

[FR Doc. 85–26157 Filed 10–29–85; 3:56 pm]

BILLING CODE 6820-35-M

16

LEGAL SERVICES CORPORATION

Operations and Regulations Committee; Meeting; Tentative Agenda

TIME AND DATE: Meeting will commence at 9:00 a.m., Friday, November 8, 1985 and continue until all official business is completed.

PLACE: Holiday Inn, A & B Room, 1850 South Harbor Blvd., Anaheim, California 92802.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —October 10, 1985
3. Lobbying—45 CFR Part 1612
   —Outside witnesses
   —Report from the Office of the General Counsel
   —Public comment
4. Other Regulations Adopted after April 27, 1984

CONTACT PERSON FOR MORE INFORMATION: Thomas A. Bovard, Office of the General Counsel, (202) 863–1820, Ext. 1400.

Dated: October 29, 1985.

Timothy H. Baker,

Secretary.

[FR Doc. 85–26160 Filed 10–29–85; 3:56 pm]

BILLING CODE 6820-35-M

17

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, November 7, 1985.

PLACE: Suite 410, 1825 K Street, NW., Washington, DC.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussison of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634–4015.

Dated: October 29, 1985.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 85–26118 Filed 10–29–85; 1:46 pm]

BILLING CODE 7600-01-M

18

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

STATUS: Open.

TIME AND DATE: November 6–7, 1985, 9:00 a.m.

PLACE: Council Offices, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

- Council Deliberation on Modified Model Conservation Standards Proposed Amendments.*
- Council Deliberation on Draft Power Plan.
- Council Business.
- Public Comment will follow each item.

*The record on the MCS closed on October 23, 1985, and the record on the draft plan closed October 25, 1985; therefore, no public comment can be taken on these subjects at this meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–26069 Filed 10–29–85; 10:26 am]

BILLING CODE 0000-00-M

19

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

STATUS: Open.

TIME AND DATE: November 13–14, 1985, 9:00 a.m.

PLACE: Council Offices, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

- Council Deliberation on Draft Power Plan.
- Council Business.
- Public Comment will follow each item.

* The record on the MCS closed on October 23, 1985, and the record on the draft plan closed October 25, 1985; therefore, no public comment can be taken on these subjects at this meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–26070 Filed 10–29–85; 10:27 am]

BILLING CODE 0000-00-M

federal register

Thursday
October 31, 1985

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 70, 500, 514, and 571

Sponsored Compounds in Food-Producing Animals; Proposed Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 70, 500, 514, and 571

[Docket No. 77N-0026]

Sponsored Compounds in Food-Producing Animals; Criteria and Procedures for Evaluating the Safety of Carcinogenic Residues

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish procedures and minimum criteria to ensure the absence of significant concentrations of cancer-causing residues in edible products of food-producing animals to which drugs, food additives, or color additives have been administered. The procedures and criteria implement the DES Proviso, an exception to the Delaney anticancer clause, which permits approval of the use of carcinogenic compounds in food-producing animals, provided that the level of any residue remaining in edible tissues is so minimal that it would not present any significant risk of cancer for human consumption.

DATE: Written comments on or before February 28, 1986.

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

FOR FURTHER INFORMATION CONTACT: Robert Benson, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

SUPPLEMENTARY INFORMATION: The Food Additives Amendment of 1958 (Pub. L. 85-929) added the "Delaney Clause" to the Federal Food, Drug, and Cosmetic Act (the act). The clause proscribes the approval of any food additive found to induce cancer in man or in laboratory animals. FDA interpreted the clause as applying to compounds for use in food-producing animals. This interpretation barred the approval of carcinogenic compounds that were potentially useful in raising food-producing animals. Accordingly, the Drug Amendments of 1962 (Pub. L. 87-781) included an additional provision to the Delaney Clause that permitted the approval of the use of a carcinogenic compound in food-producing animals if "no residue" of the compound would be found in the edible tissues of treated animals by an FDA-approved analytical method capable of verifying the absence of residues. This provision is referred to as the DES Proviso. The DES Proviso also proved to be unworkable because the development of more sensitive analytical methods for detecting residues of a compound resulted in the identification of residues in tissue at concentrations much lower than expected when the DES Proviso was enacted. In fact, beginning in the early 1970's, progress in analytical chemistry was so rapid that even approved methods of analysis soon became dated or obsolete. FDA could never conclude that no trace of a carcinogenic compound or residue would remain in the edible tissues of animals to which the compound had been administered.

As a result FDA attempted to reconcile the purpose and language of the DES Proviso with the basic statutory objective of minimizing public exposure to carcinogenic compounds. FDA attempted to establish procedures and criteria for approving methods for identifying unacceptable concentrations of residues in edible products of food-producing animals to which drugs, food additives, or color additives had been administered. The procedures and criteria were proposed as regulations comprising what are commonly referred to as the "sensitivity of the method" or "SOM" procedures. As discussed in further detail below, the procedures were proposed in 1973, finalized in 1977, withdrawn in 1978, and reproposed in 1979. FDA is now proposing the procedures again. The procedures are designed to permit the identification of that concentration of residue of a carcinogenic compound that presents an insignificant risk of cancer to the consuming public. Accordingly, the procedures call for a quantitative estimation of the risk of cancer presented by the residues of any carcinogenic compound proposed for use in food-producing animals. The procedures provide that, before a carcinogenic compound can be approved for use in food-producing animals, an analytical method must be available that can accurately and dependably measure the carcinogenic residues of the compound at concentrations greater than that estimated to be insignificant. That concentration is defined under the procedures as "no residue." The definition renders the DES Proviso operable.

I. Introduction

A. Statutory Bankground

The act contains three Delaney, or anticancer, clauses: sections 409(c)(3)(A), 512(d)(1)(H), and 706(b)(5)(B) (21 U.S.C. 348(c)(3)(A), 360b(d)(1)(H), and 376 (b)(5)(B)). Each clause contains an exception applicable to compounds administered to food-producing animals. The exception, the DES Proviso, hinges on the finding of "no residue" of carcinogenic concern. The DES Proviso is the statutory basis for these proposed regulations. A discussion of the history, interpretation, and application of the DES Proviso follows.

1. *Food Additives Amendment of 1958.* Section 409 of the act, the Food Additives Amendment of 1958, establishes a licensing procedure for food additives, substances that are likely to become components of food. Section 409 of the act provides that a food additive must be shown to be safe through adequate scientific testing procedures. A primary function of the amendment was to require that manufacturers of food additives test substances that are added to food even if the substances are only potentially unsafe.

Before the amendment, FDA's authority for ensuring the safety of substances added to food was limited to section 402 (a)(1) and (2)(A) of the act (21 U.S.C. 342 (a)(1) and (2)(A)). The section applies to intentionally added food substances that may be injurious to health. The section places a burden upon the agency to show that an added substance may be injurious. The Food Additives Amendment of 1958 shifted this burden by requiring a sponsor or proponent of a food additive to prove that the additive could be safely used.

When first introduced in Congress, the Food Additives Amendment of 1958 did not contain a specific anticancer clause. The amendment contained a section requiring that food additives be demonstrated by premarketing testing to be safe. That section was enacted and is known as the General Food Safety Clause (section 409(c)(3)(A) of the act). Elliott L. Richardson, then Assistant Secretary of the Department of Health, Education, and Welfare (HEW), noted in commenting on the amendment that the General Food Safety Clause provided adequate grounds to protect the public from cancer-causing agents as well as from other toxins. (Ref. 1):

> The scientific tests [required by the General Food Safety Clause] that are adequate to establish the safety of an additive will give information about the tendency of an additive to produce cancer when it is present in food. Any indication that the additive may thus be carcinogenic would, under the terms of the bill, restrain the Secretary [of HEW] from approving the

proposed use of the additive unless and until further testing shows to the point of reasonable certainty that the additive would not produce cancer and, thus, would be safe under the proposed conditions of use.

After the amendment was reported out of committee, Congressman Delaney from New York suggested the addition of an express anticancer clause. As a result, the following provision was added to the bill on August 13, 1958:

[N]o additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal or if it is found after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal * * *.

The House Committee on Interstate and Foreign Commerce and HEW agreed to the amendment. HEW, however, continued to maintain that the amendment did not change the meaning of the bill and that the power to regulate carcinogenic substances, as Assistant Secretary Richardson explained, was already contained in the General Food Safety Clause.

2. *Color Additive Amendments of 1960.* Section 706 of the act, the Color Additive Amendments of 1960, applies to all substances used to impart color to food and requires that before a color additive may be marketed it must be demonstrated to be safe by scientific testing. Section 706 of the act also has an anticancer clause for color additives in food. The clause is nearly identical to that promulgated in the Food Additives Amendment of 1958. Before the amendments became law, HEW commented again that an express anticancer clause was unnecessary to prevent approval of carcinogenic or potentially carcinogenic color additives because the clause did not offer any public protection that was not already provided by the general requirement to perform premarketing safety tests (Ref. 2).

3. *Drug Amendments of 1962 and Animal Drug Amendments of 1968.* Until 1962, the anticancer clauses in sections 409 and 706 did not distinguish between compounds added directly to human food and compounds that might indirectly enter human food by virtue of having been administered to food-producing animals. FDA interpreted the act as prohibiting the approval of a carcinogenic substance for use in animals. Accordingly, FDA did not consider whether a carcinogenic compound administered to animals left any residues in the edible tissue of the animal. A modification of section 706, however, was suggested by the Secretary of HEW during congressional consideration of the Color Additive Amendments of 1960. The Secretary explained (Ref. 2):

There is * * * one respect to which the anticancer proviso has proved to be needlessly stringent as applied to the use of additives in animal feed. For example, in the case of various animals raised for food production, certain drugs are used in animal feed which will leave no residue in the animal after slaughter or in any food product (such as milk or eggs) obtained from the living animal, and which are therefore perfectly safe for man. If this is demonstrated with respect to any particular additive intended for animal feed, and the additive will not adversely affect the animal itself during its expected or intended life cycle, we can see no reason for not permitting such a use of an additive which could be highly useful and beneficial in the raising of animals for food * * *.

We therefore have included in the enclosed draft bill an amendment to permit use of an additive in animal feed under the above-mentioned conditions.* * *

Under the amendment, the assay methods applicable in determining whether there will be a residue shall be those prescribed or approved by us by regulations. This will give reasonable certainty in that regard, although, of course, such regulations may from time to time be changed as new scientific developments demonstrate a need for change. It should be clearly understood that the industry still would have the responsibility of developing adequate analytical methods for detecting residues and furnishing them to the Government with a petition for approval of an additive.

The amendments proposed by the Secretary were not included in the color additive legislation.

In 1962 Congress extensively amended the new drug provisions of the act. At the time "new drugs" included animal drugs as well as human drugs. The amendments were designed, among other things, to rectify the problems identified by the Secretary in 1960 regarding the application of the anticancer clause in section 409 of the act to substances used in food-producing animals. Under section 409 of the act, the drug diethylstilbestrol (DES) could legally be administered to animals for certain longstanding uses. However, no "new" uses of the drug in food-producing animals were permissible under section 409 of the act by operation of the Delaney Clause. Citing this situation, the House Committee on Interstate and Foreign Commerce modified the anticancer clause by adding the DES Proviso. The committee explained the modification as follows (Ref. 3):

The committee amended the anticancer clause of the Food Additives Amendment and the Color Additive Amendments of the Federal Food, Drug, and Cosmetic Act by making this clause inapplicable to chemicals such as veterinary drugs when used in feed for food-producing animals if the Secretary finds: (1) That under the conditions of use and feeding specified in the proposed labeling and reasonably certain to be followed in practice such additive will not adversely affect the animals for which such feed is intended, and (2) that no residue of the additive will be found (by methods of examination prescribed or approved by the Secretary by regulations) in any edible portion of the animal after slaughter or in any food such as milk or eggs yielded by or derived from the living animals.

The Senate accepted the addition of the DES Proviso and modified the anticancer clauses. In 1968, Congress consolidated the various provisions of the act that govern the premarketing approval of drugs used in animals into section 512 of the act. The DES Proviso in section 512(d)(1)(H) of the act provides that the Secretary shall deny an application for approval of a new animal drug if he finds that the "drug induces cancer when ingested by man or animal or, after tests which are appropriate for the evaluation of the safety of such drug, induces cancer in man or animal, except that the foregoing provisions of this subparagraph shall not apply with respect to such drug if the Secretary finds that, under the conditions of use specified in proposed labeling and reasonably certain to be followed in practice (i) such drug will not adversely affect the animals for which it is intended, and (ii) *no residue of such drug will be found (by methods of examination prescribed or approved by the Secretary by regulations,* which regulations shall not be subject to subsections (c), (d), and (h)), *in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals.* * * *" (emphasis added). (A nearly identical proviso exists for food additives (section 409(c)(3)(A) of the act) and for color additives (section 706(b)(5)(B) of the act). To avoid repetition, the language quoted above from section 512(d)(1)(H) of the act will be used or referred to throughout this document.)

B. Interpretation of the DES Proviso

Most compounds used in food-producing animals require premarketing approval under the act. Accordingly, the Delaney Clause as modified by the DES Proviso is potentially applicable to many compounds. Because the DES Proviso is an exception to the application of the Delaney Clause, arriving at an appropriate interpretation of the proviso has been controversial. Several interpretations are possible. FDA believes that there are three plausible interpretations.

Under one interpretation, the term "no residue" in the DES Proviso could be considered satisfied when no residue can be found at the lowest limit of measurement of the available analytical methodology. Under this interpretation, the application of the DES Proviso would be geared to advancements in techniques of measurement. The resulting degree of public health protection would be a function solely of the capability of available technology.

A second interpretation is to construe "no residue" as calling for the definition of some low finite concentration of residues (such as 1 part per billion) as "no residue" for any compound. Under this interpretation, a sponsor of a product would merely have to develop an analytical method that could reliably measure residues of a sponsored compound at the benchmark concentration. This interpretation would not take into account the potency of different carcinogenic residues.

A third interpretation is that which the agency has adopted in these proposed regulations. Under this interpretation, the term "no residue" is defined on the basis of quantitative carcinogenicity testing of residues and the extrapolation of the test data to that estimated concentration of residues that may be considered safe in the total diet of people. Under this approach, the estimated concentration of residues that will be considered safe will vary from compound to compound depending on the carcinogenic potency of the residues. Also, under this approach any future development of a regulatory assay with the capability of measuring even lower concentrations of residues would not result, as under the first interpretation, in precluding the application of the DES Proviso in a given case.

C. History of the SOM Procedures

In addition to the General Food Safety Clause for food additives (section 409(c)(3)(A) of the act), there are virtually identical clauses for new animal drugs (section 512(d)(1)(B) of the act) and color additives (section 706(b)(4) of the act). The essence of these clauses is that a food additive, new animal drug, or color additive for use in food-producing animals cannot be approved for use until it is shown to be safe. "Safe" means a reasonable certainty of no harm from any toxicity, including carcinogenicity. In the case of a drug or food or color additive proposed for use in food-producing animals, FDA must determine not only whether the sponsored compound has been shown to be safe for the animals to which it will be administered, but also whether food derived from the animals will be safe for consumption by people. The sponsor of a compound is required to furnish to FDA the scientific and technical information necessary to make a determination as to safety. Prior to 1973, FDA did not have a consistently applied system for showing the safety of carcinogenic compounds proposed for use in food-producing animals or for invoking the DES Proviso to the Delaney Clause.

In the **Federal Register** of July 19, 1973 (38 FR 19226), FDA published a proposal to establish "the minimum standards for determining the acceptability of assay methods used to assure the absence of residues [of carcinogenic concern] in edible products of food-producing animals." The proposal was the agency's first attempt to provide a consistent and predictable approach: (1) To approve methods of measurement that would trigger the application of the DES Proviso and, therefore, (2) to demonstrate the safety of carcinogenic compounds for use in food-producing animals.

In the **Federal Register** of February 22, 1977 (42 FR 10412), the Commissioner of Food and Drugs promulgated final regulations based on the 1973 proposal. The Commissioner also solicited comments on four specific issues: (1) Acceptable level of risk, (2) comparative metabolism, (3) regulation of endogenous compounds, and (4) methods of determining an assay's lowest limit of reliable measurement.

On May 12, 1977, the Animal Health Institute (AHI) filed a complaint in the United States District Court for the District of Columbia alleging that the regulations were unlawful because they broadened the scope of the Delaney Clause to include substances not determined to be carcinogenic and because they foreclosed the marketing of a compound unless there exits an assay of sufficient sensitivity to detect residues of the compound at "theoretically" safe concentration. Also, AHI alleged that the regulations were impractical and embodied novel and highly suspect technical principles that would impose an environmental burden on the public and enormous financial costs on the animal health industry. AHI also alleged that the regulations violated the Administrative Procedure Act (5 U.S.C. 551 et seq.) because the regulations were not republished for comment.

The court agreed with AHI's letter contention because it found that the final order was significantly different from that proposed. The court remanded the case to FDA for further consideration. The court did not suggest that the agency's basic approach was suspect. The court, however, requested FDA specifically to consider AHI's question regarding the technical feasibility of the regulations. The court recommended that FDA repropose the regulations.

FDA revoked the regulations on May 26, 1978 (43 FR 22675), and on March 20, 1979 (44 FR 17070), reproposed them for public comment. The 1979 proposal contained an evaluation of the response to AHI's criticisms, the court's questions, and the substantative comments filed on the final rule. The reproposal was also supported by a lengthy and detailed administrative record. Furthermore, in an effort to promote the submission of well-directed comments, FDA held a public hearing on the proposal on June 21–22, 1979 (44 FR 23538, April 29, 1979; 44 FR 26899, May 8, 1979). A transcript of the hearing has been made a part of the administrative record of this proceeding.

II. The New Proposal

In reviewing the comments and in listening to participants at the June 1979 public hearing, FDA has concluded that there was a misunderstanding regarding the scope and purpose of the regulations proposed in 1979. In the interest of: (1) Increasing understanding about the SOM procedures and criteria; (2) continuing to draw upon valuable public comment; (3) being open to developments in science, and, most importantly; (4) developing a workable system for ensuring the safety of edible products of food-producing animals, FDA has decided to repropose less detailed regulations and to make available specific guidelines for implementing the regulations. (A notice of availability of the guidelines is published elsewhere in this issue of the **Federal Register.**)

A. Overview of the Proposed Procedures

The proposed regulations and guidelines identify the procedures and the criteria that if followed will permit the approval of carcinogenic compounds intended for use in food-producing animals, provided that the level of any residue remaining in edible tissues is so minimal that it would not present any significant risk of cancer. FDA emphasizes that the proposed regulations pertain to only one potential adverse effect: carcinogenicity. Every sponsored compound must also be evaluated for other potential adverse effects, which are not the subject of the proposed regulations, but which are included in the guidelines made available with this proposed rule.

The first step in the evaluation of any compound proposed for use in animals is the "threshold assessment," the agency's pivotal determination whether carcinogenicity testing is necessary for a sponsored compound. The elements FDA considers in making the threshold assessment are contained in a guideline. The elements include the relationship of the chemical structure of the sponsored compound to that of known carcinogens, the biological activity of the sponsored compound, the possible mutagenic activity of the compound, and the potential exposure of people to residues of the compound. See section III below.

If, after conducting the threshold assessment, FDA determines, under the General Food Safety Clause, that carcinogenicity testing (lifetime feeding studies) of the compound in laboratory animals is necessary, FDA will request the sponsor to test the parent compound and the metabolites identified by FDA to be of carcinogenic concern. (A compound that is administered to a food-producing animal can result in residues in the edible products of the animal that differ in structure from the compound. The enzymatic systems and physiological fluids of the animal often act upon a compound administered to the animal and produce these new substances, commonly known as metabolites or degradation products. Thus, the toxic response in animals could result from the administered parent compound or from the metabolites that the test animals produce by their own metabolism. The latter phenomenon is known as autoexposure.) As an alternative to separate toxicological testing of each metabolite, the guideline provides that FDA will compare metabolite profiles from tissues of target and test animals and will determine whether the bioassay has adequately tested the metabolites by autoexposure. FDA may require separate studies on a metabolite if it appears that a metabolite has not been adequately tested and is likely to have carcinogenic potency greater than the parent compound. If the data from the chronic tests do not demonstrate carcinogenicity, the sponsored compound is not subject to the proposed regulations.

If the data collected demonstrate carcinogenicity, the proposed regulations provide that FDA will evaluate the data on the quantitative aspects of the carcinogenicity of the compound and its metabolites and determine the concentration of the residues of carcinogenic concern that may be considered safe in the total diet of people. That concentration, for purposes of approval, will be defined as "no residue" and will be the permitted concentration of residue in edible tissues of treated animals.

The proposed regulations then provide that the sponsor of the compound must develop a reliable and practical regulatory assay to monitor the permitted concentration of residues in the edible tissues of treated animals.

The final step in the procedure is the determination of when the concentration of residues of carcinogenic concern in the edible tissues of the treated animals reaches the permitted concentration. This information allows for the determination of the last time before marketing an animal may be administered the sponsored compound.

B. Summary of Significant Changes in the Proposed Procedures

The proposed procedures differ significantly in several respects from the 1979 proposal. First, the regulations have been extensively revised to emphasize general principles. Much of the detail in the 1977 and 1979 regulations is now contained in guidelines. The guidelines describe an appropriate way of conducting scientific tests and provide FDA's criteria for evaluating data collected from the tests. If a sponsor follows the procedure prescribed in the regulations and guidelines, the sponsor is assured that the data collected will be sufficient to support an approval of the sponsored carcinogenic compound, assuming that the data that are collected are adequate to demonstrate the safety of the compound. The existence of guidelines does not preclude a sponsor from meeting the statutory and regulatory requirements by collecting data of information in a manner different from that described in the guidelines. Alternative means of showing that a given statutory standard is met may exist. The proposed regulations and implementing guidelines represent FDA's perception of one acceptable way to show that a carcinogenic compound may be safely used in food.

Second, the guidelines explain how to conduct studies to identify residues for chronic testing. SOM procedures proposed in the past, without offering guidance, called for rigorous metabolic studies to identify and then test metabolites of carcinogenic concern in edible tissue. The guidelines now provide that usually only major metabolites will need to be identified. The guidelines define a major metabolite as one that, upon administration to an animal, is either present in an amount greater than 10 percent of the total residue in an edible tissue or has a concentration that exceeds 0.1 part per million in tissue.

Third, the proposed procedures rely upon the linear interpolation model for determining from the results of chronic tests in animals the amount of residue of a sponsored compound permitted in the diet of people. The new model takes into account all the dose response data collected from the chronic tests.

Fourth, the proposed procedures do not focus on what constitutes the lowest limit of reliable measurement of a regulatory assay, but rather on whether the assay reliably identifies the concentration defined as "no residue." Under the proposed regulations, if a regulatory assay identifies any residue below that defined as "no residue," FDA will consider the edible tissues containing the detected residue to be safe. FDA will consider actionable only the finding of a concentration of residues above that concentration defined as "no residue."

III. Threshold Assessment

A. Background

When considering whether a sponsored compound for use in food-producing animals is safe within the meaning of the General Food Safety Clause, the agency determines whether the compound has the potential to contaminate the edible tissues of food-producing animals with residues that, if consumed, would present a risk of cancer to people. As each Federal Register notice concerning these procedures and criteria, has recognized, FDA will not require carcinogenicity testing for every sponsored compound. The mechanism by which FDA makes the determination that carcinogenicity testing is necessary is explained in the threshold assessment guideline.

Since the 1973 proposal, the elements of the threshold assessment have been refined. In the Federal Register of February 2, 1982 (47 FR 4972), FDA made available a threshold assessment guideline that superseded the approach recommended in the 1979 proposal. FDA received many favorable and well-focused comments on the revised guideline. In response to comments, FDA has further modified the 1982 guideline. Elsewhere in this issue of the Federal Register, FDA announces the availability of the new threshold assessment guideline.

B. Overview of the Threshold Assessment

The threshold assessment guidelines offers a decision-tree approach for deciding whether the sponsored

compound should be tested for carcinogenicity. The guideline is based on the assumption that the potential of a sponsored compound to present the risk of cancer to people includes two primary elements: (1) The potential carcinogenicity of the compound and (2) the exposure of people to residues of the compound. A brief discussion of how FDA applies the threshold assessment guideline follows.

When considering the potential carcinogenicity of the sponsored compound, FDA will evaluate the structure of the parent compound as well as data from short-term genetic toxicity tests and from subchronic toxicity tests performed on the compound. FDA will also evaluate any other available relevant information concerning the potential carcinogenicity of the compound. As a measure of that potential, FDA will assign a "toxicity factor" to the sponsored compound. FDA will assign an "A" toxicity factor to compounds for which the available information reveals there is a low potential for carcinogenicity. FDA will assign a "B," "C," or "D" toxicity factor to compounds with higher potentials for carcinogenicity, with D representing the compounds with the highest potential to be carcinogenic.

When considering the potential exposure of people to residues of the compound, FDA will evaluate both the frequency of exposure to residues and the amount of residue ingested during a single exposure. As a measure of the frequency of exposure of people to the compound in food from food-producing animals, FDA will assign to the compound either a "high" or "low" use factor. For example, if most of the animals in a given herd or flock would normally be treated with the sponsored compound, then people would frequently ingest residues of the compound. Under these circumstances, FDA will assign that compound to the "high" use factor. If only a few animals would normally be treated with the compound, then people would ingest residues of the compound only intermittently. Under these circumstances, FDA will assign the sponsored compound to the "low" use factor.

As a measure of the amount of residue of a compound ingested by a person during a single exposure, FDA will use the results of a residue depletion study on the compound, which takes into account the duration of treatment, the dose administered, the time of treatment in relation to slaughter, and the contribution of various edible tissues to the total diet of people.

After all available information is evaluated and the toxicity, use, and residue factors have been assigned, FDA will follow the decision elements of the threshold assessment guideline to determine whether it will request carcinogenicity testing. For example, FDA will not request carcinogenicity testing for any compound assigned an A toxicity factor. FDA will request testing for a compound assigned a B toxicity factor only if the compound is assigned the high use factor and a total residue factor that exceeds 0.25 microgram per kilogram body weight per day or if the compound is assigned the low use factor and a total residue factor that exceeds 6.25 micrograms per kilogram body weight per day. FDA will request testing for any compound assigned a C or D toxicity factor. However, in the case of a compound that has a short half-life in edible tissue and is administered a long time before slaughter of the animal, FDA may conclude that any potential risk to people will be too low to justify requesting carcinogenicity testing regardless of its assigned toxicity factor.

If FDA does not request testing for carcinogenicity, the proposed regulations do not apply to the compound. Although not likely, it is possible that subsequent testing performed under the general food safety requirements of the act and necessary for approval of the product may indicate that the compound possesses the potential to be carcinogenic. Under these circumstances, the compound may be reassigned to a toxicity category that may result in a request for carcinogenicity testing.

C. Comments on the 1982 Guideline

As discussed above, many comments were received on the 1982 guideline. As a result of the comments, FDA has revised the guideline. In the following discussion, FDA responds to the substantive comments received.

1. A comment stated that FDA in the threshold assessment should not automatically request carcinogenicity testing even when adverse data are obtained. The comment suggested that FDA should also consider use patterns, pharmacokinetic data, and residue concentration.

FDA agrees with the comment and has modified the threshold assessment accordingly. The guideline now provides that: "After all available information is evaluated, FDA will request carcinogenicity testing for a compound assigned a C or D toxicity factor. If, however, a specific compound imparts residues that have a short half-life in edible tissue and the compound is administered a long time before slaughter (for example, several months), then FDA may not require carcinogenicity testing. Under these circumstances FDA can conclude that any potential risk to people will be too low to justify chronic testing."

2. Another comment interpreted the threshold assessment as classifying a compound as a carcinogen if the short-term tests of the compound yield positive results. The comment stated that positive results in short-term tests do not provide sufficient evidence to classify a compound as a carcinogen.

FDA agrees with the comment's position regarding the limitations of short-term testing. When positive data are obtained from a battery of short-term tests, FDA does not classify the sponsored compound as a carcinogen. Rather, FDA requests the sponsor of the compound to conduct adequate carcinogenicity testing to provide definitive data to determine whether the compound is a carcinogen.

3. Many comments stated that the threshold assessment placed too much weight on structure-activity relationships and insufficient weight on the results of biological testing. The comments contended that under the threshold assessment FDA should assign all compounds an A toxicity factor when no adverse biological data are submitted by the sponsor.

FDA believes that none of the types of information relied upon in the threshold assessment to assign compounds a toxicity factor (that is, structure, results from short-term genetic toxicity tests, and results from subchronic feeding studies) is sufficient to determine whether a compound is carcinogenic. Information from each category may raise or lower concern that a given sponsored compound is carcinogenic. Even negative results from genetic toxicity tests and subchronic feeding studies cannot completely eliminate concern that arises from a compound that possesses a structural relationship with known carcinogens because genetic toxicity tests and subchronic feeding studies may not be sufficiently sensitive and may give false-negative or false-positive results. The comments correctly argued, however, that FDA has in past threshold assessment guidelines placed undue weight on structure-activity relationships. Accordingly, FDA has revised that aspect of the guideline that applies to a compound that gives no adverse data from genetic toxicity and subchronic feeding tests but possesses a structural relationship to a known carcinogen. The compound will be assigned a B toxicity factor but in determining whether carcinogenicity

testing will be requested the agency will take into account not only the proposed use of the compound but also its residue concentration. The guideline now provides that:

"FDA will request a sponsor to conduct chronic bioassays for carcinogenicity for a compound assigned a B toxicity factor if it is assigned a high-use factor and a total residue factor exceeds 0.25 microgram/kilogram body weight/day (equivalent to a concentration of 10 parts per billion in the total diet of people, assuming a 60-kilogram body weight and a total solid diet of 1,500 grams).

"FDA will request a sponsor to conduct chronic bioassays for carcinogenicity for a compound assigned to a B toxicity factor if it is assigned to a low-use factor and a total residue factor that exceeds 6.25 micrograms/kilogram body weight/day (equivalent to a concentration of 250 parts per billion in the total diet of people)."

FDA suggests the 0.25 microgram/kilogram body weight/day value for a high use compound assigned a B toxicity factor because demonstrated carcinogens recently reviewed by FDA have been determined to present an insignificant risk of cancer using criteria similar to these proposed in these regulations. As FDA gains more experience using the criteria in these proposed regulations, FDA may change this value. FDA suggests the 6.25 micrograms/kilogram body weight/day value for a low use compound assigned a B toxicity factor because FDA uses this value in deciding whether carcinogenicity testing is necessary for direct human food additives.

4. Several comments stated that the structure list, although improved, remained too broad and inclusive.

In response to a similar comment, FDA stated in the 1982 notice (47 FR 4975) that: "The list of structures was intentionally general to ensure that compounds with some carcinogenic potential would not be missed. Because of the uncertainties in selecting potential carcinogens on the basis of molecular structure, the guide will be used as a screening tool by an internal committee of agency scientists." FDA continues to believe in the propriety of an inclusive structure list. Any relevant information on the potential carcinogenicity of a compound should be considered during the threshold assessment. As noted above, however, FDA has modified the threshold assessment so as not to place undue emphasis on the significance of structure-activity relationships in the absence of other relevant evidence bearing on the question of the carcinogenicity of a sponsored compound.

5. One comment requested that FDA explain how it will interpret equivocal results from a battery of genetic toxicity tests.

Because the burden of demonstrating the safety of a compound is on the sponsor, FDA under the threshold assessment will not assign a compound to a more favorable toxicity factor on the basis of equivocal results from the battery of genetic toxicity tests. Under these circumstances, a sponsor has the option of submitting additional genetic toxicity data or of conducting chronic bioassays to resolve questions concerning the carcinogenicity of the compound.

6. Some comments also argued that the threshold assessment should take into account in the use factor the difference between drugs given to a herd or flock early in an animal's life as opposed to those administered to a herd or flock throughout an animal's life.

The threshold assessment guideline does take these distinctions into account. An anthelmintic and a growth promotant, for example, could be assigned to the same use category if they would both be given to approximately the same number of animals, an entire herd or flock, on a routine basis. However, the respective total residue factors assigned to each use would differ, for that factor accounts for the amount of residue present at the time of slaughter.

7. One comment contended that for compounds available only through a veterinarian by prescription the threshold assessment should provide for the assignment of a compound to the low use factor.

A product available through prescription is usually administered after signs of disease are present and after a diagnosis has been made. Thus, FDA will usually assign a prescription product a low use factor.

8. One comment asked how approved compounds would be classified if the criteria in the threshold assessment were applied to them.

FDA does not have the results of genetic toxicity testing and total residue data on all approved compounds. However, approximately one-third of the approved products would be classified as "suspect structure, high use."

9. Several comments requested that FDA revise the correction factors to reflect more closely the actual consumption by people of organ tissue.

FDA has obtained new data on the consumption of organ tissues and is presently evaluating this information to ascertain if a revision of the current guideline is warranted. Pending such a change, FDA will continue to use the "Guideline for Establishing a Tolerance" made available for comment elsewhere in this issue of the **Federal Register.**

IV. Studies to Identify Residues of Toxicological Concern

A. The Need To Identify Residues in Edible Tissues

In determining whether a sponsored compound proposed for use in food-producing animals is safe, section 512(d)(2)(A) of the act provides that FDA should consider the safety of any substance formed in or on food by the sponsored compound. A similar requirement is found in section 512(b)(7) of the act. The compound administered to food-producing animals is not necessarily the substance or substances that will be present in the edible products of the treated animals. The enzymatic systems and physiological fluids of an animal can act upon a compound administered to the animal and produce new substances, which are commonly referred to as metabolites or degradation products. The amount of these substances in edible animal products will be a complex function of the rate and extent of absorption of the parent compound, the rate and extent of the metabolism of the absorbed parent compound, and the rate of excretion of the parent compound and metabolites (Refs. 4 through 7).

Because the structure of metabolites can vary greatly from that of the parent compound, the toxicological properties of these metabolites may also vary. In many instances, a metabolite may be less toxic than the parent compound. However, in other instances, a metabolite may be more toxic than the parent compound (Refs. 8, 9, and 10).

The total residue of the sponsored compound in edible animal products will consist of the parent compound, free metabolites, and metabolites that are covalently bound to endogenous molecules. The relative and absolute amounts of each residue will vary among the tissues according to the time following the last administration of the sponsored compound to the animal. Because different components of the total residue may possess dissimilar toxicological potential, a compound cannot be shown to be safe until the sponsor has collected information on the amount, persistence, and chemical nature of the total residue in the edible products of the treated animals.

Comments on past notices concerning the SOM procedures and criteria have

complained that FDA has not provided adequate guidance on how to design and conduct appropriate studies for identifying residues of toxicological concern. In the absence of this guidance, comments have mistakenly believed that FDA required that every metabolite be identified and tested for carcinogenicity in separate chronic bioassays. In an effort to provide guidance and clarification in this area, FDA has prepared a detailed "Guideline for Metabolism Studies and for Identification of Residues for Toxicological Testing." The guideline is made available for comment elsewhere in this issue of the Federal Register. The guideline identifies the extent of metabolite identification and testing FDA believes is necessary. For example, the guideline permits reliance upon autoexposure testing to the extent scientifically appropriate in an effort to avoid the need to conduct separate testing on individual metabolites. The autoexposure approach assumes that the toxic response in the treated animals results from the administered parent compound or the substances that test animals produce from the administered compound by their own metabolism.

If FDA requires that a sponsored compound be subjected to carcinogenicity testing, a sponsor will always be required to test the parent compound in chronic bioassays. FDA uses the information on the amount, persistence, and chemical nature of the metabolites in target animals to select those metabolites of the parent compound that should also be subjected to carcinogenicity testing. FDA will compare data submitted by the sponsor on the metabolites of the compound in target and test animals and will use scientific judgment in determining the adequacy of autoexposure to test metabolites of the sponsored compound. FDA may still require separate toxicity studies if a metabolite is not adequately tested through autoexposure and is likely to have carcinogenic potency significantly greater than the parent compound.

B. Comments on the 1979 Proposal

Many comments were received concerning how to perform studies of the metabolism of a sponsored compound in target and test animals. The comments identified many issues that the proposed regulations did not describe in sufficient detail. The guideline and the responses to the comments, below, provide needed clarification in this area.

Metabolite Identification

10. Comments stated that FDA should clearly distinguish a study that provides a qualitative profile of metabolites for comparative purposes from a study that involves exhaustive identification of all drug-related residues. The comments stated that the first type of study is feasible and scientifically supportable. The comments argued, however, that the second type of study is technically infeasible and not very relevant to an assessment of the carcinogenicity of a residue. One of the comments recommended that FDA require the study in the target animal to provide information on excretion rates, total residue depletion rates in tissue, and a qualitative chromatographic pattern of residues in the tissue.

Comments also noted that there are no standardized procedures for the identification of an unknown metabolite in tissue at the parts per billion level and that standard techniques used in the identification of metabolites in excreta are generally not useful in the identification of metabolites in tissues. Additional comments stated that the identification of metabolites should be limited to state-of-the-art procedures, and that sponsors should be required to identify major metabolites but only to estimate the number and properties of minor metabolites. Another comment suggested that complete structural identification of minor metabolites should not be required because the fact that the metabolite is present in small amounts is sufficient information to conclude that the metabolite is of insignificant carcinogenic risk to people. Another comment expressed the view that references cited in the 1979 proposal are not germane to the proposed rule because they deal with classic drug metabolism and not with drug-related metabolites in tissue.

The comments demonstrate that FDA did not clearly explain its position on the need for identification of metabolites in edible animal tissue. FDA intended to say that techniques used in the identification of metabolites (e.g., ultraviolet-visible spectroscopy, infrared spectroscopy, nuclear magnetic resonance spectrometry, and mass spectrometry) are routine state-of-the-art techniques employed in basic biochemical and pharmacological investigations. FDA recognizes that procedures for the isolation of metabolites from edible tissues may be quite different from procedures used to isolate metabolites from urine and that there are practical limitations on the isolation of metabolites from tissues. The sponsor may isolate metabolites from excreta or from overdosed animals for purposes of chemical characterization and structural identification and should provide information to ensure that metabolites identified in excreta are the metabolites present in tissue.

FDA acknowledges the difficulties in the isolation, purification, and structural characterization of metabolites in tissue and recognizes that complete structural elucidation of minor metabolites is not possible. As discussed in the guideline, FDA will usually require structural identification of major metabolites, but will normally not require structural identification or chemical characterization of minor metabolites. FDA will consider a metabolite to be a major metabolite if either: (1) It is present in an amount greater than 10 percent of the total residue in an edible tissue at zero withdrawal, or (2) its concentration exceeds 0.1 part per million at zero withdrawal. In some cases, chemical characterization rather than unequivocal structural identification will be sufficient for major metabolites.

FDA disagrees with the assertion that the presence of only small amounts of a metabolite in tissue is sufficient information upon which to conclude that the metabolite presents an insignificant risk of cancer to people. The comment ignores the fact that the potency of chemical carcinogens varies over orders of magnitude (Ref. 11).

Radiolabeling

11. Several comments noted that the radiopurity of the parent compound used in the studies is critical because contaminants can greatly affect the interpretation of results. Comments also suggested that obtaining adequate radiopurity would be particularly difficult for high specific activity preparations because a certain degree of radiodecomposition of the parent compound is anticipated.

Many comments stated that the use of compounds with the highest specific activity available would be enormously costly, would be dangerous to personnel, and would create a waste disposal problem. Another comment stated that the investigator conducts these studies to address different questions and should be allowed to choose the specific activity for each study. Another comment stated that the use of compounds with such high specific activity is often unwarranted because individual metabolites in the tissue cannot feasibly be identified when they occur at very low concentrations.

FDA agrees that radiolabeled contaminants in a preparation of the parent compound can render the interpretation of metabolism studies difficult or impossible. In FDA's experience, radiochemical purity of 98 percent will usually give satisfactory results, but lower percentages may suffice. If the sponsor believes that a residue is present in tissue solely as a result of a contaminant in the radiolabeled preparation of the parent compound, FDA will consider submitted data pertinent to this issue when deciding if that residue is of concern.

All phases of the studies need not be conducted with radiolabeled compounds of the highest specific activity available. The sponsor may choose a specific activity that will be compatible with the objective of the experiment, thus reducing costs. FDA believes that any hazard incurred by personnel in the handling and disposal of radioactive substances may be minimized by usual laboratory safety procedures associated with the use of radioisotopes.

FDA disagrees with the comment's assertion that merely because detected residues may not be identified, the use of a high specific activity radiolabel is unnecessary. Even in the absence of structural identification of individual residues, a sensitive measure of the total residue in edible animal tissue is an essential aspect in a safety evaluation. For a compound that is to be regulated as a carcinogen, FDA will require that the specific activity of the compound be high enough to measure the metabolites at the concentration that will satisfy the operational definition of no residue.

Maximum Proposed Dosage

12. One comment stated that it is not possible to know the maximum proposed dosage of a drug because field trials for efficacy will often still be in progress, and the maximum proposed dosage may change after evaluation of these results.

The sponsor may choose to await completion of field trials before beginning metabolism studies. Alternatively, the sponsor may choose the likely maximum dosage and proceed with the studies. If the maximum proposed dosage changes, FDA will determine if any additional information is necessary.

Reporting Format

13. Some comments stated that the American Chemical Society and American Society of Biological Chemists publication formats were too restrictive in terms of data presentation for FDA to evaluate the information properly.

FDA's purpose in requiring that results of these studies be presented in a format similar to publications of professional societies is to ensure that data are submitted in a clear, concise manner. This will facilitate FDA review. FDA will not require rigid adherence to any specific format. The sponsor should include in the report a statement of the purpose for conducting the experiment, a description of the methods used, and a discussion of the results obtained.

Selecting Metabolites For Chronic Bioassay

14. Several comments dealt with FDA's proposal to use structure-activity relationships to select metabolites for separate chronic bioassays. The consensus of these comments was that structural identification of residues and physicochemical data are of little value in predicting the carcinogenic potential of metabolites. Other comments recommended that FDA use data obtained from genetic toxicity tests, instead of structure-activity relationships, to select metabolites for separate chronic bioassays. One comment stated that, because short-term genetic toxicity tests are of proven accuracy and prediction of carcinogenicity based on structure is not, a compound yielding negative results in genetic toxicity tests (provided that known carcinogens of the same chemical class have been shown to be positive in these tests) should not be of carcinogenic concern even if it possesses a structural moiety of carcinogenic concern. Another comment alleged that FDA's proposal may require separate chronic bioassays for many metabolites, that this testing will not yield meaningful data, and that research and development of drugs and feed additives will be deterred.

Structural information is of value in predicting the pharmacological and toxicological (including carcinogenic) properties of a compound (Ref. 12). FDA also recognizes the merit of using data obtained from genetic toxicity tests in selecting metabolites for separate chronic bioassays. However, FDA believes that there are limitations in the use of these data. For example, certain classes of compounds are carcinogenic, but are not well detected in some genetic toxicity tests. (See appendix 2 of the "Guideline for Threshold Assessment.") Because of these limitations, the results from genetic toxicity tests cannot always be used to reduce the concern for potential carcinogenicity arising from structure-activity relationships.

FDA may require separate toxicological studies on a metabolite if it is not adequately tested through autoexposure and is likely to have toxicological potency significantly greater than the parent compound. FDA will normally conclude that autoexposure provides an adequate test of the toxicity of the sponsored compound if at least one species of laboratory animal produces the metabolites that collectively comprise over 90 percent of the amount of residue that people will consume from tissues of treated target animals. Failing that, FDA will use the information obtained from target animals on the concentration, persistence, and chemical structure or characterization of that metabolite to determine whether separate toxicological testing is required.

Relay Toxicity

15. Many comments recommended that results of relay toxicity tests should be used in evaluating the safety of a sponsored compound. Another comment recommended that relay toxicity testing completely replace chronic testing of the parent and any or all metabolites.

FDA disagrees with the proposal that relay toxicity testing of metabolites replace testing of the parent compound or any of its metabolites. Methods for relay toxicity testing provide an excellent means of equating test animal and human exposure. However, no appropriate means of exaggerating this exposure are available. The exaggeration of dose is an essential part of any toxicity test. Should future developments in relay toxicity testing successfully overcome this deficiency, then FDA will reconsider its position on the ability of this type of study to address the lack of carcinogenic potential of metabolites in edible animal tissue. However, a positive response in a relay toxicity test indicates a serious toxicological hazard and cannot be ignored.

Bound Metabolites and Bioavailability

16. Many comments urged FDA to consider that bound metabolites are probably of little or no carcinogenic concern because: (1) The bound metabolites are unlikely to be bioavailable; (2) if they are bioavailable, then they will be rapidly cleared from the body by excretory processes; (3) the reactive portion of a bound metabolite is already involved in a covalent linkage, and it is unlikely that further metabolic activation to a toxic metabolite will occur due to thermodynamic considerations; and (4) FDA's contention that bound metabolites may be of carcinogenic concern is undocumented.

One comment recommended that separate chronic bioassays should be necessary for bound metabolites only when: (1) The bound metabolite is bioavailable, (2) the bound metabolite gives a positive response in in vitro mutagenicity tests, and (3) the bound metabolite is of greater potency than the parent compound in a mutagenicity test. Another comment contended that because bound metabolites cannot be synthesized for toxicity testing, they should not be considered to be residues.

Under the act, FDA must consider the safety of any substance formed in or on food as the result of use of the sponsored compound, including bound metabolites. Information on the toxicity of covalently bound metabolites is quite sparse because of difficulties in the isolation, identification, and synthesis of these residues for toxicity testing. Some information is available indicating that a covalently bound metabolite of aflatoxin-B_1 isolated from rats fed radiolabeled aflatoxin is not reincorporated in liver DNA when the covalently metabolite is fed to a second set of rats (Ref. 23). FDA is unaware of any chronic feeding studies designed to test the carcinogenic potential of bound metabolites, and has no basis for concluding that bound metabolites cannot be carcinogenic.

FDA does not believe that results obtained from bioavailability studies alone can be used in a routine fashion to evaluate the safety of a compound. It would not be scientifically defensible for FDA to conclude that a metabolite is not of carcinogenic concern because only a small portion of that metabolite is absorbed. Additional information, such as the results of genetic toxicity tests, may be required to evaluate properly the potential carcinogenic risk from exposure to these metabolites. Although FDA agrees that genetic toxicity testing and other data may be useful on a case-by-case basis to reduce the concern that a covalently bound metabolite may be carcinogenic, there are not sufficient scientific data to conclude that potency in a genetic toxicity test correlates well with carcinogenic potency.

In situations where the concentration of total residue (free plus covalently bound) is below the concentration of residue that will satisfy FDA's operational definition of no residue, the sponsored compound is shown to be safe. Therefore, further study of the covalently bound residue is unnecessary. In situations where the concentration of covalently bound residue exceeds the concentration of residue that will satisfy FDA's operational definition of no residue, the sponsor may propose a series of studies to remove the concern for the covalently bound residue. FDA will determine on a case-by-case basis the adequacy of the studies to address the issue.

Alternative Data Collection Schemes

17. Several comments stated that the data collection steps of the 1979 proposal do not follow a logical sequence.

The sponsor of a product may choose to collect the required information in any sequence. For example, a sponsor may believe that it is to its advantage to choose a marker substance and to develop an analytical method early in the data collection process. FDA, however, will not be able to determine whether the choice of marker is appropriate or if the limit of measurement is sufficiently low until results of chronic bioassays and metabolism and total residue studies in target animals have been evaluated and an S_e is determined.

18. FDA received many comments that recommended alternative data collection schemes for showing the safety of a sponsored compound that may be carcinogenic.

As stated in the proposal, FDA will accept data collected under alternative procedures provided that the data permit an adequate evaluation of the carcinogenic potential of residues. Below are several data collection schemes presented in comments.

Scheme A. 1. Lifetime chronic studies should be performed on those compounds that exceed an accepted threshold score based on the use of the compound, the concentration of metabolites, and the potential hazard of these residues to the consumer. After the lifetime studies have been completed, a second threshold assessment should be conducted. Compounds receiving overall scores below the accepted threshold value should be released from the proposed requirements and be judged by conventional toxicological criteria.

2. Studies of the metabolism of the compound should be conducted in the target animal and in one of the two species employed in the chronic study. The specific radioactivity of the radiotracer should be chosen to provide a measurable response at a concentration at which characterization of the radiocative residue is reasonable, recommended in the comment to be about 10 parts per billion. Positive results in the lifetime study with the sponsored compound would be reason for more rigorous approaches if the sponsor elected to continue with development of the compound.

3. Metabolites comprising 50 parts per billion or more should be identified to the extent possible. All metabolites that have been identified and synthesized should be subjected to the mutagenicity tests in bacteria and/or other short-term mutagenicity tests deemed appropriate by toxicologists. A positive response in these tests should be considered reason for further study.

4. The lifetime bioassay of the sponsored compound should be considered an acceptable evaluation of those metabolites present in both test and target species and all metabolites present at levels below 50 parts per billion, or comprising less than 10 percent of the total residue in the edible tissue.

5. Relay-toxicity and bioavailability testing should be recommended in those cases where the metabolic patterns of commonly used test animals are not similar to the metabolic patterns of the target species.

FDA agrees with many aspects of this alternative data collection process. FDA will require lifetime studies on those products that the threshold assessment indicates require further evaluation to resolve issues of carcinogenicity. When the issue of carcinogenicity is satisfactorily addressed with no finding of carcinogenicity, FDA may regulate the sponsored compound under its general food safety requirements for risks other than cancer. A second threshold assessment is, therefore, unnecessary.

FDA will generally require studies on the metabolism of the compound in target and in laboratory animals (see section IV.B. "Selecting Metabolites for Chronic Bioassay," above). A limit of detection in the 10 parts per billion range will generally be sufficient for an initial residue depletion study. However, if the product is a carcinogen, FDA will require that the residue of carcinogenic concern be measurable at the concentration that will satisfy FDA's operational definition of no residue.

The sponsor should identify metabolites that are major metabolites as defined in section IV.B. "Metabolite Identification," above, if they represent an amount greater than 10 percent of the total residue at zero withdrawal regardless of the possibility that the concentration may be below 0.1 part per million. FDA will generally rely on autoexposure testing of the metabolites (see section IV.B. "Selecting Metabolites for Chronic Bioassay," above). If a metabolite is not adequately tested by autoexposure, then genetic toxicity testing may be useful in deciding whether chronic bioassays are

necessary (see section IV.B. "Selecting Metabolites for Chronic Bioassay," above). FDA's position on relay toxicity testing and bioavailability studies are discussed in sections IV.B. "Relay Toxicity" and "Bound Metabolites and Bioavailability," above.

Scheme B. Information on the absorption, distribution, and excretion of a single dose of radiolabeled drug in target and test animals would first be collected. Emphasis would be placed on the isolation and identification of major metabolites, with an estimation of the number and properties of minor metabolites. From this study, an estimate of the required specific activity of radiolabeled drug would be made. Following multiple dosing with labeled material, excreted metabolites would be examined in target and test animals. Urinary metabolites that constitute less than 2 percent of the dose would likely be artifacts. Metabolites extractable from target tissues of the target species would be examined at steady state and at one and two half-lives of depletion. The extent of covalent binding would also be determined at these times. Metabolites in target tissues that constitute 20 percent or less of extractable material would likely be artifacts and would be considered for chronic bioassays only if they are also excreted in large amounts. From these studies, metabolic pathways would be established, metabolites would be selected for in vitro testing, and a marker substance would be selected.

FDA also agrees with aspects of this alternative. Single dose studies with a radiolabeled compound are useful to the sponsor. These studies are useful for delineating basic metabolic pathways for the product, for determining the required specific activity for future studies, for providing information on likely major and minor metabolites, and for providing information on a likely marker substance. However, single dose studies are not sufficient for the safety evaluation of a product given continuously or in repeated doses. FDA discusses appropriate metabolism studies for compounds given continuously in the "Guideline for Metabolism Studies and for Identification of Residues for Toxicological Testing." FDA agrees that the sponsor first collect information on the major metabolites and obtain an estimate of the number and properties of minor metabolites. If necessary for its evaluation of the compound, FDA will request additional information on the minor metabolites. FDA specifically rejects the proposal to examine metabolites at one and two half-lives because the residues may require more than two half-lives to deplete to the concentration that will satisfy the operational definition of no residue. FDA cannot accept without experimental verification the assertion that metabolites that comprise less than 2 percent of the radioactivity in urine or less than 20 percent of radioactivity in tissue are artifacts. FDA's experience is that actual metabolites of sponsored compounds are frequently less than 20 percent of the total residue in tissue.

Scheme C. 1. The parent compound is administered to the food-producing animal and tissues are analyzed for parent compound and metabolites.

2. The metabolism of the parent compound is investigated in vitro using a series of tissues from potential test species/strains and human autopsy material. Using this information, test animals are selected that have a metabolite profile closest to people.

3. The metabolites are synthesized and chronic bioassays are conducted with the mixture of metabolites at the maximum tolerated dose.

4. Individual metabolites are evaluated in genetic toxicity tests using human autopsy tissue for metabolic activation. If any matabolite shows a potential for genetic toxicity, then a separate chronic bioassay on this metabolite is necessary.

FDA believes agrees that this approach, too, may have merit in evaluating the carcinogenic potential of residues. Sponsors proposing in vitro studies on the metabolism of the compound should also present information demonstrating that the tissue preparations used are representative of in vivo metabolism for the species. Sponsors should also be aware that suitable human autopsy material may not be available.

V. Chronic Toxicity Testing

A. Introduction

The sponsored compound and any metabolites selected for separate carcinogenicity testing must be subjected to oral, lifetime, dose-response studies in two test animal species. The purpose of these studies is to determine whether the compounds under test are carcinogenic and, if so, to establish the concentration that will satisfy FDA's operational definition of no residue.

B. Comments on the 1979 Proposal

The two major issues raised by comments on this feature of the 1979 proposal were: (1) The design of chronic studies and (2) the interpretation of the test data to determine whether the compound is a carcinogen.

Design of Carcinogenicity Studies

19. Comments stated that FDA did not give the criteria or any other guidance for designing carcinogenicity studies.

The purpose of the proposal was to detail the type of information required to evaluate the possible carcinogenicity of the sponsored compounds, not to provide protocols for conducting studies. For guidance in developing an acceptable protocol, FDA recommends the report of the Food and Drug Advisory Committee on Protocols for Safety Evaluation of Food Additives and Pesticides (*Toxicology and Applied Pharmacology*, 20:419–438, 1971) as well as "Guidelines for Carcinogen Bioassays in Small Rodents" (National Cancer Institute, Carcinogenesis Technical Report Series No. 1. HEW Publication No. (NIH) 76–8601, 1976). FDA has also adopted minimum protocols and required quality standards for chronic bioassays (Ref. 13). FDA recommends that the sponsor submit protocols for review before starting the projects.

20. One comment argued that a time limit must be included for FDA comment on submitted protocols. The comment suggested that FDA should be deemed to have approved the protocol in the absence of a timely response.

FDA does not agree that the use of time limits is desirable or feasible. The availability of detailed protocols (Ref. 13) acceptable to FDA should reduce the need for extensive FDA comment on protocols.

21. Comments suggested that when extrapolating tumor data from animals to people it is not appropriate to use the dietary concentration of the test substance because young animals consume more food than adults in proportion to their body weight and thus receive a higher dose. The comments further suggested that the increased consumption of food by young animals under test might lead to metabolic overload. Accordingly, comments suggested that dose be expressed as miligrams per kilogram body weight and be held constant by varying the dietary concentration to match the food consumption and growth of the animals.

The two common ways of dosing animals on bioassay are: (1) To administer the test substance as a constant fraction of the daily diet (parts per million) or (2) to administer the test substance as a constant fraction of the body weight (milligrams per kilogram). Each approach has advantages and disadvantages. FDA previously required that the sponsor administer the test

substance as a constant fraction of the daily diet to minimize the potential for dosing errors. FDA is aware of the principal disadvantage of this approach; that is, the change in the relative dose with the change in the body weight of the test animals.

FDA is eliminating the requirement that the test substance be administered as a constant fraction of the daily diet. Also, FDA will accept bioassays in which the test substance has been administered as a constant fraction of the test animal's body weight. However, a sponsor who chooses this procedure must maintain and submit with the report detailed records of individual animal weights and food consumption and the concentration of the test substance in the diet. Further, the sponsor's choice for dosing the animals will commit the sponsor to accept risk estimates from the bioassay data calculated on the same basis. For example, if the study were conducted with the dose administered as a constant fraction of the test animal's daily diet, then the extrapolated safe dose in parts per million will be used to determine directly the permitted dose in the total diet of people. If the study were conducted with the dose administered as a constant fraction of the test animal's body weight, then the extrapolated safe dose in milligrams per kilogram would be multiplied by the weight in kilograms of the average adult (approximately 60 kilograms) to determine the permitted dose in milligrams in the total diet of people.

The change introduced as a result of this comment was brought about by advances in good laboratory practices, not by the argument based on metabolic overload. It is possible, of course, to overload the metabolic machinery of test animals. However, FDA will not use the potential for metabolic overload to modify its interpretation of data unless the sponsor provides convincing experimental data justifying such a modification.

22. Some comments suggested that the sharply increasing incidence of naturally occurring tumors with age could confuse the determination of the true carcinogenicity of a compound. The comments hypothesized that some compounds, although not carcinogenic themselves, can change the pattern of these naturally occurring tumors, increasing some types while decreasing others. These comments also stated that all potent carcinogens induce tumors in rodents within 1 year and suggest that the bioassays could be terminated at 1 year.

FDA does not agree that the bioassays should be terminated after 1 year. FDA is interested in detecting carcinogens with long time-to-tumor periods, as well as potent carcinogens with short time-to-tumor periods. Therefore, these proposed regulations continue to require lifetime bioassays.

FDA does not agree that naturally occurring late tumors can necessarily obscure carcinogen-induced tumors. Proper consideration of experimental design should assure that a carcinogenic effect of a given magnitude over the control animal tumor background can be determined to a given degree of statistical significance. In some cases, FDA may use a time-to-tumor analysis to evaluate the incidence of early appearing tumors in treated groups versus late appearing tumors in the control group.

It is true, as the comments state, that certain bioassay results show not only a statistically significant increase in a particular tumor type (which may result in a finding that the test substance is a carcinogen), but also on occasion a statistically significant decrease in another tumor type. When FDA evaluates the results, it will emphasize the increase in frequency of a given tumor.

Interpretation of Test Data

23. The 1979 proposal (44 FR 17086) stated that "* * * the absence of a significant increase in tumor incidence in each of two different animal bioassays, conducted in accordance with good laboratory practices and designed according to principles referenced above, is * * * sufficient evidence of noncarcinogenicity." During the public hearing and in written comments, FDA was asked to define the term carcinogen and to specify the criteria FDA would use to decide if there is no significant increase in tumor incidence.

In determining whether a tested substance is a carcinogen, FDA will rely upon the criteria given by the Subcommittee on Environmental Carcinogenesis, National Cancer Advisory Board (Ref. 14):

> The carcinogenicity of a substance is established when the administration to groups of animals in adequately designed and conducted experiments results in increases in the incidence of one or more types of maligant neoplasms (or a combination of benign and malignant neoplasms) in the treated groups as compared to control groups maintained under identical conditions but not given the test compound.* * *"

In general, FDA evaluates the results of chronic bioassays by the guidelines contained in the "General Criteria for Assessing the Evidence for Carcinogenicity of chemical Substances," National Cancer Advisory Board, 1976, and the "Guidelines for Carcinogen Bioassay in Small Rodents," National Cancer Institute, 1976. FDA considers both the statistical and biological significance of the data as part of the review.

24. Comments stated that an evaluation procedure is deficient unless it screens out results from inappropriate routes of exposure, results from exposure to above tolerable doses, results affected by the genetic proclivity of the strains, and results from a single species that produces a unique metabolite.

FDA will not disregard positive results (excess tumors) from experiments that use a nonoral route of exposure, excessive doses, or unique test animals because, at the very least, these results raise questions concerning the safety of the compound that must be resolved by more definitive testing. However, because people will ingest residues of compounds that are the subject of these regulations, the regulations specify that the bioassays must be conducted using the oral route of exposure. FDA expects that the sponsor will use commonly available rodent species for this testing.

FDA will consider a positive result (excess tumors) from a study conducted at a dose above the maximum tolerated dose as providing evidence of carcinogenicity unless there is convincing evidence to the contrary. FDA will not, however, always be able to consider a negative result (no excess tumors) from a study conducted at a dose above the maximum tolerated dose as providing convincing evidence of safety because the study may not have placed a sufficient number of animals at risk for a sufficiently long period of time. Accordingly, in some cases, the sponsor will have to provide additional evidence and a persuasive scientific rationale to support the conclusion that a negative study demonstrates the safety of the sponsored compound.

25. Many comments suggested that because benign tumors are not life threatening and do not affect animal mortality, FDA, when evaluating the residues of chronic bioassays, should discount the effects of benign tumors. One comment stated that the majority of benign tumors do not turn malignant and FDA should ignore them.

FDA will continue to consider both benign and malignant tumor incidences when evaluating the results of chronic bioassays. In reaching this conclusion, FDA will rely upon the criteria of the Subcommittee on Environmental Carcinogenesis, National Cancer

Advisory Board, which has stated (Ref. 14):

> The occurrence of benign neoplasms raises the strong possibility that the agent in question is also carcinogenic since compounds that induce benign neoplasms frequently induce malignant neoplasms. In addition, benign neoplasms may be an early stage in a multi-step carcinogenic process and they may progress to malignant neoplasms; also, benign neoplasms may themselves jeopardize the health and life of the host. For these reasons, if a substance is found to induce benign neoplasms in experimental animals, it should be considered a pontential human health hazard which requires further evaluation. In experiments where the increased incidence of malignant neoplasms in the treated group is of questionable significance, a parallel increase in incidence of benign tumors in the same tissue adds weight to the evidence for carcinogenicity of the test substance.

VI. Operational Definition of No Residue

A. The Level of Risk

If FDA has concluded that a sponsored compound is carcinogenic, FDA cannot approve the use of that sponsored compound unless the sponsor can demonstrate with an acceptable regulatory method that no residue of the sponsored compound remains in the edible products of treated animals. As discussed in the 1979 proposal (47 FR 17073), FDA has concluded that Congress did not intend a literal interpretation of the term no residue. Because there will always be some residue, albeit below the limit of measurement of the analytical method, such an interpretation would preclude approval of any carcinogen. Instead, FDA has concluded that Congress intended that any remaining residues should present an insignificant risk of cancer to people. As discussed earlier in this document, FDA has chosen to define operationally "no residue" on the basis of quantitative carcinogenicity testing of residues and the extrapolation of test data to arrive at a concentration of residue that presents an insignificant risk to test animals and, by extrapolation of the animal bioassay data to people, would also present an insignificant risk to people.

FDA cannot avoid the fact that the actual risk to people presented by carcinogenic compounds in meat, milk, and eggs is not known and cannot be precisely quantified. The 1973 proposal suggested that the insignificant level of risk could be 1 in 100 million over a lifetime using a "liberal" extrapolation procedure (Mantel-Bryan). The 1977 final regulations raised that level to 1 in 1 million over a lifetime using a slightly modified Mantel-Bryan extrapolation procedure. The 1979 reproposal retained the 1 in 1 million level of risk but used a more "conservative" extrapolation procedure (linear). Industry panelists at the June 21–22, 1979, public hearing observed that selecting a level of risk is a "no-man's land." Others testified that they had no way of knowing whether 1 in 1 million is "right or wrong." The reasons and factors offered by FDA in the 1979 proposal do not definitively resolve this issue. The selection of an insignificant level of risk is a choice which, although susceptible to being posed as a question of fact, cannot be answered solely by science or currently available information (Ref. 15). It is, instead, a policy question that must be answered by weighing a number of subjective considerations.

No comments on the 1979 proposal were received that disagreed with FDA's decision that the 1 in 1 million level presents an insignificant risk to the public. No comments at all, however, were received from the general public. All comments were from regulated industry. These comments contended that, the 1 in 1 million level represented an insignificant risk but that higher levels might also represent insignificant risks. The comments, however, as discussed below, failed to demonstrate that any higher level satisfied FDA's responsibility under the statute to protect the public health. FDA has carefully studied the submitted comments, the suggested alternatives, and other available information on risk assessment and has concluded that the 1 in 1 million level represents an insignificant level of risks.

FDA emphasizes that the 1 in 1 million level of risk adopted for these regulations does not mean that 1 in every 1 million people will contact cancer as a result of this regulation. Rather, as far as can be determined, in all probability no one will contact cancer as a result of this regulation. The 1 in 1 million level represents a (1) 1 in 1 million increase in risk over the normal risk of cancer and (2) a lifetime—not annual—risk. Furthermore, because of a number of assumptions used in the risk assessment procedure (see Section VI.B., below) and the extrapolation model used (See Section VI.C., below), FDA expects that the actual risk to an individual will be between 1 in 1 million and some much lower, but indeterminable, level.

No Specific Level of Risk

26. Some comments on the 1979 proposal suggested, without support, that no specific level of risk should be adopted for general use, but that a level of risk should be chosen for each compound on an individual basis.

FDA disagrees. Under the suggested procedure sponsors would receive no guidance about the likelihood of approval of a compound during the expensive stage of drug development or about the factors consider in determining whether the compound should be approved. This unstructured ad hoc approach would be contrary to the interests of the public health and would result in inequitable treatment of sponsors.

The Use of Public Preference in Selecting a Level of Risk

27. Comments argued that FDA could determine a level of insignificant risk by comparing risk presented from carcinogens in food with risks individuals voluntarily assume from using their occupation, from common forms of transportation, from leisure activities, and the like. Comments also contended that FDA could similarly use involuntary risks. Accordingly, comments argued that because risks of a magnitude of 1 in 15,000 over a lifetime (1 in 1 million yearly) do not concern (that is, are "accepted by") most people, FDA should adopt that level of risk for these regulations. Other comments used similar reasoning to support a 1 in 100,000 risk level.

The comments overlook the fact that when FDA approves the use of a carcinogenic compound, FDA affirmatively allows a risk to be imposed on the public. The public is not "accepting" that risk because (1) The public has no information on the risk presented by carcinogenic compounds in its food, and (2) the public has no way of avoiding that risk assuming it wishes to continue to eat meat, milk, or eggs. Furthermore, these comments do not address the growing evidence that group attitudes and group choices do not follow the same patterns as individual choices (Ref. 16). Reliance on group preference, therefore, might cause the imposition of a risk that is unacceptable to many individuals.

In the final analysis, the comments and information regarding public perception of risk at best allow FDA to infer the increment of risk of cancer that certain members of society would consider unavoidable, tolerable, or unnoticeable. Although FDA has considered the comments and information provided, FDA concludes that the sole use of social preferences and the magnitude of involuntary risks to select an insignificant level of risk provides an incomplete basis for determining the level of risk to which the public should be exposed by substances permitted in the food supply.

FDA also concludes that an increase in the level of risk to 1 in 15,000 might significantly increase the risk of cancer to people, and, until better information is provided, such a level must be viewed as unacceptable in light of current knowledge and legal standards.

The 1 in 100,000 Level of Risk

Adoption of the 1 in 15,000 level in FDA's view might significantly increase the risk of cancer. FDA and those who commented on the point agree that the 1 in 1 million risk level will not significantly increase the risk of cancer. The question that logically follows is whether a level of 1 in 100,000 presents a significant risk to people. If FDA were to propose 1 in 100,000 as the insignificant level of risk, the permitted concentration of residue would increase by a factor of 10. Table III in the 1979 proposal (44 FR 17077) indicated dietary concentrations for carcinogens corresponding to lifetime risk of 1 in 1 million. The concentrations varied from 0.05 to 260 parts per billion. The range with a 1 in 100,000 level of risk would be from 0.5 part per billion to 2.6 parts per million. (FDA was criticized in some comments for not including animal health products in the table. There is no scientific reason to believe that the carcinogenic potency of animal health products will differ greatly from other chemicals.) Whether the 1 in 100,000 level would pose a significant increase in the risk of cancer to people is, however, the critical question. It is not a question which can be unequivocally answered, and it calls for a difficult decision by FDA: for no matter what arguments are made and no matter what numbers are used, the actual risk of cancer to people remains unquantifiable.

The 1 in 100,000 level does not carry with it the degree of concern presented by the 1 in 15,000 level. Similarly, it is not as insignificant as the 1 in 1 million level. The approval of a carcinogenic sponsored compound, at any level of risk, does not include consideration of the potential interaction or synergy between an approved compound and any other substance or substances to which people are exposed. Certainly, the more approved carcinogenic compounds that are marketed the greater is the likelihood of cancer induction in people.

In the presence of these uncertainties, FDA cannot, with assurance, state that the 1 in 100,000 level would pose an insignificant level of risk of cancer to people. FDA can state, and comments agree, that the 1 in 1 million level presents an insignificant level of risk of cancer to people. Furthermore, FDA has developed confidence in the merit of the 1 in 1 million level because in recent years the agency has considered that level as its benchmark in evaluating the safety of carcinogenic compounds administered to food-producing animals. Under these circumstances, the agency believes that the most reasonable level of risk to apply in these regulations is the 1 in 1 million level. In making this decision, FDA recognizes that there may be a higher level of risk that is more appropriate but, that in light of the current uncertainties that accompany making a decision as to the most appropriate level of risk, the agency believes that choosing to rely on the 1 in 1 million level is reasonable and defensible.

B. Uncertainties in Quantitative Risk Assessment

28. Several comments requested that FDA identify the conservative assumptions used in the risk assessment procedures proposed for these regulations, identify the sources of uncertainty in those risk assessment procedures, and determine the actual or most likely estimate of risk rather than the upper bound on the risk.

FDA agrees that a discussion of the uncertainties, assumptions, and conservatisms in the risk assessment procedures is warranted. Pervasive uncertainty is the primary analytical difficulty in making a risk assessment that involves trying to define the human health effects of exposure to harmful residues. Although the risk assessment procedures proposed for these regulations draw extensively on science, which has developed a basis for linking exposure to residues to potential chronic health effects, there is uncertainty in types, probability, and magnitude of the health effects that will be associated with a given compound and its residues. These problems have no immediate solutions because of the many gaps in FDA's understanding of the causal mechanisms of carcinogenesis and in FDA's ability to ascertain the nature or extent of the effects associated with specific exposures. Where science fails to provide solutions, FDA applies conservative assumptions to ensure that its decisions will not adversely affect the public health.

For example, FDA relies upon the results of animal bioassays on a given substance to make a regulatory decision. FDA recognizes the inherent limitations and uncertainties in such bioassays, but relies on their results because there is scientific consensus that the bioassay is the best way currently available of determining the carcinogenicity of a compound. However, if one were to conduct a superb bioassay in which 1,000 animals were placed at risk and no tumors were detected, one could not conclude that the compound was not a carcinogen, but only that at the 99 percent confidence level the lifetime risk of cancer to the test animal was less than approximately 1 in 200. In such circumstances, FDA would regulate the compound under the general food safety requirements of the act for risks other than cancer and would apply a safety factor of 100 to the dose giving no observed effect in the bioassay. Thus, assuming a superb bioassay and assuming that the highest dose used in the bioassay is also the dose that gives no observed toxicological effect, FDA may be imposing a maximum lifetime risk of cancer of 1 in 20,000 on the public. FDA allows marketing of the compound because there is a scientific consensus that the results of such an assay are sufficient to create a rebuttable presumption that the compound is not carcinogenic.

On the other hand, if FDA concludes that the bioassay shows that the sponsored compound or its residues are carcinogenic, there are uncertainties in the estimate of risk to people from the compound's residues in edible products of target animals. These uncertainties exist because people are exposed to much lower residue levels than are experimental animals and because it has not been determined whether the potency of a carcinogen is proportionately the same at that lower level. The scientific community has not reached a consensus on the procedure for making this extrapolation of risk.

The risk assessment procedure used by FDA requires that the upper 95 percent confidence limit on the tumor incidence data be used to estimate the carcinogenic potency of a substance. Assuming a typical bioassay conducted on a sponsored compound (e.g., 50 animals per sex per dose) and a 20 percent incidence of tumors, this requirement causes an overestimate of the most probable potency by a factor of two. In addition, data from the most sensitive species and the most sensitive sex are used, resulting in an overestimate of the most probable potency by a factor of one to four.

The risk assessment procedure used by FDA assumes that each residue is as potent as the most potent compound detected in the bioassay. This is unlikely to be true, but in the absence of a bioassay on each residue and of knowlege of the quantity of each residue in the tissue, the effect on risk to the consuming public cannot be quantified.

The risk assessment procedure used by FDA assumes that a lower frequency of dosing has no effect on carcinogenic

potency. This is unlikely to be true. Because the animals used in the bioassay receive a constant and daily dose, but people will most likely be exposed to sporadic doses, the carcinogenic potency to people is most likely overestimated. However, FDA has no data that will allow a reliable prediction of the magnitude of this overestimate.

The risk assessment procedure used by FDA includes a calculation of the upper limit of carcinogenic potency at low dose, a dose representative of what people are exposed to. The statistical procedure used in this calculation is discussed in section VI.C., below.

The risk assessment procedure used by FDA assumes a one to one correspondence between the carcinogenic potency of the compound in the test animals and in people. The available, but extremely limited, data submitted in a comment suggest that carcinogenic potency of a specific chemical in rodents and people may vary by an order of magnitude, but is as likely to be high as low.

The risk assessment procedure used by FDA assumes that the concentration of residue in the edible product is at the permitted concentration, that consumption of that edible product by all people is equal to the consumption by the 90th percentile eater, and that all marketed animals are treated with the carcinogen (market penetration of 100 percent). These assumptions may overestimate risk. The extent of the overestimation cannot be quantified.

For the comments, the assumptions and requirements discussed above are multiple conservatisms; for FDA, each of these assumptions and requirements is a matter of prudence dictated by the lack of scientific consensus and FDA's responsibility under the statute to ensure to a reasonable certainty that the public will not be harmed.

C. Analysis of Animal Carcinogenesis Data Introduction

FDA's interpretation of the DES Proviso where "no residue" is construed to mean "no significant risk" requires an assessment of the risk anticipated from a known carcinogen as a function of the dose. Experiments designed to observe responses in the range of interest (that is, 1 in 1 million) would require impossibly large populations of test animals. Therefore, some method is required to extrapolate data from the standard bioassays, which use much smaller and more manageable numbers of animals, to the range of interest. Because the mechanism of chemical carcinogenesis is not sufficiently understood, none of the available statistical extrapolation procedures has a fully adequate biological rationale. Matters are further complicated by the fact that the dose-response relations assumed by the various procedures diverge substantially in the projections of risks presented in the range below the lowest dose tested.

FDA's objective has been to select an extrapolation procedure that is reasonably well supported by current science and a level of risk that is protective of the public health. FDA still believes that its objectives are best met by a nonthreshold, linear-at-low-dose extrapolation procedure that determines the upper limit of the risk. After considering the comments on the 1979 proposal and other available information on extrapolation procedures, FDA has concluded that the linear interpolation procedure of Gaylor and Kodell should be adopted for these proposed regulations. (Gaylor, D. W. and R. L. Kodell, "Linear Interpolation Algorithm for Low Dose Risk Assessment of Toxic Substances," *Journal of Environmental Pathology and Toxicology*, 4:305–312, 1980.) As discussed in this paper, the linear interpolation procedure consists of the following steps:

1. Use any appropriate mathematical model which adequately fits the data to approximate the dose response relationship in the experimental data range.

2. Obtain the upper confidence limits on the excess tumor rate above the spontaneous background rate in the experimental dosage range.

3. Connect a straight line from the origin to the point on the upper confidence limit at the lowest experimental dosage.

4. Obtain upper limits of risk for low dosages or, conversely, dosages corresponding to low upper limits of risk from the interpolation line obtained in Step 3.

FDA will require the use of the upper 95 percent confidence limit and the upper limit of lifetime risk of 1 in 1 million. The principal advantage of the linear interpolation procedure over the extrapolation procedure adopted in the 1979 proposal is that it uses all of the data in the experimental dosage range.

FDA recognizes that alternative procedures may have merit. Accordingly, FDA solicits comments on the propriety of those alternative procedures and what is believed to be their advantages over the proposed linear interpolation procedure. Of particular interest are the Crump modified multi-stage model (Ref. 17) and the one-hit model (Ref. 18).

Comments on the 1979 Proposal

29. The most frequent comment on the 1979 proposal stated or requested that other extrapolation models be used or that a class of acceptable extrapolation models be established and that the best model be selected on a case-by-case basis. The comments stated that an extrapolation model should be based on its scientific merit, how well it agrees with the observed data, and its consistency with other information available about the carcinogen. Many additional comments stated that the linear model was not a valid model for representation of the mechanism of action of a carcinogen. The arguments presented were based on: (1) The lack of close agreement between observed responses and a straight line fit of these observed responses, (2) the concept that most physical and biological systems follow exponential relationships, (3) the existence of biological thresholds, and (4) the knowledge about DNA repair mechanisms.

Neither the linear extrapolation procedure adopted in the 1979 proposal nor the linear interpolation procedure adopted in this reproposal should be construed as a mechanistic model of carcinogenicity. FDA selected the linear interpolation procedure primarily because of the procedures that do not disregard data from a chronic bioassay; the linear interpolation procedure is the least likely to underestimate risk.

The futility of attempting to select an extrapolation procedure based on how closely the procedure can describe the observed data and then predict risk at a low dose was illustrated in one of the comments. Six different models, each with a different biological rationale, were compared. The models were the one-hit, Weibull, logistic, log-probit, multi-hit, and multi-stage. The data used were derived from the ED_{01} study conducted at FDA's National Center for Toxicological Research. Because this study was specifically designed to investigate the carcinogenic response in the low dose region, many of the deficiencies found in studies designed to give only qualitative answers about carcinogenicity were not present. For liver neoplasms, the Weibull, logistic, and log-probit models could equally describe responses in the observed regions, but the predicted responses at a dose of 10 parts per billion varied by a factor of 10^{12}. For bladder hyperplasia, none of the models even came close to describing the observed responses.

30. Several comments stated that use of the linear extrapolation procedure would result in stagnating the

development of new products and better methods of extrapolation. These comments and several additional comments stated that the linear extrapolation procedure was too conservative, needlessly inflexible, restrictive, arbitrary, and unnecessarily rigid.

FDA does not believe that adopting a specific extrapolation procedure will stagnate development of new products or new methods of extrapolation. FDA is always open to new concepts and procedures when they are supported by sound data or cogent scientific rationale and when they provide the required degree of protection to the public health. The waiver provisions of the regulations were included for this reason.

31. Several comments stated that simplicity of use and ease of calculation should not be part of the consideration in selecting an extrapolation procedure.

FDA agrees that simplicity and ease of calculation should not be a major consideration in the selection of an extrapolation procedure. However, the availability, complexity, reliability, and reproducibility of the Mantel et al. extrapolation procedure (Ref. 19) and the associated computer programs were issues raised by AHI in its suit against the 1977 regulations. Therefore, these aspects were discussed in the 1979 proposal and were considered by FDA in the selection of the linear extrapolation procedure.

32. Several comments stated that the proposed regulations did not have clearly defined provisions for combining data from different dose levels, different sexes, different experiments, and different species. These comments concluded that as a result of this deficiency, additional unnecessary conservatism is introduced because the extrapolation is not based on all of the available data. Several comments advocated using the Mantel et al. procedure (Ref. 19) because it has specific methods for pooling data.

As noted previously, the linear interpolation procedure uses data from all the dose levels of the experiment to determine the upper confidence limit and to estimate the risk. In some instances, combining data from different experiments could reduce the upper confidence limit; however, in other instances data from different experiments may contain different types of information and should not be pooled. The sponsor must provide the scientific rationale that will justify combining data. FDA will use its statistical and biological evaluation of the data to determine which data, if any, will be appropriate for pooling. Where there are significant statistical or biological differences in the observed responses, FDA will not combine the data for analysis.

FDA, as stated in the 1979 proposal, does not believe that the Mantel et al. procedure is appropriate for these regulations because it may underestimate the risk at low doses. This deficiency is not outweighed by the procedure's specific methods for pooling data.

33. Several comments stated that the actual risk, or at least a realistic projection of the potential hazard, should be used for extrapolation rather than the upper bound on the risk.

As a policy matter, FDA has decided to continue to base the extrapolation on the upper confidence limit of the responses from the animal bioassay. This approach provides added assurance that the risk will not be underestimated. However, FDA will now use the upper 95 percent confidence limit, rather than the upper 99 percent confidence limit.

34. Several comments stressed that extrapolation was only one part of the risk estimation procedure and undue emphasis should not be placed on the use of mathematical procedures. These comments suggested that several extrapolation models be used to bracket the acceptable dose and then judgment be used in selecting the final acceptable dose.

FDA does not believe that this approach would be helpful. If the suggested procedure were adopted, FDA would have a set of residue concentrations that would vary by orders of magnitude, but no way of choosing among them. FDA has already used its judgment to select the extrapolation procedure that best meets the objectives of the regulations.

35. One comment posed the question of which lesions should be counted when attempting low dose* extrapolations.

When chronic bioassays are conducted in such a way that dependable data are available for determining dose-response curves for various lesions at various ages of test animals, then FDA believes that the appropriate dose-response curve to use is the one that yields the lowest dose at the level of insignificant risk. However, the opportunity to select among various age-dependent dose-response curves will usually not occur with the chronic bioassays recommended under these proposed regulations. FDA does not require that sponsors use the number of animals or the number of doses necessary to yield well-defined dose-response curves from serial sacrifices. Of course, sponsors are free on their own initiative to test a larger number of animals and a larger number of doses than FDA requests.

36. Two comments stated that no extrapolation procedure should be used because the animal bioassays were, at best, qualitative and not quantitative. One of these comments went on to state that carcinogens should be classified as either weak, moderate, or strong. Strong carcinogens would not be approved for use. Weak and moderate carcinogens would be assigned a preselected safe concentration of residue that would satisfy the operational definition of no residue.

FDA disagrees. Accepting this comment would be the equivalent of adopting an alternative interpretation of the DES Proviso that was rejected by FDA because a single permitted concentration of residue is not suitable for weak and moderate carcinogens that have large differences in measured carcinogenic potencies (Ref. 11). (See also Section I.B., "Interpretation of the DES Proviso.")

37. Several comments urged that FDA use any available epidemiological data to establish an upper limit on the risk.

FDA agrees and will accept risk estimates based on appropriate epidemiological data when the data are relevant to decisions on the approval of sponsored compounds for use in food-producing animals.

38. One comment stated that FDA should establish general standards for an acceptable extrapolation and allow the sponsors to demonstrate that these standards have been satisfied by the specific procedure selected by the sponsor.

In these regulations, FDA has established acceptable procedures for extrapolating data from animal bioassays. In acting upon submitted applications, FDA will consider alternate procedures that provide the equivalent degree of assurance that the sponsored compound can be used in animals without posing an unacceptable risk of cancer to people. For example, if a sponsor has information establishing the mechanism of carcinogenicity for a specific compound, then the sponsor may use that information to develop a more suitable extrapolation procedure. The waiver provisions were included for this purpose.

D. Derivation of the Concentration of the Residue of Carcinogenic Concern That Will Be Defined as No Residue

As used in these regulations, S_e means the concentration of the test compound in the total diet of test animals that corresponds to a maximum lifetime risk

of cancer in the test animals of 1 in 1 million. For these regulations, FDA will also assume that if the S_o concentration of residue were to occur in the total human diet, no significant increase in the risk of cancer to people would result. In some cases a sponsor will have tested for carcinogenicity metabolites in addition to the sponsored compound. In these instances, FDA will assume that the most potent carcinogen of those tested poses the greatest potential carcinogenic threat among the residues. FDA will use that carcinogen to calculate S_o.

Because the total human diet is not derived from food-producing animals, FDA will make corrections for food intake in determining the permitted concentration of residue of carcinogenic concern (see "Guideline for Establishing A Tolerance"). The S_m value represents the concentration of total residue of carcinogenic concern that FDA will permit for specific classes of edible products that constitute finite percentages of the total human diet.

VII. Studies To Select Marker Residue and Target Tissue

A. Introduction

Before the use of a carcinogenic compound can be approved, FDA must determine that a practical and reliable assay is available to measure the residue of carcinogenic concern at the concentration that will satisfy FDA's operational defintion of no residue. One approach to this problem would be to require assays that can be used to measure every residue in each of the various edible tissues. Because the number of residues in edible tissues is likely to be large, such an approach would be impractical. There is another, far more more practical approach which sacrifices no principle of safety. This alternative approach centers on the concept of a marker residue and a target tissue.

A marker residue is a residue whose concentration is in a known relationship to the concentration of the residue of carcinogenic concern in the last tissue to achieve its permitted concentration. The marker residue can be the sponsored compound, any of its metabolites, or a combination of residues for which a common assay can be developed. The marker residue can be a carcinogenic or a noncarcinogenic residue.

The target tissue is the edible tissue selected to monitor for residues in the target animal. The target tissue and marker residue are selected so that the absence of marker residue above the permitted concentration will confirm that each edible tissue has a concentration of residue of carcinogenic concern below its S_m, and, therefore, FDA's operational defintion of no residue has been satisfied for all edible tissues of the animal.

When a compound is to be used in milk- or egg-producing animals, milk or eggs will be a target tissue in addition to one tissue selected for the edible carcass. If a compound is used in both milk- and egg-producing animals, milk and eggs each must be a target tissue in addition to the one selected for the edible carcass. This is necessary because milk or eggs enter the food supply independently. In these cases, it may be necessary to select a marker residue for milk or eggs that is different from the marker residue selected for the target tissue representing the edible carcass.

Application of the concepts of marker residue and target tissue requires an experimental determination of the quantitative relationships among the residues that might serve as marker residues in each of the various edible tissues that might serve as target tissues. Because these relationships change with time, the sponsor must measure the depletion of the potential marker residues in the potential target tissues starting after the last treatment with the compound and continuing until the total residue of carcinogenic concern has reached S_m for that tissue. FDA will use the residue depletion profiles and the regulatory method to determine the R_m for the marker residue. The R_m is the concentration of the marker in the target tissue when the concentration of the total residue of carcinogenic concern is equal to S_m in the last tissue to achieve this value.

B. Comments on the 1979 Proposal

39. One comment argued that it was wrong to require that milk or eggs also be the target tissue when a sponsored compound is to be used in milk- or egg-producing animals.

FDA disagrees and will retain the requirement. As discussed above, milk or eggs and the edible portions of the carcass enter the food supply independently. Therefore, a regulatory method must be available to measure the residue of carcinogenic concern in eggs or milk as well as the edible portion of the carcass.

40. One comment contended that because FDA will select the target tissue, the marker residue, and the R_m, it will be many months before the sponsor can begin developing the regulatory method for the marker residue. The comment requested that once sponsors have submitted adequate data, they should be free to make these selections and begin the necessary testing rather than again having to wait for FDA review and approval.

FDA expects that sponsors will select the target tissue and the marker residue, and designate R_m. Upon submission of these data, FDA will review the information to ensure that the sponsor has reached a valid conclusion. Sponsors generally make excellent choices in selecting a marker residue and target tissue, FDA, therefore, does not believe its particular role in validating the selections is likely to result in delays in data development.

VIII. Sponsored Compounds Affecting Pools of Carcinogenic or Potentially Carcinogenic Substances Endogenous to Target Animals

FDA is withdrawing those sections of the 1979 proposal that were concerned with endogenous substances. The criteria and procedues FDA will employ in evaluating the safety of endogenous substances will be discussed in the "Guideline for Toxicological Testing."

IX. Regulatory Method

A. Introduction

Under the proposed regulations, FDA will approve a carcinogenic compound for use in food-producing animals if the concentration of residue of carcinogenic concern satisfies the operational definition of no residue, and if a method is available that can reliably measure that concentration of residues in edible animal products. The criteria for determining whether a method is acceptable are described in the "Guideline for Approval of Methods of Analysis for Residues."

B. Comments on the 1979 Proposal

41. FDA received many comments on the criteria for evaluating regulatory methods. Generally, the comments criticized FDA for referring to the nonstandard analytical attributes dependability and practicability.

FDA believes that in large part the criticisms made in the comments are well taken. FDA's new guideline for analytical methods refers only to standard attributes of an analytical method. In approving a regulatory method, however, FDA believes that it is important to consider some of the aspects of practicability, a nonstandard attribute. Therefore, FDA will continue to consider the following items, in addition to the standard attributes of analytical methodology, when evaluating a regulatory assay: The commercial availability of equipment and supplies; the degree of training required to complete the assay

successfully; the length of time required to complete the procedure; and the costs associated with developing and running the assay.

42. Comments stated that it would be hard to envision a method satisfying the proposed regulations that would not involve the modification of existing instrumentation of the use of sophisticated techniques. Comments also stated that the proposed regulations are unreasonable because they either demand that the equipment and materials employed be commercially available or else force the sponsor to advance and market the analytical instrumentation. Furthermore, the comments argued that one of the biggest obstacles to gaining new animal drug application (NADA) approval has been that government regulatory laboratories do not have the equipment or expertise to implement the proposed procedures, a problem that will increase in severity with the greater demands put on analytical capability by these procedures. Another comment noted that some methods are now available for detecting animal drugs in tissue in the 5 to 100 parts per trillion range, but that these methods require the participation of highly skilled and careful scientists. The comment further complained that even these methods do not allow the determination of residues in tissue for a large number of samples in one day's time. The comment concluded that procedures that require new technology and that involve detection limits at ultra low levels will, for the foreseeable future, require great skill and a significant amount of time to carry out sample analysis.

FDA is aware of the problems in developing a method for detecting a carcinogenic compound in edible tissue. When a sponsor develops a method based on new technology and the method passes FDA's desk review, then FDA will gain the expertise needed to perform the method. FDA agrees that one must not label all new and ultrasensitive methodologies impracticable.

43. One comment found the phrases "suitable for routine use in a government regulatory laboratory" and "consistent with regulatory objectives" meaningless as goals for the developmental analytical chemist. The comment asserted that FDA should accept a method on its merits, not on the length of time required to conduct the procedure.

The phrases in question pertain mostly to the time required to complete the procedure in a government laboratory. For research purposes, the time required to complete the procedure may be of a secondary consideration; for the regulatory purposes of compliance and surveillance, the time required to complete the procedure is of great importance. The U.S. Department of Agriculture (USDA) and FDA would be unable to fulfill their regulatory responsibilities with a method yielding, for example, one analytical result per day. Although FDA agrees that practicability may not be a scientific attribute of a method, FDA must consider collateral factors when evaluating the proposed regulatory method. FDA discusses these factors in the "Guideline for Approval of Methods of Analysis for Residues."

44. One comment suggested redefining practicability such that a method is practicable if four out of five laboratories can successfully repeat it.

Practicability has been defined mainly in terms of timeliness, though other factors such as safety of reagents and procedures will be assessed. The comment refers to attributes of the method that are considered under the requirements for reproducibility.

45. One comment emphasized that no method can claim to provide a response that is due to "that compound only" and, accordingly, recommended that "should" replace "must" in the first sentence of the definition of specificity which appeared in the preamble to the 1979 proposal. The same comment stated that the preamble implied that mass spectrometry is the only acceptable confirmatory technique, a proposition that would be unreasonable and technology limiting. The comment added that FDA should clarify the distinction between a method for screening of samples and a method for confirming positive results found by the screening method.

FDA agrees that no method can guarantee that an analytical response is unique to that compound. The regulatory method must be able to quantify the marker residue (sometimes referred to as the determinative aspect of the method) and to verify the identity of the marker residue (confirmatory procedure). FDA did not and does not mean to limit sponsors to the use of mass spectrometry for confirming the identity of the marker residue. In fact, FDA proposed only the regulatory method be composed of a sufficient number of independent measurements to ensure that the identity of the marker residue is confirmed.

46. Another comment declared as meaningless FDA's statement that "the method is considered specific if the observed response is a smooth and continuously decreasing or increasing function of the concentration of the marker residue and of that compound only." The comment also stated that the regulations should address what other residues must be tested to characterize the method.

The quoted statement was intended simply to remind sponsors of a criterion central to good analytical practice, single-valuedness. FDA agrees that it should give guidance to sponsors about possible interfering substances that could affect the analysis.

47. One comment proposed that a confirmatory procedure be made available only for a method that tends to generate an unusual number of false-positives. A related comment argued that confirmation of marker residue is necessary while developing the method but not during routine operation of the method.

FDA disagrees that a regulatory method should be capable of confirming the marker residue only when special conditions exist. Because compounds regulated for animal use may yield violative residues in edible tissues, FDA must be able to ensure that the compound responsible for a violation can be measured and identified. In a surveillance situation, if initial measurements demonstrate that tissues are nonviolative with respect to a particular drug, further inquiry is not necessary. However, confirmatory procedures must always be available for those instances in which violations occur.

48. Comments argued that a method which produced average recoveries somewhat below the 60 to 110 percent or 80 to 110 percent ranges, but which had high precision, would be disapproved under the proposed regulations even though current technology might consider the method good. Several comments also pointed to the use of internal standards containing stable isotopes. The comments argued that the use of these internal standards provides accurate analyses even with extremely low recoveries.

The average recovery for an acceptable assay will ordinarily be within the stated ranges. However, FDA may consider a different range if a method provides high precision with lower recoveries.

49. One comment noted that the 60 to 110 percent and 80 to 110 percent limits are unrealistic for measurement at or near the detection limit of an analytical method and proposed a limit for the average recoveries of 25 to 175 percent. Another comment proposed that 80 to 110 percent should always be the limits; however, should FDA accept methodolgy with average recoveries

between 60 to 80 percent, it should require that a correction factor be applied to the analytical result. One comment asked that FDA specify maximum and minimum acceptable values for individual recoveries.

Because it relies substantially on analytical chemistry to carry out its regulatory responsibility to ensure public protection, FDA must establish reasonable and defensible criteria for evaluating a method proposed to monitor edible tissue. It has been FDA's experience that average recoveries of 80 to 110 percent for 100 parts per billion and above are attainable. Although average recoveries of compounds below 100 parts per billion are more variable, FDA's regulatory objective to monitor effectively for carcinogenic residues would be compromised if recoveries of 25 to 175 percent, as suggested, were accepted. In choosing 60 to 110 percent as an acceptable limit for recoveries, FDA sought both to make allowances for the increased variability that could be expected to occur below a concentration of 100 parts per billion and to establish a standard that would not render the method unreliable. Rather than becoming entangled in justifying how to determine and use a correction factor to adjust an observed analytical result, FDA, having rigorously evaluated and validated the method, prefers to rely upon the analytical result itself.

With regard to maximum and minimum acceptable values for individual recoveries, FDA expects that for average recoveries to fall within the designated 60 to 110 percent and 80 to 110 percent limits, the individual recoveries will ordinarily fall near those same ranges. Average recoveries of 60 to 110 percent or 80 to 110 percent can be obtained by averaging very high and very low values; however, in such cases, the precision will be adversely affected. When a set of data contains a result that appears to deviate excessively from the average or median, FDA will base the decision to retain or disregard that result upon usual statistical considerations such as those recommended by the Association of Official Analytical Chemists (AOAC) in "Statistical Techniques for Collaborative Tests" (Ref. 20).

50. One comment stated that the proposed regulations failed to specify what type of hydrolytic enzymes should be used if exhausitve extraction is used to ascertain accuracy.

FDA is deleting the requirement for treatment of target tissue from dosed animals with hydrolytic enzymes to free bound or conjugated marker residue (unless, of course, it is part of the proposed method) because the method need not measure all the potential marker residue present in tissue. The method must, however, consistently remove an amount of marker residue that has been demonstrated to be in some known relation to the total residue.

51. One comment noted that the proposed regulations would require that a series of spiked samples be run to obtain a response curve each time a set of unknown samples is assayed. The comment noted that this procedure will reduce the number of samples that can be run in a given period of time.

FDA will develop an analytical curve from spiked tissue during the method trial. In actual surveillance situations, an analyst will conduct several trials to determine that the method works in his or her hands, and, assured of that, he or she will then conduct the analyses of the unknown samples and analyze a series of spiked samples if such a procedure is an integral part of the regulatory method.

52. Many comments expressed disagreement with the proposed validation procedure. The comments stated that the use of only three laboratories is not statistically sound; accordingly, the comments suggested that additional laboratories, including commercial and State laboratories, be required to participate in the validation. In addressing the appropriateness of AOAC involvement in method validation, the comments indicated that AOAC applies requirements similar to those listed under section VIII of the 1979 proposal. In response to FDA's statement that the AOAC process was time-consuming, one comment suggested that the collaborative study be conducted simultaneously with the development of other data, rather than after the NADA was submitted.

FDA agrees that a method trial involving more than three laboratories would improve the characterization of the method. However, FDA believes the sampling procedure to be followed by the three laboratories will provide sufficient data to judge the adequacy of a proposed regulatory method for surveillance purposes.

FDA's decision in the 1979 proposal to decline to accept the AOAC procedure was based on considerations of time and practical implementation. Up until then it had been the experience of FDA analysts and laboratory managers that the mechanics of coordinating a collaborative study, such as that developed by AOAC, required more time than is needed to initiate and complete a three-government laboratory study. However, because the purpose of method trials is to ascertain whether the regulatory method conforms to the criteria for acceptance, FDA would not object to a sponsor's trying its proposed regulatory method in an expanded study in laboratories in addition to the three government laboratories. Sponsors should be aware that such a procedure might increase the time required for completion of the method trial and would require the sponsors to furnish an increased number of samples and other materials that are not available commercially. In any event, however, the three government laboratories participating in the method trial must be able to perform the method satisfactorily because they have the responsibility for surveillance and enforcement.

The suggestion that FDA validate a method while other data are being collected is not an acceptable time-saving idea. Under this scheme, a method trial could begin before collection of the toxicity and metabolism data necessary for establishing the target tissue, marker residue, S_m, and R_m. Without such information, FDA cannot initiate a method trial.

53. Other comments contended that the requirements on method evaluation were unclear and that FDA should clarify at what stage in the review process validation will occur. The comment also requested that appropriate time for preparation of samples by the applicant be allowed.

The criteria and procedures for evaluating the proposed regulatory method are discussed in FDA's guideline. Provided a desk review of the data submitted in support of the methodology satisfies the criteria in the guideline, FDA will recommend that the method undergo an interlaboratory validation trial. In notifying the sponsor of the acceptance of its method for a validation trial, FDA will outline the number and type of tissue samples to be forwarded to each participating laboratory. FDA will work closely with sponsors in setting up the method trial and will allow ample time for preparation of the samples.

54. In connection with the validation process, one comment suggested that the interlaboratory study should include and provide for a prevalidation desk review and evaluation of the regulatory method by each laboratory that is to participate in the validation study.

FDA agrees with this comment. If FDA finds a proposed regulatory method acceptable for a validation trial, each participating laboratory reviews the method prior to initiation of the trial.

FDA forwards comments made by each laboratory to the sponsor.

55. Another comment suggested that if one of the three government laboratories failed to validate the method, a fourth laboratory should be asked to repeat the method. At the same time, the laboratory in which the method failed should provide all raw data to the sponsor so that the sponsor can comment knowledgeably on the inability to validate.

As indicated previously, FDA requires that the proposed method be validated in three participating government laboratories. In the course of method validation, should problems arise, FDA will investigate the reason. FDA will discuss with the sponsor problems encountered with the method and, if warranted, repeat the trial.

56. A related comment raised concern that the requirement that the sponsor provide supplies to the laboratories involved in the method trial could represent an open-ended potential for requiring industry to supply the government laboratories with equipment and supplies, and therefore suggested that the phrase "if they are not commercially available" be appended to the regulation. The comment added that the sponsor should be allowed to supply training to the government personnel involved in the validation if FDA considers training necessary.

FDA agrees that the sponsor will have to supply the government laboratories with equipment and supplies that are not commercially available. FDA already allows a sponsor to demonstrate its proposed regulatory method. Demonstrations help government scientists to become acquainted with proposed methods and to identify defects prior to initiating a validation trial.

X. Withdrawal Periods

A. Introduction

The regulations propose to define the preslaughter withdrawal period or the milk discard time for a sponsored compound as the period of time required, after the last administration of the sponsored compound, for the concentration of the marker residue to deplete to R_m in the target tissue. The preslaughter withdrawal period or milk discard time must also be compatible with actual conditions of livestock management and be reasonably certain to be followed in practice. Because of the way in which the regulations define marker residue, target tissue, and R_m, the use of the sponsored compound in accordance with the prescribed preslaughter withdrawal period or milk discard time will assure that unacceptable levels of a carcinogenic residue will not be present in human food derived from treated animals. The data required and the procedure for determining the preslaughter withdrawal period or the milk discard time are described in the "Guideline for Establishing Withdrawal Periods."

B. Comments on the 1979 Proposal

57. A comment contended that in choosing the R_m as the concentration to which the residues must deplete, FDA is inconsistent with its interpretation of no residue. The comment contended that this procedure is the same as alternative two—rejected by FDA—found on page 17086 of the 1979 proposal.

FDA has revised this aspect of the proposed regulations. FDA now proposes that when the residues have depleted to or below R_m, then FDA's operational definition of no residue has been satisfied. If the residues do not deplete to or below R_m, then FDA cannot approve the use of the sponsored compound.

58. Comments contended that the statement "validated regulatory method" is improperly used, because methods are not validated until the final stages of a petition's review, and the sponsor cannot wait for this method validation before initiating residue depletion studies to establish a withdrawal period.

FDA does not agree with the suggestion that the withdrawal period be established using a method that is not the one submitted for validation. Because different methods may have a different specificity, precision, or systematic error, the data collected with different methods could establish different withdrawal periods. However, the sponsor does not need to wait until after official FDA validation to collect the required data for establishing the withdrawal period. The key requirement is that the method submitted for validation also be the one used to collect the data for establishing the withdrawal period.

59. One comment questioned the use of withdrawal periods based on individual animals because the risk to people is related to the average residue concentration at a given withdrawal period and the fact that compounds may be given to production units containing more than one animal, e.g., flocks, herds, pens, etc. The comment suggested that the variability of these units be used in the calculations of the required withdrawal periods.

FDA agrees that if the mean of the herd or flock is at or below R_m, then the herd or flock is in compliance with FDA's operational definition of no residue. However, because the withdrawal period is established from only a limited number of animals that are maintained under typical field conditions, FDA will use a tolerance limit on these observations to establish the withdrawal period. A tolerance limit provides an internal within which a given percentile of the population lies, with a given confidence that the interval does contain that percentile of the population. When calculating a tolerance limit, FDA will use the 99th percentile of the population and the 95 percent confidence level. This procedure will ensure with a high degree of confidence that the mean residue concentration of any future herd or flock presented for slaughter will be in compliance.

FDA believes that the tolerance limit approach is necessary because a number of variables associated with normal husbandry practices may alter the extent to which residues accumulate or the rate with which residues deplete. Relevant variables may include breed, diet, state of confinement, geographical location, age of animals, state of health, and other herd-to-herd variables.

60. One comment stated that the 1979 proposal indicates that extended withdrawal periods will not be approved for drug products if the withdrawal period is longer than that commonly accepted in livestock management practices. The comment continued that these "commonly accepted livestock management practices" have not been determined empirically by livestock producers and are often a result of producers following the withdrawal periods set by FDA. The comment concluded that it was incongruous for FDA to say that it will not approve any withdrawal periods longer than those it has previously established.

FDA does not agree with this comment. As stated in the 1979 proposal, section 512(d)(2)(D) of the act provides expressly that, in determining whether a compound is approvable, FDA must consider whether the conditions of use of a sponsored compound are reasonably certain to be followed in practice. The withdrawal period is one of the conditions of use. In determining a withdrawal period, FDA does not base its decision on previously established withdrawal periods, but rather on available data and the proposed conditions of use for the sponsored compound.

XI. Compliance

The approved regulatory method will be used to monitor the concentration of the marker residue in the target tissue of slaughtered animals. Information and data from monitoring will be used by FDA in conjunction with USDA in a comprehensive effort to assure the safety of food from food-producing animals. If the concentration of the marker residue is found above the R_m in target issue, the remainder of the carcass may contain violative residues and the carcass may be seized under 21 U.S.C. 334 as adulterated under 21 U.S.C. 342(a). If the circumstances are appropriate, the articles may also be detained under the Poultry Producers or Meat Inspection Acts (see 21 U.S.C. 451 et seq. and 601 et seq.).

61. A comment on the 1979 proposal questioned whether an entire animal carcass is required to be condemned under the regulations when it is found that the concentrations of the marker residue in target tissue exceeds R_m.

Based on data submitted to FDA, the agency may be able to make reliable and accurate predictions of the concentration of residue in other tissues when the concentration of residue in target tissue is above R_m. If FDA can determine from these data that muscle does not contain residues of carcinogenic concern in excess of its S_m, then the muscle is nonviolative and will not be subject to regulatory action. Whether regulatory action will be taken in any particular case will depend not only upon the degree of confidence FDA has in extrapolating results from one tissue to another but also upon the applicable legal standard; for example, whether the government has to show that the carcass is unfit for food or merely that it bears or contains unapproved concentrations of an animal drug. FDA will work closely with USDA in providing the necessary evaluations for determining whether regulatory action is advisable.

Regardless of whether a seizure occurs, information gathered from monitoring may assist both FDA and USDA in identifying producers who customarily submit for slaughter animals adulterated within the meaning of the act. This information may be helpful in detaining for prophylactic investigation herds, flocks, etc., from such producers. Lastly, and perhaps most importantly, information regarding the rate and extent of residues above safe concentrations in edible tissue may result in formal FDA action under section 512(e) of the act to withdraw the approval of the sponsored compound.

XII. Waiver of Requirements

In response to a petition or on his own initiative, the Commissioner may waive, in whole or in part, the requirements of the proposed regulations, except the requirement under proposed 21 CFR 500.88 for a regulatory method. (The possibility always exists that the agency may be precluded from enforcing a statutory requirement. In the special circumstances attending estradiol-containing products in cattle, for example, FDA has decided that imposing the requirement for a regulatory method for estradiol would be legally inappropriate because doing so would yield a result so unreasonable that it "could not be thoroughly attributed to Congressional design." *United States* v. *Rutherford*, 442 U.S. 544, 545 (1979). This exception is very narrow and rarely capable of being met.)

A petition for a waiver may be filed by any person who would be adversely affected by the application of the requirements to a particular compound. The petition should explain and document why some or all of the requirements are not reasonably applicable to the compound, and describe the alternative procedures that have been, or coud be, followed to assure that use of the compound will not contaminate human food with residues whose consumption could present a risk of cancer to people. The petition shall clearly set forth the reasons and supporting information that demonstrate why the alternative procedures will provide an adequate basis for concluding that approval of the compound satisfies the requirements of the anticancer provisions of the act. If the Commissioner determines that waiver of any of the requirements of proposed Subpart E of 21 CFR Part 500 is appropriate, the Commissioner will state the basis for the determination in the regulation approving marketing of the sponsored compound.

XIII. Implementation

The proposed regulations are based on recognized scientific principles for testing and evaluating compounds for potential carcinogenicity. Until a final rule is published, FDA will use these proposed regulations as a guideline for determining whether a sponsored compound is shown to be safe. FDA will apply the proposed regulations and guidelines to compounds being evaluated for approval or subject to proposals to withdraw approval.

Accordingly, FDA will apply the threshold assessment to all sponsored compounds currently in any stage of review and for all future applications, except when each of the following conditions is satisfied:

1. Substantial and acceptable work on the human food safety data requirements for an application was begun before March 20, 1979.

2. The administrative file reveals an FDA commitment to the sponsor before March 20, 1979, concerning the human food safety data required for approval.

3. The sponsor has continued its efforts to obtain a new animal drug application or a food or color additive petition approval after receiving FDA's commitment.

4. The compound is shown to be safe under standards being applied shortly before March 20, 1979, and no apparent safety concerns exist regarding the product under the conditions prescribed, recommended, or suggested in the proposed labeling as required under section 512(d)(2) of the act.

Recently, FDA published a notice in the **Federal Register** in which the agency discussed this implementation plan in greater detail (see 48 FR 6361; February 11, 1983). FDA continues to solicit comments on the plan.

XIV. General Comments on the 1979 Proposal

A. Statutory Construction

62. Several comments argued that, because the Delaney Clause applies only to substances found to induce cancer when ingested by man or animals, the clause cannot be applied to compounds for which carcinogenicity is merely suspected.

FDA agrees. The comments went on to reason that FDA could not require chronic testing of compounds that are merely potential carcinogens. In making this analysis, the comments overlooked the fact that the General Food Safety Clause requires that an additive or new animal drug be shown to be safe. If there is good reason to suspect that a compound is a carcinogen, the compound cannot be shown to be safe until evidence is available that adequately answers the questions concerning carcingenicity. In evaluating for approval any additive or new animal drug, FDA applies the threshold assessment criteria to determine whether there is a reasonable basis to suspect the carcinogenicity of a compound. If there is, FDA requires that chronic tests be conducted on the compound and where applicable, on its metabolites of carcinogenic concern. If the tests demonstrate that the compound or its metabolites are carcinogenic, then the compound comes under the

proscription of the Delaney Clause, in which case these proposed regulations provide a mechanism for implementing the DES Proviso and approving the use of the compound.

63. Several comments contended that the proposed regulations exceeded FDA's statutory authority because the agency stated that it would apply the operational definition, standards, and criteria put forth in the 1979 proposal to withdrawal actions against approved compounds. Comments contended that the agency may not evaluate an approved compound under the SOM procedures and consider the evaluation new evidence under section 512(e)(1) of the act supporting withdrawal of an approved NADA.

FDA agrees that new evidence is necessary before bringing action under section 512(e)(1) of the act. In specific situations the application of these proposed regulations and guidelines to the reevaluation of approved products may constitute new evidence sufficient to demonstrate that the approved products no longer are shown to be safe. Section 512(e)(1)(B) of the act provides as follows:

> (e)(1) The Secretary shall, after due notice and opportunity for hearing to the applicant, issue an order withdrawing approval of an application filed pursuant to subsection (b) with respect to any new animal drug if the Secretary finds—
>
> * * * * *
>
> (B) that *new evidence* not contained in such application or not available * * * until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved * * *. [Emphasis added.]

Thus, if new evidence evaluated together with previously existing evidence shows that the drug is no longer shown to be safe, the burden of proof under this provision is met by the agency, and unless the product can be shown to be safe by the manufacturing party, the approval of the product must be withdrawn. Congress was careful to make clear that new evidence includes any evidence not available at the time the application was approved. New evidence includes tests by new methods, tests by methods not originally considered applicable, and new interpretations of previously collected data and information. In withdrawing the approval of a new animal drug, it is not the agency's burden to show that the use of the drug is unsafe. Instead, FDA must provide a reasonable basis for concluding that there are important questions about the safety of the compound and the residues that may result from its use. FDA may appropriately reach this conclusion and satisfy its burden under the new evidence clause of section 512(e)(1)(B) of the act by relying on the standards and criteria provided in the regulations and the guidelines. In fact, this interpretation was followed by the Commissioner in his withdrawal of the NADA's for DES and was upheld by the reviewing court in *Rhone Poulenc, Inc.* v. *FDA*, 626 F.2d 750 (D.C. Cir. 1980).

64. A related comment argued that any attempt to withdraw the approval of a compound like DES "where no residues have been detected using approved test methods is inconsistent with the law both as it appears on the face of the statute, and as the statute has been judicially construed."

The sponsor of an NADA for a carcinogenic drug must submit as part of that NADA an acceptable method of analysis to detect residues of the drug in edible products of the treated animal. The statute requires the submission of "a description of practicable methods for determining the quantity, if any, of such drug in or on food, and any substance formed in or on food, because of its use; * * *" (see section 512(b)(7) of the act, see also section 512(d)(1)(H) of the act). In addition, the legislative history of the DES Proviso shows that that provision contemplates that the sponsor will have the responsibility for developing an analytical method for a carcinogenic drug (Ref. 21). When the sponsor of an NADA for a carcinogen fails to submit an adequate analytical method to detect residues, FDA cannot approve the NADA. In the case of an approved NADA for a carcinogenic compound, if FDA determines based on new information that the approved analytical method for detecting residues is inadequate, FDA has two grounds upon which it may withdraw the approval. First, FDA may withdraw the approval because the compound is no longer shown to be safe (see section 512(e)(1)(B) of the act). This ground was relied upon by the Commissioner in his decision to withdraw the approved NADA's for the use of DES (see 44 FR 54859; September 21, 1979). Second, FDA could withdraw the approval on the basis of the Delaney Clause. Faced with evidence that an approved method was inadequate, FDA could not make a finding that "no residue" of the sponsored compound would be found in the edible products of treated animals. The DES Proviso cannot begin to operate without that finding, and, accordingly, the Delaney Clause would preclude continued approval. A more lengthy discussion of this position may be found in the Commissioner's order withdrawing the approved NADA's for DES (44 FR 54858–54860).

65. Several comments contended that the proposed regulations were arbitrary, capricious, and vague and therefore violated the Administrative Procedure Act. The primary grounds for the contention were: FDA's failure in the proposal to define carcinogen and FDA's failure in general to follow statutory time limits for action upon an application for approval.

As discussed above, when determining whether a tested substance is a carcinogen, FDA will rely upon the criteria given by the Subcommittee on Environmental Carcinogenesis, National Cancer Advisory Board (Ref. 14).

In response to the comments on statutory time limits, FDA would like to clarify that, once an application is complete and accepted for filing, or once an application is filed over protest, the statutory time limits provided in the respective sections of the act begin to run. Much of the delay in the approval process of a sponsored compound is attributable to the time needed to collect the data necessary to complete an application, not to FDA's review of the data.

66. One comment argued that the comment period for the proposed regulations should be extended until FDA has established criteria for evaluating chronic tests for carcinogenicity, until FDA has prepared and published guidelines on critical parts of the proposed regulation, and until criteria for considering exceptions to the proposed criteria are prepared.

Instead of extending the comment period and promulgating a final rule, FDA has decided to repropose the regulations and make available the implementing guidelines.

67. One comment suggested that FDA should consider allowing the conditional marketing of compounds prior to approval and prior to the completion of the data collection process provided in the regulations. The comment contended that the periods required for the review of data were excessively long. Another comment suggested that unapproved compounds should be subjected to veterinary prescription provisions and be marketed under the supervision of a veterinarian on a limited basis once short-term tests had been performed.

FDA recognizes that the data collection process may be time consuming. Nevertheless, the statute requires that the sponsor demonstrate

safety by adequate tests by all methods reasonably applicable before any compound can be approved. Until that statutory standard is met, FDA cannot, either conditionally or otherwise, legally approve a sponsored compound. FDA will make every effort to expedite not only its review of collected data but also the review of protocols for desired testing.

68. One comment recommended the creation of an "evaluation and classification panel" to be composed of government and nongovernment experts to identify, classify, and categorize carcinogens. The panel's cancer determinations would be binding upon the various regulatory agencies, including FDA. The determinations would be limited to scientific issues and, according to the comment, would not intrude upon the regulatory responsibilities of the agencies involved. The comment suggested that the panel would make scientific judgments as opposed to regulatory judgments.

FDA recognizes the benefit of consulting qualified experts for opinions concerning difficult scientific questions. Accordingly, FDA often seeks outside advice and, to the extent possible under the act (see 21 U.S.C. 331(j)) and FDA's regulations (see 21 CFR 514.11), FDA will continue to do so. However, FDA does not agree that the creation of an outside panel that would make decisions binding on FDA is either necessary or desirable.

B. Economic Issues

69. Several comments contended that in making a decision as to the safety of the sponsored compound FDA should consider whether the societal and economic benefits which a sponsored compound might produce outweigh the costs of restricting its use. A comment contended that the decision in *American Petroleum Institute* v. *Occupational Safety and Health Administration (OSHA)*, 581 F.2d 493 (5th Cir. 1978), *aff'd on other grounds sub. nom., Industrial Union Department* v. *American Petroleum Institute*, 488 U.S. 607 (1980), supports such a consideration by the agency.

FDA is required to make an assessment of the costs and benefits of every rule it issues and to prepare a regulatory impact analysis and/or regulatory flexibility analysis if the rule meets the criteria of Executive Order 12291 or the Regulatory Flexibility Act. This assessment is intended to assist in making regulatory decisions and/or to inform the public of the consequences of those decisions. In preparing an assessment, FDA considers whether alternative acceptable methods of accomplishing the desired end, in this case the showing of safety, exist. FDA recognizes the obligation to select the alternative that involves the least cost to society. However, FDA is not allowed to factor into the determination of the safety of the compound the costs or benefits to society of that compound (see 44 FR 54881–54883).

The decision in *American Petroleum Institute* (API) provides little support for the comments' contentions. And, a related, more recent case, *American Textile Manufacturers Institute, Inc.* v. *Donovan*, 617 F.2d 636 (D.C. Cir. 1979), *aff'd* 452 U.S. 490 (1981), is contrary to the comment's position. In *API* the Supreme Court found that the Occupational Safety and Health Administration (OSHA), prior to setting an exposure limit on the airborne concentration of a toxic substance in the work place, had to make a finding that the toxic substance in question posed a significant health risk and that the proposed standard was necessary and appropriate. The Court declined to decide whether the Occupational Safety and Health Act (OSH Act) required that in making such a decision OSHA had to determine whether the benefits expected from the new standard bore a reasonable relationship to the costs that it imposed. However, in *American Textile* the Court held that risk benefit balancing under the OSH Act would be inconsistent with the congressional design and that no cost-benefit analysis requirement on the issuance of the standard existed under this act. The statutory language in the General Food Safety Clause is less equivocal concerning cost than the provisions of the OSH Act that were the subject of the Court's attention.

70. Comments contended that the 1979 proposed regulations would be overly burdensome because nearly every compound currently regulated or to be regulated would be included under the regulations.

The comment assumes that every compound for which an approval is sought is carcinogenic. In fact, only a minority of sponsored compounds, probably 20 percent or less, have or will be determined to be carcinogenic in laboratory animals (Ref. 22). Only carcinogenic compounds will be regulated under these proposed regulations.

71. A comment contended that the regulations resulted in an unfair restriction of trade because small companies producing limited numbers of drug products are not financially able to compete with larger, better financed companies, and because the proposed regulation would be effective only in the United States.

The act makes no distinction between large, well-financed manufacturers of sponsored compounds and smaller, less well-financed manufacturers. The legal requirements remain: The sponsored product must be demonstrated to be safe by adequate tests by all methods reasonably applicable. However, FDA recognizes the necessity for being especially attentive to the needs of small business to the extent that its obligation to protect the public health allows. FDA specifically solicits focused comment and alternatives as to how FDA may, within the requirements of the act, minimize the economic impact of the proposed regulations on small—as well as big—business. To date no small firm has sponsored a compound that would be subject to this proposed rule.

The comment is correct that the regulations are only effective for the approval of compounds for use in this country. Compounds administered in foreign countries to animals that may be imported into this country will not be approved under these proposed regulations because FDA has no control over the compounds that are given or administered to food-producing animals in other countries. To the extent that FDA is aware of an adulterated or misbranded product being offered for importation into this country, FDA will take action to preclude that importation under section 801 of the act (21 U.S.C. 381).

C. Technology Forcing Issues

72. Comments argued that the development of a practical and reliable assay to measure residues in animal tissues in the low parts per billion or high parts per trillion will not always be possible with current technology. Although the comments agreed in general that analytical chemistry has shown great progress in recent years, the comments argued with what they perceived to be FDA's position that continued progress will allow the development of the methodologies called for under the SOM procedures and criteria. In support of these arguments, the comments stated that Tables I and II contained in the preamble to the 1979 proposal (44 FR 17076) do not accurately reflect the state of the art in analytical chemistry for two reasons: (1) The compounds cited as examples either possess intense fluorescence or are substituted with halogen atoms permitting easy detection; and (2) the development of acceptable regulatory methods for detecting residues in the edible products

of food-producing animals is simply not supported by trends in specific methodology in areas of technology.

FDA agrees that for some sponsored compounds the development of an adequate regulatory method may be beyond the capacity of current technology. FDA never intended to give a contrary impression, for it is indisputable that some compounds will be so potent that a sponsor will be unable to develop a regulatory method with a sufficiently low limit of measurement. Other compounds may leave residues too difficult to characterize and identify sufficiently. Not all sponsored compounds, however, will create similar problems. FDA recognizes that the development of an analytical method for monitoring residues is not an easy task. FDA does not minimize the problems that can be associated with extracting and measuring residues contained in animal tissues. Nevertheless, as Tables I and II in the 1979 proposal showed, methodology for trace analysis has been characterized by marked and continuous improvements over the past three decades. Developments and improvements in available technology are the result of efforts by industry and the government to resolve public health protection problems like those presented by carcinogenic residues in edible tissue.

D. Additional Comments

Several comments provided, in addition to narrative comments on the proposal, specific comments on proposed sections of the regulations. Many of these comments duplicated comments received on the 1979 proposal.

21 CFR 500.80

73. One comment contended that the term "sponsored compound" should not be used in the regulations but rather the terms "drug" and "food additive" should be used because, according to the comment, those terms are more generally acceptable.

The term "sponsored compound" means any drug or additive proposed for use or used in food-producing animals. Thus, by definition it includes not only new animal drugs and food additives, but also color additives. For purposes of clarity and convenience, the term "sponsored compound," FDA believes, is more acceptable than the comment's proposal.

74. One comment questioned why the term "residues of carcinogenic concern" was not defined and also queried whether the term was synonymous with "residues of toxicological concern."

FDA meant the two terms to be synonymous. To avoid confusion, this reproposal will use the term "residues of carcinogenic concern."

75. A comment contended that § 500.80 should contain a statement to the effect that the regulations do not apply to new animal drugs or food additives intended solely for investigational use.

These regulations are not meant to supersede the provisions of 21 CFR Part 511. The regulations in no manner hinder or affect the securing under 21 CFR 511.1 of an exemption to ship or deliver an investigational drug. The regulations and guidelines, however, will provide models for data collection under an investigational new animal drug application. These standards may also be used to determine whether an authorization for use of edible products of animals receiving the investigational drug is warranted (see 21 CFR 511.1(b)(5)).

76. A comment requested that for purposes of clarity § 500.80 should be revised to read as follows: "If at any point in the process of data collection set forth in paragraph (b)(1) of this section, the evaluation of the data shows that the compound should not be regulated under these regulations, the sponsored compound will continue to be considered for approval under the general safety provisions of the act for risks other than cancer."

FDA has amended § 500.80(c) to reflect the substance of this comment.

Definitions

77. One comment suggested that "target tissue" be defined as the edible tissue selected to monitor for residues.

FDA agrees with this comment.

78. Another comment requested that the definition of essential nutrients be expanded to read "is required for the animal's growth, development, function, and reproduction and that must be supplied from external sources, e.g., minerals, trace minerals, essential amino acids, and essential fatty acids."

FDA has amended the regulations to reflect the substance of this comment.

21 CFR 514.1

79. One comment noted that the proposed revision to § 514.1(b)(7) omitted the last sentence of the introductory paragraph. The sentence provided that "when data or other adequate information establish that it is not reasonable to expect a new animal drug to become a component of food, assay methodology is not required." The comment contended that the sentence is important and should be reinstated, arguing that certain drugs used in food-producing animals are so poorly absorbed or so rapidly deplete from the tissues that they shoud not be considered as components of food. The comment also contended that it may be impractical to develop a regulatory method with sufficient sensitivity to detect traces of residues that are not unsafe.

FDA agrees that the sentence referred to should be retained, with some modification in § 514.1(b)(7). The following sentence has been added. "When data or other adequate information establish that it is not reasonable to expect the new animal drug to become a component of food at concentrations considered unsafe, a regulatory method is not required."

XV. Conclusion

The proposed regulations and the implementing guidelines are designed to ensure that edible tissues derived from animals treated with sponsored compounds are safe. In developing these regulations and guidelines, FDA followed well-recognized scientific procedures and applied high standards of public health protection. All sponsored compounds will be evaluated under the general safety provisions of the act. Sponsored compounds shown by adequate testing to be carcinogens will be regulated under proposed Subpart E of 21 CFR Part 500.

Executive Order 12291 and the Regulatory Flexibility Act require economic impact analyses of proposed regulations that are likely to have significant consequences on the overall regulated industry or on particular sections of it. In the economic impact analysis prepared for the 1979 proposal, FDA concluded that the expenses of conducting the biological studies and developing the regulatory method of analysis would be several million dollars for each carcinogenic compound. Without this testing, however, the carcinogenic compound could not be approved. In the economic analysis prepared for this proposal, FDA makes similar conclusions. However, because FDA is unlikely to receive requests to approve a large number of carcinogenic compounds, this regulation will not impose an annual effect on the economy of $100 million or more, the threshold value established by Executive Order 12291. In accordance with the Regulatory Flexibility Act, FDA has considered the effect that this proposal would have on small entities including small businesses and has determined that to date no small firm has sponsored a compound that would be subject to this proposed rule. Therefore, FDA certifies in accordance with section

605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action. The economic and regulatory flexibility analyses are on file with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

The agency has determined under 21 CFR 25.24(a)(8) (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.

Sections 500.86, 500.88, 500.90, and 514.1(b)(7) of this proposed rule contain collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Bruce Artim.

The following information has been placed on display in the Dockets Management Branch (address above), and may be reviewed in that office between 9 a.m. and 4 p.m., Monday through Friday.

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12. "Carcinogen Structure Guide," Prepared by the Bureau of Foods, Food and Drug Administration.

13. "Toxicological Principles for the Safety Assessment of Direct Food Additives," Food and Drug Administration, 47 FR 46141, October 15, 1982.

14. "General Criteria for Assessing the Evidence for Carcinogenicity of Chemical Substances: Report of the Subcommittee on Environmental Carcinogenesis, National Cancer Advisory Board," *Journal of the National Cancer Institute*, 58:461-465, 1977.

15. Rodgers, W. H., Jr., "Benefits, Costs, and Risks: Oversight of Health and Environmental Decision Making," *Harvard Environmental Law Review*, 4:191-226, 1980.

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17. Crump, K. S., "Statistical Aspects of Linear Extrapolation," *Health Risk Analysis*, edited by C. Richmond, P. Walsh, and E. Copenhaven, Franklin Institute Press, pp. 381-390, 1981.

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20. Youden, W. J., "Statistical Techniques for Collaborative Tests," The Association of Official Analytical Chemists, Washington, DC, 1967.

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List of Subjects

21 CFR Part 70

Color additives, Cosmetics, Definitions, Drugs, Labeling, Packaging and containers.

21 CFR Part 500

Animal drugs, Animal feeds, Labeling.

21 CFR Part 514

Administrative practice and procedure, Animal drugs.

21 CFR Part 571

Administrative practice and procedure, Animal feeds, Animal foods, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Parts 70, 500, 514, and 571 be amended as follows:

PART 70—COLOR ADDITIVES

1. The authority citation for 21 CFR Part 70 is revised as set forth below, and the authority citation under 21 CFR 70.50 is removed.

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10, 5.11.

2. Part 70 is amended in § 70.50 by adding new paragraph (c) to read as follows:

§ 70.50 Application of the cancer clause of section 706 of the act.

* * * * *

(c) *Color additives for use as an ingredient of feed for animals that are raised for food production.* Color additives that are an ingredient of the feed for animals raised for food production that have the potential to contaminate human food with residues whose consumption could present a risk of cancer to people must satisfy the requirements of Subpart E of Part 500 of this chapter.

PART 500—GENERAL

2. Part 500 is amended by adding a new Subpart E to read as follows:

Subpart E—Regulation of Carcinogenic Compounds Used in Food-Producing Animals

Sec.

500.80 Scope of this subpart.
500.82 Definitions.
500.84 Operational definition of no residue.
500.86 Marker residue and target tissue.
500.88 Regulatory method.
500.90 Waiver of requirements.

Authority: Secs. 402, 403, 409, 512, 701(a), 706, 52 Stat. 1046-1048 as amended, 1055, 72

Stat. 1785–1788 as amended, 74 Stat. 399–403 as amended, 82 Stat. 343–351 (21 U.S.C. 342, 343, 348, 360b, 371(a), 376).

Subpart E—Regulation of Carcinogenic Compounds Used in Food-Producing Animals

§ 500.80 Scope of this subpart.

(a) The Federal Food, Drug, and Cosmetic Act requires that sponsored compounds intended for use in food-producing animals be shown to be safe and that food produced from animals exposed to these compounds be shown to be safe for consumption by people. The statute prohibits the use in food-producing animals of any compound found to induce cancer when ingested by people or animals unless it can be determined by methods of examination prescribed or approved by the Secretary (a function delegated to the Commissioner of Food and Drugs under § 5.10 of this chapter) that no residue of that compound will be found in the food produced from those animals under conditions of use reasonably certain to be followed in practice. This subpart provides an operational definition of no residue and identifies the steps a sponsor of a compound shall follow to secure the approval of the compound. FDA guidelines contain the procedures and protocols FDA recommends for the implementation of this subpart. These guidelines are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for these guidelines should be identified with Docket No. 83D–0288.

(b) If FDA concludes on the basis of the threshold assessment that a sponsor shall conduct carcinogenicity testing on the sponsored compound, FDA will also determine whether and to what extent the sponsor shall conduct carcinogenicity testing on metabolites of the sponsored compound. The bioassays that sponsor conducts must be oral, lifetime, dose-response studies and must be designed to assess carcinogenicity and to determine the quantitative aspects of any carcinogenic response.

(c) If FDA concludes on the basis of the threshold assessment or at a later time during the approval process that the data show that the sponsored compound and its metabolites should not be subject to these regulations, FDA will continue to consider the compound for approval under the general safety provisions of the act for risks other than cancer.

(d) This subpart does not apply to essential nutrients.

§ 500.82 Definitions.

(a) The definitions and interpretations contained in section 201 of the act apply to those terms when used in this subpart.

(b) The following definitions apply to this subpart:

"Act" means the Federal Food, Drug, and Cosmetic Act (sections 201–901, 52 Stat. 1040 et seq., as amended (21 U.S.C. 301–392)).

"Essential nutrients" means compounds that are found in the tissues of untreated, healthy target animals and not produced in sufficient quantity to support the animal's growth, development, function, or reproduction, e.g., vitamins, essential minerals, essential amino acids, and essential fatty acids. These compounds must be supplied from external sources.

"FDA" means the Food and Drug Administration.

"Marker residue" means the residue selected for assay whose concentration is in a known relationship to the concentration of the residue of carcinogenic concern in the last tissue to deplete to its permitted concentration.

"Preslaughter withdrawal period" or "milk discard time" means the time after cessation of administration of the sponsored compound for the residue of carcinogenic concern in the edible product to deplete to the concentration that will satisfy the operational definition of no residue.

"Regulatory method" means the aggregate of all experimental procedures for measuring and confirming the presence of the marker residue of the sponsored compound in the target tissue of the target animal.

"R_m" means the concentration of the marker residue in the target tissue when the residue of carcinogenic concern is equal to S_m in the last tissue to deplete to its permitted concentration.

"Residue" means any compound present in edible tissues of the target animal that results from the use of the sponsored compound, including the sponsored compound, its metabolites, and any other substances formed in or on food because of the sponsored compound's use.

"Residue of carcinogenic concern" means all compounds in the total residue of a demonstrated carcinogen excluding any compounds judged by FDA not to present a carcinogenic risk.

"S_m" means the permitted concentration of residue of carcinogenic concern for a specific edible tissue.

"S_o" means the concentration of the test compound in the total diet of test animals that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million. For the purpose of this subpart, FDA will also assume that this S_o will correspond to the concentration of residue of carcinogenic concern in the total human diet that represents no significant increase in the risk of cancer to people.

"Sponsor" means the person or organization proposing or holding an approval by FDA for the use of a sponsored compound.

"Sponsored compound" means any drug or food additive or color additive proposed for use, or used, in food-producing animals or in their feed.

"Target animals" means the production class of animals in which a sponsored compound is proposed or intended for use.

"Target tissue" means the edible tissue selected to monitor for residues in the target animals.

"Test animals" means the species selected for use in the toxicity tests.

"Threshold assessment" means FDA's review of data and information available about a sponsored compound to determine whether chronic bioassays in test animals are necessary to resolve questions concerning the carcinogenicity of the compound.

§ 500.84 Operational definition of no residue.

(a) On the basis of the results of the chronic bioassays and other available information, FDA will determine whether any of the substances tested are carcinogenic. If the results of the chronic bioassays are equivocal, FDA will regulate the sponsored compound as a carcinogen until further testing resolves the remaining questions regarding carcinogenicity.

(b) If FDA concludes that the results of the bioassays do not establish carcinogenicity, then FDA will not subject the sponsored compound to the remainder of the requirements of this subpart.

(c) For each sponsored compound that FDA decides should be regulated as a carcinogen, FDA will analyze the data from the bioassays according to the linear interpolation procedure described by Gaylor, D.W. and R.L. Kodell, "Linear Interpolation Algorithm for Low Dose Risk Assessment of Toxic Substances," *Journal of Environmental Pathology and Toxicology*, 4:305–312, 1980.

(1) For each substance tested in a separate bioassay, FDA will calculate, using the upper 95 percent confidence limit on the observations, the concentration of the residue of carcinogenic concern that corresponds to a maximum lifetime risk to the test animal of 1 in 1 million. FDA will

designate the lowest value obtained as S_o.

(2) FDA will consider that "no residue" of the compound remains in the edible tissue when conditions of use of the sponsored compound, including any required preslaughter withdrawal period or milk discard time, assure that the concentration of the residue of carcinogenic concern in the total diet of people will not exceed S_o. Because the total diet is not derived from food-producing animals, FDA will make corrections for food intake. FDA will designate as S_m the concentration of residue of carcinogenic concern that is permitted in a specific edible product.

§ 500.86 Marker residue and target tissue.

(a) For each edible tissue, the sponsor shall measure the depletion of the residue of carcinogenic concern until its concentration is at or below S_m.

(b) For each edible tissue, the sponsor shall also measure the depletion of one or more potential marker residues until the concentration of the residue of carcinogenic concern is at or below S_m.

(c) From these data, FDA will select a target tissue and a marker residue and designate the concentration of marker residue (R_m) that the regulatory method must be capable of measuring in the target tissue. FDA will select R_m such that the absence of the marker residue in the target tissue above R_m can be taken as confirmation that the residue of carcinogenic concern does not exceed S_m in each of the edible tissues and, therefore, that the residue of carcinogenic concern in the diet of people does not exceed S_o.

(d) When a compound is to be used in milk- or egg-producing animals, milk or eggs must be the target tissue in addition to the tissue selected to monitor for residues in the edible carcass.

§ 500.88 Regulatory method.

(a) The sponsor shall submit for evaluation and validation a regulatory method developed to monitor compliance with FDA's operational definition of no residue.

(b) The regulatory method must reliably measure and confirm the identity of the marker residue in the target tissue at concentrations equal to and above R_m.

(c) FDA will publish in the **Federal Register** the complete regulatory method for measuring the marker residue in the target tissue in accordance with the provisions of sections 409(c)(3)(A), 512(d)(1)(H) and (i), and 706(b)(5)(B) of the act.

§ 500.90 Waiver of requirements.

In response to a petition or on the Commissioner's own initiative, the Commissioner may waive, in whole or in part, the requirements of this subpart except those provided under § 500.88. A petition for this waiver may be filed by any person who would be adversely affected by the application of the requirements to a particular compound. The petition shall explain and document why some or all of the requirements are not reasonably applicable to the compound, and set forth clearly the reasons why the alternative procedures will provide the basis for concluding that approval of the compound satisfies the requirements of the anticancer provisions of the act. If the Commissioner determines that waiver of any of the requirements of this subpart is appropriate, the Commissioner will state the basis for that determination in the regulation approving marketing of the sponsored compound.

PART 514—NEW ANIMAL DRUG APPLICATIONS

4. The authority citation for 21 CFR Part 514 is revised to read as set forth below, and the authority citations under 21 CFR 514.1, 514.8, 514.11, 514.15, 514.50, 514.51, 514.55, 514.60, 514.110, 514.111, 514.115, 514.150, 514.155, 514.160, and 514.200 are removed.

Authority: Secs. 512 (i) and (n), 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b(i) and (n), 371(a)); 21 CFR 5.10, 5.11; §§ 514.50, 514.55, 514.60, 514.150, 514.155, 514.160 are issued only under secs. 507 and 512(n), 59 Stat. 463 as amended, 82 Stat. 350–351 (21 U.S.C. 357, 360b(n)); 21 CFR 5.10, 5.11.

5. Part 514 is amended in § 514.1 by revising the introductory text of paragraph (b)(7) and by revising paragraph (b)(7)(ii), to read as follows:

§ 514.1 Applications.

* * * * *

(b) * * *

(7) *Analytical methods for residues.* Applications shall include a description of practicable methods for determining the quantity, if any, of the new animal drug in or on food, and any substance formed in or on food because of its use, and the proposed tolerance or withdrawal period or other use restrictions to ensure that the proposed use of this drug will be safe. When data or other adequate information establish that it is not reasonable to expect the new animal drug to become a component of food at concentrations considered unsafe, a regulatory method is not required.

* * * * *

(ii) A new animal drug that has the potential to contaminate human food with residues whose consumption could present a risk of cancer to people must satisfy the requirements of Subpart E of Part 500 of this chapter.

* * * * *

6. In § 514.111 by adding new paragraph (a)(10) to read as follows:

§ 514.111 Refusal to approve an application.

(a) * * *

(10) The drug fails to satisfy the requirements of Subpart E of Part 500 of this chapter.

* * * * *

PART 571—FOOD ADDITIVE PETITIONS

7. The authority citation for 21 CFR Part 571 is revised to read as set forth below and the authority citations under 21 CFR 571.1 and 571.6 are removed.

Authority: Secs. 409, 701, 52 Stat. 1055–1056 as amended, 72 Stat. 1785–1788 as amended (21 U.S.C. 348, 371); 21 CFR 5.10 5.11.

8. Part 571 is amended by adding new § 571.115 to read as follows:

§ 571.115 Application of the anticancer clause of section 409 of the act.

Food additives intended for use as an ingredient in food for animals that are raised for food production that have the potential to contaminate human food with residues whose consumption could present a risk of cancer to people must satisfy the requirements of Subpart E of Part 500 of this chapter.

Interested persons may, on or before, February 28, 1986, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 19, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85–25808 Filed 10–30–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83D-0288]

Sponsored Compounds Used in Food-Producing Animals; Availability of Guidelines for Human Food Safety Evaluation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of guidelines that describe the tests that the sponsor of a new animal drug or a food or color additive may conduct to establish safe conditions of use of the compound in food-producing animals. These guidelines apply to human food safety, not to target animal safety. FDA invites interested persons to submit written comments on the guidelines.

DATE: Written comments on the guidelines may be submitted at any time. FDA will respond to comments received before February 28, 1986.

ADDRESS: The guidelines are available for public examination at, comments may be submitted to, and individual copies may be obtained from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert W. Benson, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

SUPPLEMENTARY INFORMATION: FDA is required by the general safety provisions of sections 409, 512, and 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 360b, and 376) to determine whether each food additive, new animal drug, or color additive proposed for use in food-producing animals is safe for those animals and whether the edible products derived from treated animals are safe for people. The pertinent regulations implementing the statutory provisions are found at 21 CFR Part 70, § 514.1, and Part 570.

The sponsor of the compound is required to furnish to FDA the scientific information necessary for demonstrating that the residues of the sponsored compound in the edible products of treated animals are safe. FDA has developed a series of guidelines to inform sponsors of the type of scientific information FDA believes will provide an acceptable basis for making the safety determination. The individual guidelines are:

I. Guideline for Metabolism Studies and for Identification of Residues for Toxicological Testing.

II. Guideline for Toxicological Testing.

III. Guideline for Threshold Assessment.

IV. Guideline for Establishing a Tolerance.

V. Guideline for Approval of Methods of Analysis for Residues.

VI. Guideline for Establishing Withdrawal Periods.

A sponsor may rely upon the guidelines with the assurance that they describe procedures acceptable to FDA. (See 21 CFR 10.90.) Of course, if a sponsor believes that alternative procedures are also applicable, the guidelines do not preclude a sponsor from pursuing those alternative procedures. Under such circmstances, however, FDA encourages the sponsor to discuss the propriety of the alternative procedures in advance with FDA to prevent the expenditure of money and effort on activity that may later be deemed to be unacceptable.

The guidelines are available for public examination at the Dockets Management Branch (address above). Individual copies may be obtained from that office.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding the guidelines. FDA will respond to comments received before February 28, 1986. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 25, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-25807 Filed 10-30-85; 8:45 am]

BILLING CODE 4160-01-M

federal register

Thursday
October 31, 1985

Part III

Department of Health and Human Services

Office of the Secretary

Cost-of-Living Increase in Benefits, Etc.; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Cost-of-Living Increase in Benefits Under Titles II and XVI for 1986; Average of the Total Wages for 1984; Contribution and Benefit Base, Quarter of Coverage Amount, Retirement Earnings Test Exempt Amounts, Formulas for Computing Benefits, and "Old-Law" Contribution and Benefit Base for 1986; Old-Age, Survivors, and Disability Insurance (OASDI) Fund Ratio for 1985; and Tables of Benefit Amounts for 1986

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) A 3.1 percent cost-of-living increase in benefits under title II (section 215(i)) of the Social Security Act (the Act);

(2) An increase in the Federal SSI (title XVI) benefit amounts for 1986 to $4,032 for an eligible individual, $6,048 for an eligible individual with an eligible spouse, and $2,016 for an essential person (section 1617 of the Act);

(3) The average of the total wages for 1984 to be $16,135.07;

(4) The Social Security contribution and benefit base to be $42,000 for remuneration paid in 1986 and self-employment income earned in taxable years beginning in 1986;

(5) The amount of earnings a person must have to be credited with a quarter of coverage in 1986 to be $440;

(6) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 1986 to be $650 for beneficiaries age 65 through 69 and $480 for beneficiaries under age 65;

(7) The "old-law" contribution and benefit base to be $31,500 for 1986.

We also describe the computation of benefits for a worker and the worker's family who first become eligible for benefits in 1986, and the computation of the OASDI fund ratio used to determine whether the automatic increase in benefits under title II of the Act is affected by the "stabilizer" provision.

Finally, we are publishing two tables of OASDI benefit amounts. The first table reflects: (a) The automatic benefit increase, and (b) the new higher average monthly wage and related benefit amounts made possible by the higher contribution and benefit base. This table will be used primarily to compute the title II benefits of workers who attained age 62 or became disabled before 1979, and of the family members of insured workers who died before 1979, and to compute the related maximum family benefit. The second table provides the range of primary insurance amounts and the corresponding maximum family benefits under the "special minimum" benefit provision, as revised to reflect the automatic benefit increase. These benefits are payable to certain individuals with long periods of relatively low earnings.

FOR FURTHER INFORMATION CONTACT: Clare M. Albrecht, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-3882.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Act to publish within 45 days after the close of the third calendar quarter of 1985 the benefit increase percentage and the revised tables of benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1984 (section 215(i)(2)(C)(iii)) and the OASDI fund ratio for 1985 (section 215(i)(2)(C)(iii)). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1986 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1986 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1986 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1986 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1986 (section 203(a)(2)(C)).

Cost-of-Living Increases

General. The cost-of-living increase is 3.1 percent for benefits under titles II and XVI of the Social Security Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 3.1 percent beginning with the December 1985 benefits, which are payable on January 3, 1986. The kinds of benefits payable to individuals entitled under this program are old-age, disability, wife's, husband's, child's, widow's, widower's, mother's, father's, and parent's insurance benefits. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI benefit amounts will also increase by 3.1 percent effective for payments made for the month of January 1986 but paid on December 31, 1985. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1986 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation. Under section 215(i) of the Act, the third calendar quarter of 1985 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is therefore required to increase benefits, effective with December 1985, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1985, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1984 through the third quarter of 1985. Automatic benefit increases may be modified by a "stabilizer" provision under certain adverse financial conditions that are described in the section on the OASDI fund ratio. The December 1985 benefit increase is not affected by this provision.

Section 215 (i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of this index for the 3 months in that quarter. The Department of Labor's revised Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1984, was: for July 1984, 307.5; for August 1984, 310.3; and for September 1984, 312.1. The arithmetical mean for this calendar quarter is 310.0 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1985, was: for July 1985, 319.1; for August 1985, 319.6; and for September 1985, 320.5. The arithmetical mean for this calendar quarter is 319.7 (after rounding to the nearest 0.1). Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1985, exceeds that for the calendar quarter ending September 30, 1984, by 3.1 precent, a cost-of-living benefit increase of 3.1 percent is effective for benefits under title II of the Act beginning December 1985.

Title II Benefit Amounts. In accordance with section 215(i)(4) of the

Act, the primary insurance amounts and the maximum family benefits shown in columns IV and V of the revised benefit table (table 1) were obtained by: (1) increasing by 3.1 percent the corresponding amounts established by the last cost-of-living increase and the extension of the benefit table made under section 215(i)(4) and published on October 31, 1984, at 49 FR 43775, and (2) extending the table due to the increase in the contribution and benefit base for 1986, as described below. The table applies only to the benefits of those persons who attained age 62 or became disabled before January 1979 and the family members of insured workers who died before 1979. The table is deemed to appear in section 215(a) of the Act. Note that this table does not apply to those individuals who become eligible (i.e., attain age 62, or become disabled) or die after 1978; their benefits will generally be determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described below. For persons who first become eligible for benefits or who die before age 62 in the period 1979–1985, the 3.1 percent increase will apply beginning with benefits for December 1985 and will be included in checks received in January 1986; the 3.1 percent increase will not apply for persons who first become eligible for benefits or die after 1985.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the attached table 2 shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 3.1 percent benefit increase.

Section 227 of the Act provides flat-rate benefits to workers who became age 72 before 1969 and are not insured under the usual requirements, and to their spouses or surviving spouses. Section 228 of the Act provides similar benefits for certain uninsured persons who became age 72 before 1972. The current monthly benefit amount of $134.40 for an individual under sections 227 and 228 of the Act is increased by 3.1 percent to obtain the new amount of $138.50. The present monthly benefit amount of $67.40 for a spouse under section 227 is increased by 3.1 percent to $69.40.

Title XVI Benefit Amounts. In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 3.1 percent effective January 1986. Therefore, the yearly Federal SSI benefit amount of $3,900 for an eligible individual, $5,856 for an eligible individual with an eligible spouse and $1,956 for an essential person, which are effective January 1985, are increased, effective with January 1986, to $4,032, $6,048, and $2,016, respectively, after rounding. The monthly payment amount is determined dividing the yearly amount by 12, and subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Average of the Total Wages for 1984

The determination of the average wage figure for 1984 is based on the 1983 average wage figure of $15,239.24 announced in the **Federal Register** on October 31, 1984 (49 FR 43775), along with the percentage increase in average wages from 1983 to 1984 measured by annual wage data tabulated by the Internal Revenue Service (IRS). The average amounts of wages calculated directly from IRS data were $15,650.18 and $16,570.17 for 1983 and 1984, respectively. To determine an average wage figure for 1984 at a level that is consistent with the series of average wages for 1951–1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1983 average wage figure of $15,239.24 by the percentage increase in average wages from 1983 to 1984 (based on IRS data) as follows (with the result rounded to the nearest cent): Average wage for 1984 = $15,239.24 × $16,570.17 ÷ $15,650.18 = $16,135.07. Therefore, the average wage for 1984 is determined to be $16,135.07.

Contribution and Benefit Base

General. The contribution and benefit base is $42,000 for remuneration paid in 1986 and self-employment income earned in taxable years beginning in 1986.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation. Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula, the contribution and benefit base for 1986 shall be equal to the 1985 base of $39,600 multiplied by the ratio of (1) the average amount, per employee, of total wages for the calendar year 1984 to (2) the average amount of those wages for the calendar year 1983. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1983 was previously determined to be $15,239.24. The average wage for calendar year 1984 has been determined to be $16,135.07 as stated herein.

Amount. The ratio of the average for 1984, $16,135.07, compared to that for 1983, $15,239.24, is 1.0587844. Multiplying the 1985 contribution and benefit base of $39,600 by the ratio 1.0587844 produces the amount of $41,927.86 which must then be rounded to $42,000. Accordingly, the contribution and benefit base is determined to be $42,000 for 1986.

Quarter of Coverage Amount

General. The 1986 amount of earnings required for a quarter of coverage is $440. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95–216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverge for the year). Individuals generally must have self-employment income of at least $400 in a taxable year in order to be credited with any quarters of coverage.

Computation. Under the prescribed formula, the quarter of coverage amount for 1986 shall be equal to the 1978

amount of $250 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar year 1984 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the Federal Register on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1984 has been determined to be $16,135.07 as stated herein.

Quarter of Coverage Amount. The ratio of the average wage for 1984, $16,135.07, compared to that for 1976, $9,226.48, is 1.748779. Multiplying the 1976 quarter of coverage amount of $250 by the ratio of 1.748779 produces the amount of $437.19 which must then be rounded to $440. Accordingly, the quarter of coverage amount is determined to be $440 for 1986.

Retirement Earnings Test Exempt Amounts

(a) *Beneficiaries Aged 70 or Over.* Beginning with months after December 1982, there is no limit on the amount an individual aged 70 or over may earn and still receive Social Security benefits.

(b) *Beneficiaries Aged 65 through 69.* The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1985 was determined by this formula to be $610. Under the formula, the exempt amount for 1986 shall be the 1985 exempt amount multiplied by the ratio of: (1) The average amount, per employee, of the total wages for calendar year 1984 to (2) the average amount of those wages for calendar year 1983. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages for 1984, $16,135.07, compared to that for 1983, $15,239.24, is 1.0587844.

Exempt Amount for Beneficiaries Aged 65 through 69. Multiplying the 1985 retirement earnings test montly exempt amount of $610 by the ratio of 1.0587844 produces the amount of $645.86. This must then be rounded to $650. The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is thus determined to be $840 for 1986. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $7,800.

(c) *Beneficiaries Under Age 65.* Section 203 of the Act providesthat beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly exempt amount for beneficiaries under age 65 is $450 for 1985. The formula provides that the exempt amount for 1986 shall be the 1985 exempt amount for beneficiaries under age 65 multiplied by the ratio of: (1) The average amount, per employee, of the total wages for calendar year 1984 to (2) the average amount of those wages for calendar year 1983. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages for 1984, $16,135.07, compared to that of 1983, $15,239.24, is 1.0587844.

Exempt amount for Beneficiaries Under Age 65. Multiplying the 1985 retirement earnings test monthly exempt amount of $450 by the ratio 1.0587844 produces the amount of $476.45. This must then be rounded to $480. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $480 for 1986. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $5,760.

Computing Benefits After 1978

The Social Security Amendments of 1977 changed the formula for determining an individual's primary insurance amount after 1978. This basic new formula is based on "wage indexing" and was fully explained with interim regulations and final regulations published in the Federal Register on December 29, 1978 (43 FR 60877), and July 15, 1982 (47 FR 30731), respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. This formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings. To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1986, we divide the average of the total wages for 1984, $16,135.07, by the average of the total wages for each year prior to 1984 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with higher indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1986.

Computing the Primary Insurance Amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1986 are obtained by multiplying the 1979 amounts by the ratio of the average of the total wages for 1984, $16,135.07, to that for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1986, the ratio is 1.649897. Multiplying the 1979 amounts of $180 and $1,085 by 1.649897 produces the amounts of $296.98 and $1,790.14. These must then be rounded to $297 and $1,790. Accordingly, the portions of the average indexed monthly earnings to be used in 1986 are determined to be the first $297, the amount between $297 and $1,790, and the amount over $1,790.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability

insurance benefits in 1986, or who die in 1986 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $297 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $297 and through $1,790, plus

(c) 15 percent of the average indexed monthly earnings over $1,790.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

The 1977 Amendments continued the long established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a Final Rule published in the **Federal Register** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The amounts for 1986 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1984, $16,135.07, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1986, the ratio is 1.649897. Multiplying the amounts of $230, $332, and $433 by 1.649897 produces the amounts of $379.48, $547.77, and $714.41. These amounts are then rounded to $379, $548, and $714. Accordingly, the portions of the primary insurance amounts to be used in 1986 are determined to be the first $379, the amount between $379 and $548, the amount between $548 and $714, and the amount over $714.

Consequently, for the family of a worker who becomes age 62 or dies in 1986, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $379 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $379 through $548, plus

(c) 134 percent of the worker's primary insurance amount over $548 through $714, plus

(d) 175 percent of the worker's primary insurance amount over $714.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203 (a) of the Act (42 U.S.C. 403(a)).

Extension of Benefit Table Effective January 1986

Table 1 includes an extension of the Table for Determining Primary Insurance Amount and Maximum Family Benefits provided in section 215(a)(5) of the Act. This extension reflects the higher average monthly wage and related benefit amounts now possible under the increased contribution and benefit base published by this Notice effective January 1986 in accordance with section 215(i) of the Act. Table 1 will apply primarily to benefits based on earnings of workers who reached age 62 before 1979.

"Old-Law" Contribution and Benefit Base

General. The 1986 "old-law" contribution and benefit base is $31,500. This is the base that would have been effective under the Social Security Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Social Security Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act. (This use is stated in section 230(d) of the Social Security Act), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Social Security Act.

Computation. The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1985 base multiplied by the ratio of: (1) The average amount, per employee, of total wages for the calendar year of 1984 to (2) the average amount of those wages for the calendar year of 1983. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1983 was previously determined to be $15,239.24. The average wage for calendar year 1984 has been determined to be $16,135.07, as stated herein.

Amount. The ratio of the average wage for 1984, $16,135.07 compared to that for 1983, $15,239.24, is 1.0587844. Multiplying the 1985 "old-law" contribution and benefit base amount of $29,700 by the ratio of 1.0587844 produces the amount of $31,445.90 which must bhen be rounded to $31.500. Accordingly, the "old-law" contribution and benefit base is determined to be $31,500 for 1986.

OASDI Fund Ratio

General. Section 215(i) of the Act was amended by section 112 of the Social Security Amendments of 1983 (Pub. L. 98–21), to include a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expeditures, are below a specified level, the automatic benefit increase is equal to the lesser of: (1) The increase in average wages or (2) the increase in prices. The threshold level specified for the OASDI fund ratio is 15.0 percent for benefit increases for December of 1984 through December 1988, and 20.0 percent thereafter. The amendments also provide for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this

provision. "Catch-up" benefit increases occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation. Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1985 is defined as the ratio of: (1) The combined assets of the OASI and DI Trust Funds at the beginning of 1985, including advance tax transfers for January 1985 and excluding amounts owed to the Hospital Insurance (HI) Trust Fund, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1985, excluding payments of interest and principal on amounts owed to the HI Trust Fund and transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio. The combined assets of the OASI and DI Trust Funds at the beginning of 1985 (including advance tax transfers for January 1985 and excluding amounts owed to the HI Trust Fund) equaled $33,956 million, and the expenditures are estimated to be $191,569 million. Thus, the OASDI fund ratio for 1985 is 17.7 percent, which exceeds the applicable threshold of 15.0 percent. As a result, the "stabilizer" provision does not affect the benefit increase for December 1985.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–13.805, and 13.807 Social Security Programs)

Dated: October 29, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

BILLING CODE 4190-11-M

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for Dec. 1984)—or the primary insurance amount as determined under subsec.(c)) is—	III (average monthly wage)—or the average monthly wage (as determined under subsec. (b)) is-		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
	16.20	195.90		76	201.90	303.00
16.21	16.84	199.00	77	78	205.10	307.70
16.85	17.60	203.60	79	80	209.90	314.90
17.61	18.40	207.20	81	81	213.60	320.70
18.41	19.24	210.80	82	83	217.30	326.30
19.25	20.00	215.30	84	85	221.90	333.30
20.01	20.64	219.50	86	87	226.30	339.50
20.65	21.28	222.80	88	89	229.70	344.70
21.29	21.88	227.30	90	90	234.30	351.60
21.89	22.28	231.20	91	92	238.30	357.70
22.29	22.68	234.90	93	94	242.10	363.40
22.69	23.08	238.80	95	96	246.20	369.50
23.09	23.44	243.10	97	97	250.60	376.10
23.45	23.76	247.10	98	99	254.70	382.20
23.77	24.20	252.00	100	101	259.80	389.70
24.21	24.60	255.40	102	102	263.30	395.10
24.61	25.00	259.60	103	104	267.60	401.50
25.01	25.48	264.50	105	106	272.60	409.20
25.49	25.92	268.80	107	107	277.10	415.90
25.93	26.40	273.00	108	109	281.40	422.10
26.41	26.94	277.20	110	113	285.70	428.70
26.95	27.46	281.10	114	118	289.80	434.80
27.47	28.00	285.40	119	122	294.20	441.30
28.01	28.68	289.90	123	127	298.80	448.40
28.69	29.25	294.20	128	132	303.30	454.90
29.26	29.68	298.10	133	136	307.30	461.20
29.69	30.36	302.20	137	141	311.50	467.50
30.37	30.92	306.60	142	146	316.10	474.10
30.93	31.36	311.20	147	150	320.80	481.20
31.37	32.00	314.70	151	155	324.40	486.80
32.01	32.60	319.40	156	160	329.30	494.00
32.61	33.20	323.60	161	164	333.60	500.50
33.21	33.88	327.60	165	169	337.70	506.80
33.89	34.50	332.10	170	174	342.30	513.70
34.51	35.00	336.10	175	178	346.50	519.90
35.01	35.80	340.70	179	183	351.20	526.80
35.81	36.40	344.60	184	188	355.20	533.00
36.41	37.08	349.20	189	193	360.00	540.20
37.09	37.60	353.40	194	197	364.30	546.70
37.61	38.20	357.50	198	202	368.50	553.10
38.21	39.12	362.30	203	207	373.50	560.20
39.13	39.68	366.30	208	211	377.60	566.70
39.69	40.33	369.70	212	216	381.10	571.80
40.34	41.12	374.40	217	221	386.00	579.10
41.13	41.76	378.70	222	225	390.40	585.80
41.77	42.44	383.30	226	230	395.10	592.90
42.45	43.20	387.50	231	235	399.50	599.50
43.21	43.76	392.20	236	239	404.30	606.70
43.77	44.44	395.80	240	244	408.00	614.80
44.45	44.88	399.70	245	249	412.00	627.60
44.89	45.60	404.70	250	253	417.20	637.90
		408.60	254	258	421.20	650.30
		412.20	259	263	424.90	662.70
		417.40	264	267	430.30	672.70
		421.10	268	272	434.10	685.50
		425.70	273	277	438.80	697.70
		429.80	278	281	443.10	707.80
		434.00	282	286	447.40	720.50
		438.70	287	291	452.20	733.30
		442.20	292	295	455.90	743.10
		447.10	296	300	460.90	755.60
		451.20	301	305	465.10	768.60
		455.00	306	309	469.10	778.50
		459.70	310	314	473.90	790.90
		463.40	315	319	477.70	803.70
		467.70	320	323	482.10	813.60
		472.10	324	328	486.70	826.20
		476.10	329	333	490.80	838.80
		481.10	334	337	496.00	849.20
		484.40	338	342	499.40	861.50
		489.00	343	347	504.10	874.10
		493.60	348	351	508.90	884.10
		497.30	352	356	512.70	896.70
		502.20	357	361	517.70	909.40
		506.10	362	365	521.70	919.40

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for Dec. 1984)—or the primary insurance amount as determined under subsec.(c)) is—	III (average monthly wage)—or the average monthly wage (as determined under subsec. (b)) is-		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		510.00	366	370	525.80	932.00
		514.70	371	375	530.60	944.20
		518.90	376	379	534.90	954.80
		523.30	380	384	539.50	967.40
		527.20	385	389	543.50	979.80
		531.20	390	393	547.60	989.70
		536.00	394	398	552.60	1002.60
		540.00	399	403	556.70	1015.10
		544.60	404	407	561.40	1025.00
		548.30	408	412	565.20	1037.80
		552.10	413	417	569.20	1050.10
		556.00	418	421	573.20	1060.20
		560.50	422	426	577.80	1072.90
		564.30	427	431	581.70	1085.50
		567.80	432	436	585.40	1098.20
		572.50	437	440	590.20	1103.00
		576.00	441	445	593.80	1109.70
		580.00	446	450	597.90	1115.70
		584.10	451	454	602.20	1120.50
		588.10	455	459	606.30	1126.80
		591.90	460	464	610.20	1132.90
		595.60	465	468	614.00	1138.40
		600.40	469	473	619.00	1144.50
		603.70	474	478	622.40	1150.90
		607.50	479	482	626.30	1156.00
		611.70	483	487	630.60	1162.50
		615.90	488	492	634.90	1168.80
		619.50	493	496	638.70	1173.80
		624.00	497	501	643.30	1179.70
		627.60	502	506	647.00	1186.00
		631.40	507	510	650.90	1191.20
		635.30	511	515	654.90	1197.50
		639.80	516	520	659.60	1204.10
		643.40	521	524	663.30	1208.80
		647.10	525	529	667.10	1215.20
		651.90	530	534	672.10	1221.40
		655.20	535	538	675.50	1226.40
		659.30	539	543	679.70	1232.80
		663.30	544	548	683.80	1239.10
		667.50	549	553	688.10	1245.40
		671.10	554	556	691.90	1249.00
		674.40	557	560	695.30	1254.20
		678.10	561	563	699.10	1258.00
		681.50	564	567	702.60	1263.10
		685.60	568	570	706.80	1266.60
		688.80	571	574	710.10	1271.70
		692.30	575	577	713.70	1275.80
		695.50	578	581	717.00	1280.50
		699.10	582	584	720.70	1284.50
		702.10	585	588	723.80	1289.40
		706.30	589	591	728.10	1293.10
		709.80	592	595	731.80	1298.20
		713.30	596	598	735.40	1301.60
		716.80	599	602	739.00	1307.20
		720.20	603	605	742.50	1310.80
		723.60	606	609	746.00	1315.50
		727.30	610	612	749.80	1319.60
		730.80	613	616	753.40	1324.60
		734.20	617	620	756.90	1329.70
		737.90	621	623	760.70	1333.30
		741.10	624	627	764.00	1338.60
		744.80	628	630	767.80	1343.20
		748.30	631	634	771.40	1349.80
		751.90	635	637	775.20	1356.10
		755.50	638	641	778.90	1362.60
		758.80	642	644	782.30	1368.70
		762.40	645	648	786.00	1375.30
		765.70	649	652	789.40	1381.40
		768.00	653	656	791.80	1385.40
		770.20	657	660	794.00	1389.10
		772.90	661	665	796.80	1394.40
		775.60	666	670	799.60	1399.40
		778.50	671	675	802.60	1404.00
		781.40	676	680	805.60	1409.10
		784.00	681	685	808.30	1414.10
		787.10	686	690	811.50	1418.80
		789.40	691	695	813.80	1424.40

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for Dec. 1984)—or the primary insurance amount as determined under subsec.(c)) is—	III (average monthly wage)—or the average monthly wage (as determined under subsec. (b)) is-		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		792.00	696	700	816.50	1429.00
		795.00	701	705	819.60	1434.10
		797.80	706	710	822.50	1439.20
		800.80	711	715	825.60	1443.90
		803.40	716	720	828.30	1449.10
		806.20	721	725	831.10	1454.00
		809.10	726	730	834.10	1459.20
		811.80	731	735	836.90	1464.30
		814.70	736	740	839.90	1469.00
		817.30	741	745	842.60	1474.40
		819.70	746	750	845.10	1478.90
		822.50	751	755	847.90	1483.60
		824.80	756	760	850.30	1487.50
		827.20	761	765	852.80	1491.80
		829.10	766	770	854.80	1496.10
		831.70	771	775	857.40	1500.10
		834.00	776	780	859.80	1504.20
		836.40	781	785	862.30	1508.40
		838.40	786	790	864.30	1512.50
		840.70	791	795	866.70	1516.70
		843.20	796	800	869.30	1520.90
		845.50	801	805	871.70	1525.20
		847.90	806	810	874.10	1529.20
		850.10	811	815	876.40	1533.70
		852.50	816	820	878.90	1537.60
		854.80	821	825	881.20	1541.90
		857.10	826	830	883.60	1545.90
		859.30	831	835	885.90	1550.40
		861.60	836	840	888.30	1554.20
		864.00	841	845	890.70	1558.80
		866.10	846	850	892.90	1562.40
		868.60	851	855	895.50	1566.90
		870.90	856	860	897.80	1571.00
		873.20	861	865	900.20	1575.20
		875.70	866	870	902.80	1579.40
		877.80	871	875	905.00	1583.60
		880.10	876	880	907.30	1587.60
		882.50	881	885	909.80	1592.00
		884.70	886	890	912.10	1595.80
		886.90	891	895	914.30	1600.70
		889.30	896	900	916.80	1604.30
		891.80	901	905	919.40	1608.60
		894.10	906	910	921.80	1612.90
		896.40	911	915	924.10	1617.10
		899.00	916	920	926.80	1620.90
		900.90	921	925	928.80	1625.50
		903.10	926	930	931.00	1629.30
		905.40	931	935	933.40	1633.60
		907.90	936	940	936.00	1637.80
		910.10	941	945	938.30	1642.00
		912.40	946	950	940.60	1646.00
		914.90	951	955	943.20	1650.50
		917.50	956	960	945.90	1654.60
		919.80	961	965	948.30	1658.50
		921.50	966	970	950.00	1663.00
		923.90	971	975	952.50	1667.20
		926.20	976	980	954.90	1671.10
		928.90	981	985	957.60	1675.20
		930.90	986	990	959.70	1679.40
		933.20	991	995	962.10	1683.80
		935.70	996	1000	964.70	1687.70
		937.90	1001	1005	966.90	1691.30
		939.40	1006	1010	968.50	1695.30
		941.80	1011	1015	970.90	1698.80
		944.10	1016	1020	973.30	1703.00
		946.00	1021	1025	975.30	1706.40
		947.70	1026	1030	977.00	1710.40
		950.20	1031	1035	979.60	1714.10
		952.20	1036	1040	981.70	1717.70
		954.20	1041	1045	983.70	1721.70
		956.60	1046	1050	986.20	1725.20
		958.30	1051	1055	988.00	1728.60
		960.30	1056	1060	990.00	1733.00
		962.70	1061	1065	992.50	1736.50
		964.80	1066	1070	994.70	1740.30
		966.70	1071	1075	996.60	1744.20
		968.80	1076	1080	998.80	1747.80

TABLE I.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for Dec. 1984)—or the primary insurance amount as determined under subsec.(c)) is—	III (average monthly wage)—or the average monthly wage (as determined under subsec. (b)) is-		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		971.10	1081	1085	1001.20	1751.50
		972.90	1086	1090	1003.00	1755.20
		975.10	1091	1095	1005.30	1759.10
		977.40	1096	1100	1007.60	1763.10
		979.10	1101	1105	1009.40	1766.50
		981.30	1106	1110	1011.70	1770.40
		983.50	1111	1115	1013.90	1773.90
		985.50	1116	1120	1016.00	1778.00
		987.70	1121	1125	1018.30	1781.50
		989.60	1126	1130	1020.20	1785.30
		991.70	1131	1135	1022.40	1788.80
		993.90	1136	1140	1024.70	1793.10
		996.10	1141	1145	1026.90	1796.80
		998.20	1146	1150	1029.10	1800.40
		999.90	1151	1155	1030.80	1803.90
		1002.20	1156	1160	1033.20	1807.70
		1004.40	1161	1165	1035.50	1811.70
		1006.40	1166	1170	1037.50	1815.50
		1008.60	1171	1175	1039.80	1819.30
		1010.50	1176	1180	1041.80	1823.00
		1012.30	1181	1185	1043.60	1826.30
		1014.40	1186	1190	1045.80	1829.70
		1016.10	1191	1195	1047.50	1833.40
		1018.10	1196	1200	1049.60	1836.90
		1020.10	1201	1205	1051.70	1840.20
		1022.00	1206	1210	1053.60	1843.90
		1023.90	1211	1215	1055.60	1847.20
		1025.80	1216	1220	1057.50	1850.70
		1027.80	1221	1225	1059.60	1854.00
		1029.90	1226	1230	1061.80	1857.70
		1031.60	1231	1235	1063.50	1861.00
		1033.40	1236	1240	1065.40	1864.60
		1035.60	1241	1245	1067.70	1868.20
		1037.50	1246	1250	1069.60	1871.60
		1039.30	1251	1255	1071.50	1875.00
		1041.30	1256	1260	1073.50	1878.60
		1043.30	1261	1265	1075.60	1882.10
		1045.20	1266	1270	1077.60	1885.50
		1047.00	1271	1275	1079.40	1888.70
		1048.90	1276	1280	1081.40	1892.50
		1050.60	1281	1285	1083.10	1895.50
		1052.50	1286	1290	1085.10	1898.80
		1054.50	1291	1295	1087.10	1902.00
		1056.20	1296	1300	1088.90	1905.30
		1057.90	1301	1305	1090.60	1908.60
		1059.70	1306	1310	1092.50	1911.90
		1061.50	1311	1315	1094.40	1915.10
		1063.60	1316	1320	1096.50	1918.60
		1065.30	1321	1325	1098.30	1921.60
		1067.10	1326	1330	1100.10	1925.20
		1068.80	1331	1335	1101.90	1928.40
		1070.70	1336	1340	1103.80	1931.70
		1072.50	1341	1345	1105.70	1934.90
		1074.30	1346	1350	1107.60	1938.10
		1076.10	1351	1355	1109.40	1941.30
		1077.90	1356	1360	1111.30	1944.60
		1079.90	1361	1365	1113.30	1947.80
		1081.40	1366	1370	1114.90	1951.20
		1083.30	1371	1375	1116.80	1954.40
		1085.30	1376	1380	1118.90	1957.70
		1086.80	1381	1385	1120.40	1960.70
		1088.60	1386	1390	1122.30	1963.90
		1090.20	1391	1395	1123.90	1967.00
		1091.80	1396	1400	1125.60	1970.10
		1093.60	1401	1405	1127.50	1973.00
		1095.20	1406	1410	1129.10	1976.20
		1096.90	1411	1415	1130.90	1979.30
		1098.60	1416	1420	1132.60	1982.50
		1100.40	1421	1425	1134.50	1985.60
		1102.00	1426	1430	1136.10	1988.60
		1104.00	1431	1435	1138.20	1991.60
		1105.70	1436	1440	1139.90	1994.70
		1107.30	1441	1445	1141.60	1997.70
		1109.20	1446	1450	1143.50	2001.10
		1110.70	1451	1455	1145.10	2004.00
		1112.40	1456	1460	1146.80	2007.20
		1114.20	1461	1465	1148.70	2010.20

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for Dec. 1984)—or the primary insurance amount as determined under subsec.(c)) is—	III (average monthly wage)—or the average monthly wage (as determined under subsec. (b)) is-		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1115.80	1466	1470	1150.30	2013.30
		1117.50	1471	1475	1152.10	2016.40
		1119.10	1476	1480	1153.70	2019.20
		1121.00	1481	1485	1155.70	2022.30
		1122.40	1486	1490	1157.10	2024.90
		1124.20	1491	1495	1159.00	2028.00
		1125.60	1496	1500	1160.40	2030.90
		1127.30	1501	1505	1162.20	2034.00
		1128.80	1506	1510	1163.70	2036.60
		1130.50	1511	1515	1165.50	2039.50
		1132.10	1516	1520	1167.10	2042.50
		1133.70	1521	1525	1168.80	2045.60
		1135.20	1526	1530	1170.30	2048.10
		1136.90	1531	1535	1172.10	2051.10
		1138.60	1536	1540	1173.80	2054.10
		1140.10	1541	1545	1175.40	2057.00
		1141.80	1546	1550	1177.10	2059.80
		1143.40	1551	1555	1178.80	2062.80
		1145.00	1556	1560	1180.40	2065.70
		1146.50	1561	1565	1182.00	2068.70
		1148.20	1566	1570	1183.70	2071.30
		1149.70	1571	1575	1185.30	2074.40
		1151.30	1576	1580	1186.90	2077.30
		1152.90	1581	1585	1188.60	2080.20
		1154.60	1586	1590	1190.30	2083.00
		1156.10	1591	1595	1191.90	2086.10
		1157.80	1596	1600	1193.60	2089.00
		1159.40	1601	1605	1195.30	2091.80
		1161.00	1606	1610	1196.90	2094.50
		1162.50	1611	1615	1198.50	2097.60
		1164.20	1616	1620	1200.20	2100.40
		1165.80	1621	1625	1201.90	2103.40
		1167.50	1626	1630	1203.60	2106.20
		1169.20	1631	1635	1205.40	2109.30
		1170.60	1636	1640	1206.80	2112.00
		1172.40	1641	1645	1208.70	2115.00
		1174.00	1646	1650	1210.30	2117.80
		1175.60	1651	1655	1212.00	2120.80
		1177.20	1656	1660	1213.60	2123.60
		1178.70	1661	1665	1215.20	2126.50
		1180.40	1666	1670	1216.90	2129.40
		1181.90	1671	1675	1218.50	2132.40
		1183.60	1676	1680	1220.20	2135.30
		1185.20	1681	1685	1221.90	2138.20
		1186.80	1686	1690	1223.50	2141.00
		1188.40	1691	1695	1225.20	2144.00
		1189.80	1696	1700	1226.60	2146.90
		1191.50	1701	1705	1228.40	2149.90
		1193.00	1706	1710	1229.90	2152.70
		1194.70	1711	1715	1231.70	2155.60
		1196.20	1716	1720	1233.20	2158.30
		1197.90	1721	1725	1235.00	2161.40
		1199.50	1726	1730	1236.60	2164.10
		1201.10	1731	1735	1238.30	2167.10
		1202.80	1736	1740	1240.00	2169.90
		1204.30	1741	1745	1241.60	2173.00
		1205.90	1746	1750	1243.20	2175.80
		1207.50	1751	1755	1244.90	2178.80
		1209.10	1756	1760	1246.50	2181.60
		1210.80	1761	1765	1248.30	2184.70
		1212.30	1766	1770	1249.80	2187.30
		1213.90	1771	1775	1251.50	2190.30
		1215.60	1776	1780	1253.20	2193.30
		1217.10	1781	1785	1254.80	2196.40
		1218.90	1786	1790	1256.60	2198.90
		1220.40	1791	1795	1258.20	2201.90
		1222.10	1796	1800	1259.90	2204.80
		1223.60	1801	1805	1261.50	2207.80
		1225.30	1806	1810	1263.20	2210.60
		1226.80	1811	1815	1264.80	2213.60
		1228.50	1816	1820	1266.50	2216.50
		1229.90	1821	1825	1268.00	2219.50
		1231.70	1826	1830	1269.80	2222.10
		1233.30	1831	1835	1271.50	2225.20
		1234.90	1836	1840	1273.10	2228.10
		1236.60	1841	1845	1274.90	2231.10
		1238.00	1846	1850	1276.30	2233.60

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for Dec. 1984)—or the primary insurance amount as determined under subsec.(c)) is—	III (average monthly wage)—or the average monthly wage (as determined under subsec. (b)) is-		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1239.80	1851	1855	1278.20	2236.70
		1241.20	1856	1860	1279.60	2239.60
		1243.00	1861	1865	1281.50	2242.60
		1244.50	1866	1870	1283.00	2245.30
		1246.10	1871	1875	1284.70	2248.40
		1247.70	1876	1880	1286.30	2251.20
		1249.30	1881	1885	1288.00	2254.20
		1251.00	1886	1890	1289.70	2257.00
		1252.50	1891	1895	1291.30	2260.10
		1254.20	1896	1900	1293.00	2262.90
		1255.80	1901	1905	1294.70	2265.90
		1257.30	1906	1910	1296.20	2268.60
		1258.90	1911	1915	1297.90	2271.30
		1260.30	1916	1920	1299.30	2274.00
		1261.70	1921	1925	1300.80	2276.60
		1263.20	1926	1930	1302.30	2279.40
		1264.70	1931	1935	1303.90	2281.90
		1266.20	1936	1940	1305.40	2284.70
		1267.60	1941	1945	1306.80	2287.20
		1269.20	1946	1950	1308.50	2289.90
		1270.60	1951	1955	1309.90	2292.40
		1272.00	1956	1960	1311.40	2295.30
		1273.50	1961	1965	1312.90	2297.70
		1275.00	1966	1970	1314.50	2300.50
		1276.50	1971	1975	1316.00	2302.90
		1277.80	1976	1980	1317.40	2305.70
		1279.50	1981	1985	1319.10	2308.40
		1280.80	1986	1990	1320.50	2311.00
		1282.10	1991	1995	1321.80	2313.50
		1283.70	1996	2000	1323.40	2316.30
		1285.10	2001	2005	1324.90	2318.80
		1286.70	2006	2010	1326.50	2321.60
		1288.00	2011	2015	1327.90	2324.10
		1289.70	2016	2020	1329.60	2326.80
		1291.00	2021	2025	1331.00	2329.50
		1292.50	2026	2030	1332.50	2332.20
		1293.90	2031	2035	1334.00	2334.50
		1295.50	2036	2040	1335.60	2337.30
		1296.90	2041	2045	1337.10	2339.80
		1298.40	2046	2050	1338.60	2342.70
		1299.90	2051	2055	1340.10	2345.30
		1301.40	2056	2060	1341.70	2347.90
		1302.60	2061	2065	1342.90	2350.30
		1304.20	2066	2070	1344.60	2353.20
		1305.60	2071	2075	1346.00	2355.70
		1307.20	2076	2080	1347.70	2358.50
		1308.50	2081	2085	1349.00	2361.00
		1310.10	2086	2090	1350.70	2363.80
		1311.50	2091	2095	1352.10	2366.30
		1312.80	2096	2100	1353.40	2369.10
		1314.40	2101	2105	1355.10	2371.50
		1315.80	2106	2110	1356.50	2374.30
		1317.40	2111	2115	1358.20	2376.80
		1318.70	2116	2120	1359.50	2379.60
		1320.30	2121	2125	1361.20	2382.10
		1321.70	2126	2130	1362.60	2384.90
		1323.30	2131	2135	1364.30	2387.40
		1324.60	2136	2140	1365.60	2390.20
		1326.00	2141	2145	1367.10	2392.60
		1327.60	2146	2150	1368.70	2395.50
		1329.00	2151	2155	1370.10	2398.00
		1330.40	2156	2160	1371.60	2400.60
		1331.90	2161	2165	1373.10	2403.10
		1333.10	2166	2170	1374.40	2405.30
		1334.50	2171	2175	1375.80	2407.70
		1335.70	2176	2180	1377.10	2409.90
		1337.00	2181	2185	1378.40	2412.40
		1338.20	2186	2190	1379.60	2414.70
		1339.40	2191	2195	1380.90	2416.80
		1340.80	2196	2200	1382.30	2419.20
		1342.00	2201	2205	1383.60	2421.60
		1343.40	2206	2210	1385.00	2423.90
		1344.60	2211	2215	1386.20	2426.10
		1345.90	2216	2220	1387.60	2428.50
		1347.20	2221	2225	1388.90	2430.80
		1348.50	2226	2230	1390.30	2433.20
		1349.80	2231	2235	1391.60	2435.40

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for Dec. 1984)—or the primary insurance amount as determined under subsec.(c)) is—	III (average monthly wage)—or the average monthly wage (as determined under subsec. (b)) is—		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1351.00	2236	2240	1392.80	2437.50
		1352.20	2241	2245	1394.10	2440.00
		1353.60	2246	2250	1395.50	2442.20
		1354.90	2251	2255	1396.90	2444.60
		1356.20	2256	2260	1398.20	2446.80
		1357.50	2261	2265	1399.50	2449.30
		1358.70	2266	2270	1400.80	2451.50
		1359.90	2271	2275	1402.00	2453.70
		1361.20	2276	2280	1403.30	2456.10
		1362.50	2281	2285	1404.70	2458.50
		1363.90	2286	2290	1406.10	2460.70
		1365.20	2291	2295	1407.50	2463.00
		1366.40	2296	2300	1408.70	2465.40
		1367.60	2301	2305	1409.90	2467.80
		1368.90	2306	2310	1411.30	2470.00
		1370.20	2311	2315	1412.60	2472.30
		1371.50	2316	2320	1414.00	2474.60
		1372.80	2321	2325	1415.30	2477.00
		1373.90	2326	2330	1416.40	2479.20
		1375.40	2331	2335	1418.00	2481.60
		1376.60	2336	2340	1419.20	2483.80
		1377.90	2341	2345	1420.60	2486.20
		1379.20	2346	2350	1421.90	2488.50
		1380.50	2351	2355	1423.20	2490.90
		1381.70	2356	2360	1424.50	2493.10
		1382.90	2361	2365	1425.70	2495.40
		1384.30	2366	2370	1427.20	2497.70
		1385.60	2371	2375	1428.50	2500.00
		1387.00	2376	2380	1429.90	2502.30
		1388.10	2381	2385	1431.10	2504.60
		1389.30	2386	2390	1432.30	2506.90
		1390.70	2391	2395	1433.80	2509.30
		1391.90	2396	2400	1435.00	2511.40
		1393.30	2401	2405	1436.40	2513.80
		1394.50	2406	2410	1437.70	2516.10
		1395.90	2411	2415	1439.10	2518.60
		1397.10	2416	2420	1440.40	2520.60
		1398.30	2421	2425	1441.60	2523.10
		1399.70	2426	2430	1443.00	2525.40
		1400.90	2431	2435	1444.30	2527.90
		1402.20	2436	2440	1445.60	2529.90
		1403.40	2441	2445	1446.90	2532.30
		1404.70	2446	2450	1448.20	2534.70
		1406.00	2451	2455	1449.50	2537.00
		1407.30	2456	2460	1450.90	2539.20
		1408.70	2461	2465	1452.30	2541.60
		1409.80	2466	2470	1453.50	2543.90
		1411.20	2471	2475	1454.90	2546.20
		1412.30	2476	2480	1456.00	2548.20
		1413.40	2481	2485	1457.20	2550.40
		1414.60	2486	2490	1458.40	2552.40
		1415.70	2491	2495	1459.50	2554.50
		1416.90	2496	2500	1460.80	2556.60
		1418.10	2501	2505	1462.00	2558.70
		1419.10	2506	2510	1463.00	2560.60
		1420.40	2511	2515	1464.40	2562.80
		1421.50	2516	2520	1465.50	2564.90
		1422.70	2521	2525	1466.80	2566.90
		1423.80	2526	2530	1467.90	2569.00
		1424.90	2531	2535	1469.00	2571.20
		1426.10	2536	2540	1470.30	2573.20
		1427.30	2541	2545	1471.50	2575.30
		1428.40	2546	2550	1472.60	2577.30
		1429.60	2551	2555	1473.90	2579.50
		1430.70	2556	2560	1475.00	2581.50
		1431.90	2561	2565	1476.20	2583.50
		1433.00	2566	2570	1477.40	2585.70
		1434.10	2571	2575	1478.50	2587.80
		1435.40	2576	2580	1479.80	2589.70
		1436.50	2581	2585	1481.00	2592.00
		1437.60	2586	2590	1482.10	2593.90
		1438.80	2591	2595	1483.40	2596.00
		1439.90	2596	2600	1484.50	2598.10
		1441.00	2601	2605	1485.60	2600.20
		1442.20	2606	2610	1486.90	2602.20
		1443.40	2611	2615	1488.10	2604.40
		1444.60	2616	2620	1489.30	2606.40

TABLE I.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for Dec. 1984)—or the primary insurance amount as determined under subsec.(c)) is—	III (average monthly wage)—or the average monthly wage (as determined under subsec. (b)) is-		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1445.60	2621	2625	1490.40	2608.50
		1446.80	2626	2630	1491.60	2610.50
		1448.00	2631	2635	1492.80	2612.80
		1449.20	2636	2640	1494.10	2614.70
		1450.20	2641	2645	1495.10	2616.80
		1451.40	2646	2650	1496.30	2618.70
		1452.60	2651	2655	1497.60	2621.00
		1453.80	2656	2660	1498.80	2623.00
		1454.80	2661	2665	1499.80	2625.10
		1456.00	2666	2670	1501.10	2627.10
		1457.20	2671	2675	1502.30	2629.30
		1458.40	2676	2680	1503.60	2631.30
		1459.40	2681	2685	1504.60	2633.40
		1460.60	2686	2690	1505.80	2635.50
		1461.80	2691	2695	1507.10	2637.60
		1463.00	2696	2700	1508.30	2639.50
		1464.10	2701	2705	1509.40	2641.60
		1465.10	2706	2710	1510.50	2643.40
		1466.20	2711	2715	1511.60	2645.40
		1467.30	2716	2720	1512.70	2647.20
		1468.30	2721	2725	1513.80	2649.20
		1469.40	2726	2730	1514.90	2651.20
		1470.50	2731	2735	1516.00	2653.10
		1471.50	2736	2740	1517.10	2655.00
		1472.70	2741	2745	1518.30	2657.00
		1473.70	2746	2750	1519.30	2658.90
		1474.70	2751	2755	1520.40	2660.90
		1475.90	2756	2760	1521.60	2662.70
		1476.90	2761	2765	1522.60	2664.80
		1477.90	2766	2770	1523.70	2666.60
		1479.10	2771	2775	1524.90	2668.60
		1480.10	2776	2780	1525.90	2670.40
		1481.10	2781	2785	1527.00	2672.40
		1482.30	2786	2790	1528.20	2674.40
		1483.30	2791	2795	1529.20	2676.30
		1484.50	2796	2800	1530.50	2678.20
		1485.50	2801	2805	1531.50	2680.20
		1486.50	2806	2810	1532.50	2682.10
		1487.70	2811	2815	1533.80	2684.10
		1488.70	2816	2820	1534.80	2686.00
		1489.70	2821	2825	1535.80	2687.90
		1490.90	2826	2830	1537.10	2689.80
		1491.90	2831	2835	1538.10	2691.80
		1492.90	2836	2840	1539.10	2693.60
		1494.10	2841	2845	1540.40	2695.70
		1495.10	2846	2850	1541.40	2697.50
		1496.10	2851	2855	1542.40	2699.50
		1497.30	2856	2860	1543.70	2701.50
		1498.30	2861	2865	1544.70	2703.30
		1499.40	2866	2870	1545.80	2705.30
		1500.50	2871	2875	1547.00	2707.10
		1501.50	2876	2880	1548.00	2709.10
		1502.60	2881	2885	1549.10	2711.20
		1503.70	2886	2890	1550.30	2712.90
		1504.70	2891	2895	1551.30	2715.00
		1505.90	2896	2900	1552.50	2716.90
		1506.90	2901	2905	1553.60	2718.80
		1507.90	2906	2910	1554.60	2720.80
		1509.10	2911	2915	1555.80	2722.70
		1510.10	2916	2920	1556.90	2724.60
		1511.20	2921	2925	1558.00	2726.60
		1512.30	2926	2930	1559.10	2728.40
		1513.30	2931	2935	1560.20	2730.50
		1514.40	2936	2940	1561.30	2732.30
		1515.50	2941	2945	1562.40	2734.30
		1516.50	2946	2950	1563.50	2736.20
		1517.60	2951	2955	1564.60	2738.20
		1518.70	2956	2960	1565.70	2740.00
		1519.70	2961	2965	1566.80	2742.10
		1520.80	2966	2970	1567.90	2744.00
		1521.90	2971	2975	1569.00	2745.90
		1523.00	2976	2980	1570.20	2747.80
		1524.00	2981	2985	1571.20	2749.50
		1525.00	2986	2990	1572.20	2751.50
		1526.10	2991	2995	1573.40	2753.30
		1527.10	2996	3000	1574.40	2755.20
		1528.10	3001	3005	1575.40	2757.10

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for Dec. 1984)—or the primary insurance amount as determined under subsec.(c)) is—	III (average monthly wage)—or the average monthly wage (as determined under subsec. (b)) is-		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1529.20	3006	3010	1576.60	2758.90
		1530.20	3011	3015	1577.60	2760.80
		1531.20	3016	3020	1578.60	2762.70
		1532.30	3021	3025	1579.80	2764.50
		1533.30	3026	3030	1580.80	2766.40
		1534.30	3031	3035	1581.80	2768.30
		1535.40	3036	3040	1582.90	2770.10
		1536.40	3041	3045	1584.00	2772.00
		1537.40	3046	3050	1585.00	2773.90
		1538.50	3051	3055	1586.10	2775.70
		1539.50	3056	3060	1587.20	2777.70
		1540.50	3061	3065	1588.20	2779.40
		1541.60	3066	3070	1589.30	2781.40
		1542.60	3071	3075	1590.40	2783.10
		1543.70	3076	3080	1591.50	2785.10
		1544.70	3081	3085	1592.50	2786.90
		1545.70	3086	3090	1593.60	2788.80
		1546.80	3091	3095	1594.70	2790.70
		1547.80	3096	3100	1595.70	2792.50
		1548.80	3101	3105	1596.80	2794.40
		1549.90	3106	3110	1597.90	2796.30
		1550.90	3111	3115	1598.90	2798.10
		1551.90	3116	3120	1600.00	2800.00
		1553.00	3121	3125	1601.10	2801.90
		1554.00	3126	3130	1602.10	2803.80
		1555.00	3131	3135	1603.20	2805.60
		1556.10	3136	3140	1604.30	2807.50
		1557.10	3141	3145	1605.30	2809.30
		1558.10	3146	3150	1606.40	2811.30
		1559.10	3151	3155	1607.40	2812.90
		1560.10	3156	3160	1608.40	2814.70
		1561.10	3161	3165	1609.40	2816.50
		1562.10	3166	3170	1610.50	2818.30
		1563.10	3171	3175	1611.50	2820.10
		1564.10	3176	3180	1612.50	2821.90
		1565.10	3181	3185	1613.60	2823.80
		1566.10	3186	3190	1614.60	2825.50
		1567.10	3191	3195	1615.60	2827.40
		1568.10	3196	3200	1616.70	2829.10
		1569.10	3201	3205	1617.70	2831.00
		1570.10	3206	3210	1618.70	2832.70
		1571.10	3211	3215	1619.80	2834.60
		1572.10	3216	3220	1620.80	2836.30
		1573.10	3221	3225	1621.80	2838.20
		1574.10	3226	3230	1622.80	2839.90
		1575.10	3231	3235	1623.90	2841.80
		1576.10	3236	3240	1624.90	2843.60
		1577.10	3241	3245	1625.90	2845.40
		1578.10	3246	3250	1627.00	2847.20
		1579.10	3251	3255	1628.00	2849.00
		1580.10	3256	3260	1629.00	2850.80
		1581.10	3261	3265	1630.10	2852.60
		1582.10	3266	3270	1631.10	2854.40
		1583.10	3271	3275	1632.10	2856.20
		1584.10	3276	3280	1633.20	2858.00
		1585.10	3281	3285	1634.20	2859.80
		1586.10	3286	3290	1635.20	2861.60
		1587.10	3291	3295	1636.30	2863.40
		1588.10	3296	3300	1637.30	2865.20
			3301	3305	1638.30	2867.00
			3306	3310	1639.30	2868.70
			3311	3315	1640.30	2870.50
			3316	3320	1641.30	2872.20
			3321	3325	1642.30	2874.00
			3326	3330	1643.30	2875.70
			3331	3335	1644.30	2877.50
			3336	3340	1645.30	2879.20
			3341	3345	1646.30	2881.00
			3346	3350	1647.30	2882.70
			3351	3355	1648.30	2884.50
			3356	3360	1649.30	2886.20
			3361	3365	1650.30	2888.00
			3366	3370	1651.30	2889.70
			3371	3375	1652.30	2891.50
			3376	3380	1653.30	2893.20
			3381	3385	1654.30	2895.00
			3386	3390	1655.30	2896.70

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for Dec. 1984)—or the primary insurance amount as determined under subsec.(c)) is—	III (average monthly wage)—or the average monthly wage (as determined under subsec. (b)) is-		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
			3391	3395	1656.30	2898.50
			3396	3400	1657.30	2900.20
			3401	3405	1658.30	2902.00
			3406	3410	1659.30	2903.70
			3411	3415	1660.30	2905.50
			3416	3420	1661.30	2907.20
			3421	3425	1662.30	2909.00
			3426	3430	1663.30	2910.70
			3431	3435	1664.30	2912.50
			3436	3440	1665.30	2914.20
			3441	3445	1666.30	2916.00
			3446	3450	1667.30	2917.70
			3451	3455	1668.30	2919.50
			3456	3460	1669.30	2921.20
			3461	3465	1670.30	2923.00
			3466	3470	1671.30	2924.70
			3471	3475	1672.30	2926.50
			3476	3480	1673.30	2928.20
			3481	3485	1674.30	2930.00
			3486	3490	1675.30	2931.70
			3491	3495	1676.30	2933.50
			3496	3500	1677.30	2935.20

TABLE 2.—SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Primary insurance amount payable for Dec. 1984	No. of years required minimum earnings level	Primary insurance amount payable for Dec. 1985	Maximum family benefit payable for Dec. 1985
18.70	11	19.20	28.90
37.00	12	38.10	57.30
55.50	13	57.20	86.00
74.00	14	76.20	114.50
92.40	15	95.20	142.90
111.00	16	114.40	171.70
129.40	17	133.40	200.10
148.00	18	152.50	228.80
166.40	19	171.50	257.30
184.70	20	190.40	285.70
203.30	21	209.60	314.60
221.80	22	228.60	343.10
240.40	23	247.80	371.90
258.80	24	266.80	400.30
277.20	25	285.70	428.70
295.90	26	305.00	457.70
314.30	27	324.00	486.20
332.70	28	343.00	514.60
351.10	29	361.90	543.20
369.50	30	380.90	571.60

[FR Doc. 85-26108 Filed 10-30-85; 8:45 am]
BILLING CODE 4190-11-C

federal register

Thursday
October 31, 1985

Part IV

Department of the Interior

Minerals Management Service

Gulf of Alaska (March 1988); Request for Interest; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Request for Interest
Gulf of Alaska
(March 1988)

Purpose

The Gulf of Alaska proposed Outer Continental Shelf (OCS) oil and gas lease sale appears in the Draft Proposed Program dated March 1985 for the 5-year schedule of mid-1986 through mid-1991. This sale is being reviewed by the Secretary of the Interior to determine whether the OCS presale process should be initiated for this sale. The oil and gas industry is asked to assist in this process by providing up-to-date information on its interest in leasing and exploring within the Gulf of Alaska.

If a decision is made to begin the OCS presale process for this sale, a Call for Information and Nominations would be issued in February 1986 with a sale proposed for March 1988.

Use of Information from Request

The responses will assist the Secretary of the Interior to determine if the presale process for the proposal should be started, cancelled, or deferred for consideration in a future 5-year schedule. This approach is designed to add flexibility to the program by providing for the reasonable possibility that changes in geologic data and economic or other conditions could create bidding interest in the future in areas which now appear unattractive. For example, a substantial oil price increase (such as might result from an oil supply disruption), if anticipated to be relatively long-term, could make an area now unattractive to potential bidders into one which could be of interest. Other information of interest would include new geophysical data; new geological data; new interpretations of existing data; and new estimates of costs of production. By requesting information and acting on it prior to the issuance of the Call, the risk of inappropriate expenditures for such sales would be minimized.

The presale process includes the following steps: Call for Information and Nominations and Notice of Intent to Prepare an Environmental Impact Statement (EIS), Area Identification, draft EIS, Public Hearing, final EIS, proposed Notice, Governor's Comments, and final Notice of Sale.

Description of the Area

The Gulf of Alaska Planning Area generally extends south from 59° 05' N. latitude at approximately 151° 55' W. longitude to the territorial sea at approximately 59° N. latitude, thence east to 148° W. longitude, thence south to 58° N. latitude, thence east to 147° W. longitude, thence south to 53° N. latitude, thence east to 141° W. longitude, thence generally northeast along

the fishery conservation line to the territorial sea, thence along the territorial sea to the point of origin. The area includes approximately 23,871 blocks covering 132.4 million acres. The attached map depicts the planning area.

Previous Presale Activities

There have been three previous lease sales held in this area. Sale 39 held in April 1976; Sale 55 held in October 1980; and Sale RS-1 held in June 1981. A total of 112 leases were issued for these three sales. Since that time, 104 of those leases have been relinquished and one has expired. There remain seven active leases which are due to expire on November 30, 1985. There have been 12 wells drilled, plugged and abandoned in the Gulf of Alaska Planning Area. The last scheduled lease sale, Sale 88, Gulf of Alaska/Cook Inlet, originally to have been held in December 1984, has been postponed indefinitely.

The Call for Information for proposed Lease Sale 88, Gulf of Alaska/Cook Inlet was published in the Federal Register at 48 FR 11224 on March 16, 1983, and included the entire Gulf of Alaska Planning Area covering approximately 132.4 million acres. Three companies responded with interest shown in the northeastern portion of the planning area, specifically from Icy Bay south to Cape Fairweather. A Request for Supplemental Information for Sale 88 was published in the Federal Register at 49 FR 12763 on March 30, 1984, covering an area generally between the 3-geographical-mile boundary and the 2,000-meter isobath. Five companies responded to the request for supplemental information with interest generally from Hinchinbrook Entrance east to Yakutat.

A proposed Notice of Sale for Sale 88 was published in the Federal Register at 49 FR 31638 on August 7, 1984. The area proposed in the Gulf of Alaska Planning Area was generally that area from Kayak Island east to Yakutat to include 1,678 blocks covering 9,232,760.88 acres. On November 9, 1984, the sale was delayed by the Minerals Management Service to reexamine industry interest. On February 20, 1985, the Secretary of the Interior announced that Sale 88 would be postponed indefinitely due to lack of industry interest.

Instructions on Request for Interest

Information regarding leasing and exploring in the Gulf of Alaska Planning Area may be provided by mail, telephone, or alternatively, by informal meeting with the Regional Director or designated representative. General or detailed information may be submitted. Specific responses are requested on the advisability of selecting one of the following options for the planning area: proceed with the OCS presale process; cancel the OCS presale process; or defer the sale for consideration in a future 5-year schedule.

In order to be included in the review process, information must be submitted no later than 45 days following publication of this document in the Federal Register. Correct receipt of the information will be facilitated if the envelope is marked "Request for Interest on Proposed Lease Sale Gulf of Alaska (March 1988)."

Letters should be addressed to the Regional Supervisor for Leasing and Environment, Alaska OCS Region, P.O. Box 101159, Anchorage, Alaska 99510 or hand delivered to 949 East 36th Avenue, room 544, Anchorage, Alaska. A copy of the response should be sent to the Chief, Offshore Leasing Management Division, Department of the Interior, Minerals Management Service, Mail Stop 645, Washington, D.C. 20240. Hand deliveries to the Department of the Interior may be made at 18th and C Streets, N.W., room 2523, Washington, D.C. Telephone inquiries may be made to Tom Warren (907) 261-4691 (Alaska) or to Sandra Seim (202) 343-5121 (Washington, D.C.).

Wm D Bettenberg

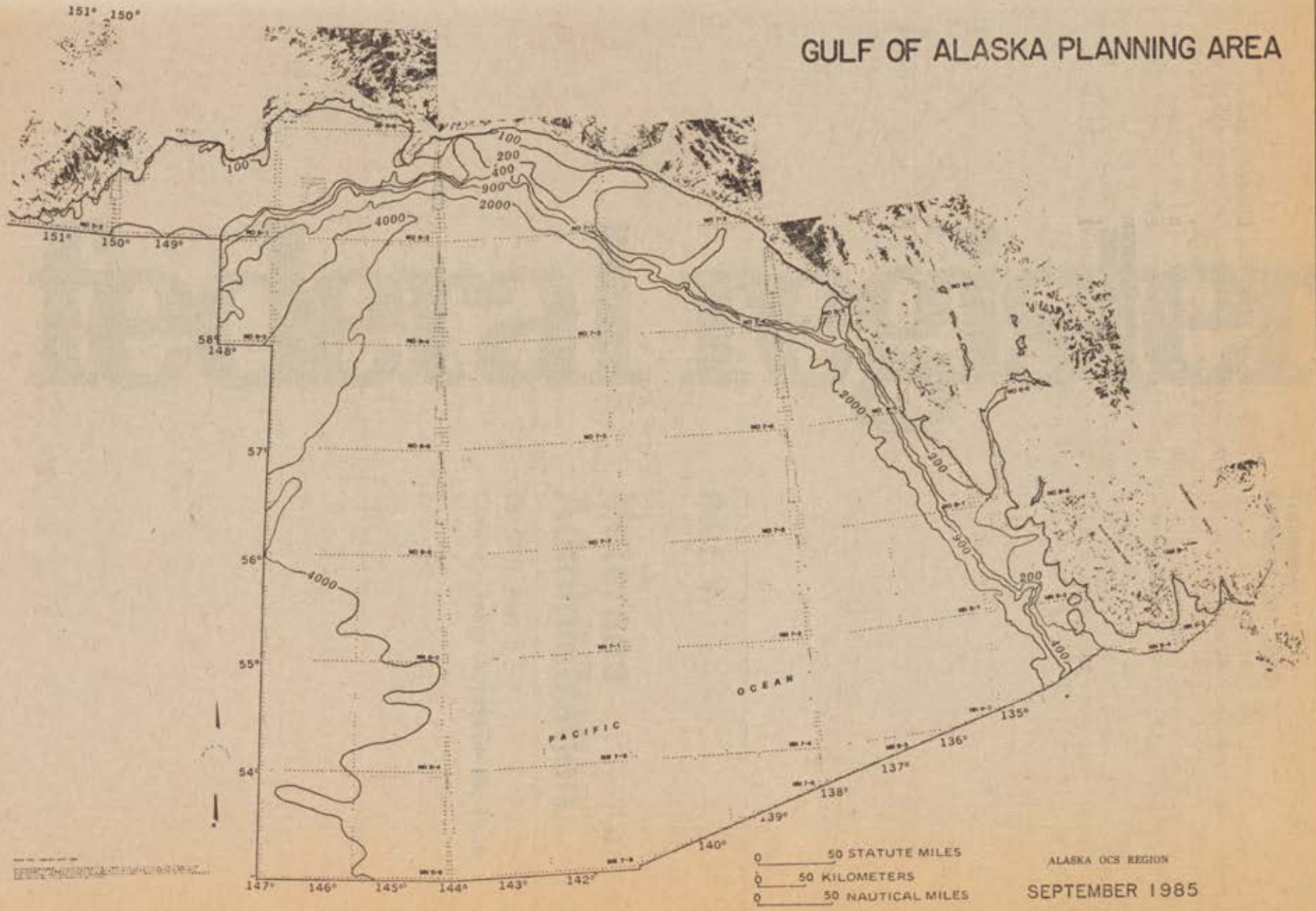
Director, Minerals Management Service
Wm. D. Bettenberg

Date: 10/25/85

Approved

OCT 28 1985

Deputy Assistant Secretary - Land
and Minerals Management
J. Steven Griles



[FR Doc. 85-26111 Filed 10-30-85; 8:45 am]

BILLING CODE 4310-MR-C

federal register

Thursday
October 31, 1985

Part V

Veterans Administration

38 CFR Part 3
Cost-of-Living Adjustments; Rule

VETERANS ADMINISTRATION

38 CFR Part 3

Cost-of-Living Adjustments

AGENCY: Veterans Administration.

ACTION: Cost-of-Living Adjustments.

SUMMARY: As required by law the Veterans Administration (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1985.

DATE: These COLAs are effective December 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, (202) 389-3005.

SUPPLEMENTARY INFORMATION: Under the provisions of 38 U.S.C. 3112 and section 306 of Pub. L. 95-588 the VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register.**

The Social Security Administration has announced that there will be a 3.1 percent cost-of-living increase in social security benefits effective December 1, 1985. Therefore, applying the same percentage, the following increased rates and income limitations for the VA's pension and parents' DIC programs will be effective December 1, 1985.

Improved Pension

Table 1

Maximum annual rates

(1) Veterans permanently and totally disabled (38 U.S.C. 521).

Veteran with no dependents, $5,886.

Veteran with one dependent, $7,710.

For each additional dependent, $999.

(2) Veterans in need of aid and attendance (38 U.S.C. 521).

Veteran with no dependents, $9,416.

Veteran with one dependent, $11,240.

For each additional dependent, $999.

(3) Veterans who are housebound (38 U.S.C. 521).

Veteran with no dependents, $7,194.

Veteran with one dependent, $9,019.

For each additional dependent, $999.

(4) Two veterans married to one another; combined rates (38 U.S.C. 521).

Neither veteran in need of aid and attendance or housebound, $7,710.

Either veteran in need of aid and attendance, $11,240.

Both veterans in need of aid and attendance, $14,769.

Either veteran housebound, $9,019.

Both veterans housebound; $10,328.

One veteran housebound and one veteran in need of aid and attendance, $12,548.

For each dependent child, $999.

(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 541).

Surviving spouse alone, $3,944.

Surviving spouse and one child in his or her custody, $5,167.

For each additional child in his or her custody, $999.

(6) Surviving spouses in need of aid and attendance (38 U.S.C. 541).

Surviving spouse alone, $6,309.

Surviving spouse with one child in his or her custody, $7,530.

For each additional child in his or her custody, $999.

(7) Surviving spouses who are housebound (38 U.S.C. 541).

Surviving spouse alone, $4,822.

Surviving spouse and one child in his or her custody, $6,042.

For each additional child in his or her custody, $999.

(8) Surviving child alone (38 U.S.C. 542). $999.

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 521, 541, and 542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,329. (38 U.S.C. 521(g)).

Parents' DIC

DIC (dependency and indemnity compensation) shall be paid monthly to parents of a deceased veteran in the following amounts. (38 U.S.C. 415).

Table 2

One parent. If there is only one parent the monthly rate of DIC paid to such parent shall be $275 reduced on the basis of the parent's annual income according to the following formula:

For each $1 of annual income		
The $275 monthly rate shall be reduced by	Which is more than	But not more than
0.00	0	$800
$0.08	$800	6,695

No DIC is payable under this table if annual income exceeds $6,695.

One Parent Who Has Remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under table 2 or under table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $196 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

For each $1 of annual income		
The $196 monthly rate shall be reduced by	Which is more than	But not more than
0.00	0	$800
$0.05	$800	1,000
.07	1,000	1,200
.08	1,200	6,695

No DIC is payable under this table if annual income exceeds $6,695.

Two parents living together or remarried parents living with spouses. The rates in table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $185 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

For each $1 of annual income		
The $185 monthly rate shall be reduced by	Which is more than	But not more than
0.00	0	$1,000
$0.03	$1,000	1,700
.04	1,700	2,300
.05	2,300	2,700
.06	2,700	3,200
.07	3,200	3,700
.08	3,700	9,002

No DIC is payable under this table if combined annual income exceeds $9,002.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under tables 2 through 4 shall be increased by $145 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under tables 2 through 4 shall not be less than $5.

Section 306 Pension Income Limitations

Table 5

(1) Veteran or surviving spouse with no dependents, $6,695 (Pub. L. 95–588, section 306(a)).

(2) Veteran with no dependents in need of aid and attendance $7,195 (38 U.S.C. 521(d) as in effect on December 31, 1978).

(3) Veteran or surviving spouse with one or more dependents, $9,002 (Pub. L. 95–588, section 306(a)).

(4) Veteran with one or more dependents in need of aid and attendance, $9,502 (38 U.S.C. 521(d) as in effect on December 31, 1978).

(5) Child (no entitled veteran or surviving spouse), $5,471 (Pub. L. 95–588, section 306(a)).

(6) Spouse income exclusion (38 CFR 3.262), $2,133 (Pub. L. 95–588, section 306(a)(2)(B)).

Old-Law Pension Income Limitations

Table 6

(1) Veteran or surviving spouse without dependents or an entitled child, $5,860 (Pub. L. 95–588, section 306(b)).

(2) Veteran or surviving spouse with one or more dependents, $8,452 (Pub. L. 95–588, section 306(b)).

Dated: October 28, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 85–26112 Filed 10–30–85; 8:45 am]

BILLING CODE 8320–01–M

federal register

Thursday
October 31, 1985

Part VI

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 442

Medicare and Medicaid Programs; Long-Term Care Survey; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 442

[HSQ-119-P]

Medicare and Medicaid Programs; Long-Term Care Survey

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

ACTION: Proposed rule.

SUMMARY: This proposal responds to a Federal court order requiring that, by October 31, 1985, we publish proposed regulations regarding a survey system that would enable the Secretary to better assess whether high quality care is actually being furnished to Medicaid recipients in nursing homes. This proposal represents a departure from, and an exception to, our position that the survey method used to determine compliance with program participation requirements can be modified without the need for change in our regulations.

The proposal would amend the Medicaid regulations to emphasize that the State survey agency must follow the survey methods and procedures prescribed by HCFA that are current at the time of the survey. This preamble also indicates our intent to implement a new outcome-oriented survey process beginning early in 1986.

The new survey procedure, which has been tested and refined during the last few years, is expected to provide a better basis for judging the quality of care actually provided to patients because it gives greater emphasis to patient outcomes. This will enable the surveyor to focus more directly on deficiencies that affect the health, safety and well-being of patients and residents.

We would amend the Medicare regulations to conform to these changes and to make clear that the new process will also be used for Medicare facilities.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on December 30, 1985.

ADDRESSES: Address written comments to: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-119-P, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503, Attention: Fay Iudicello.

In commenting, please refer to file code HSQ-119-P.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

For copies of the proposed survey methodology, contact: The Office of Survey and Certification, The Health Standards and Quality Bureau, Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207.

FOR FURTHER INFORMATION, CONTACT: Sharon Harris, (301) 594-5547.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative Requirements

Section 1864 of the Social Security Act (the Act) requires the Secretary to enter into agreements with States to survey nursing homes and certify their compliance or noncompliance with Medicare participation requirements. Section 1902(a)(33)(B) of the Act requires the State Medicaid agency to contract with the State survey agency used by Medicare (if that agency is the agency responsible for licensing health facilities), to determine whether such facilities meet the requirements for participation in the Medicaid program. Medicaid participation requirements for skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) are in section 1902(a)(28) and 1905(c) of the Act, respectively. Regulations implementing these requirements are located in Part 442, Subparts D, E, F, and G of the Medicaid rules.

Under § 442.101 of those rules, the State survey agency (SA) certifies to the Medicaid agency whether Medicaid participation requirements are met. The regulations at §431.610(f)(1) require in effect that the SA use Federal standards and the forms, methods, and procedures designated by HCFA. Section 442.30(a)(4) provides that, if the SA fails to follow the Federal procedures referenced in § 431.610(f), the Medicaid provider agreement excuted on the basis of the SA's survey and certification will not be considered by HCFA to be valid evidence of a facility's compliance with participation requirements. When the agreement is considered to be invalid, HCFA must disallow Federal financial participation in expenses incurred by the State for the services furnished by that facility.

The process for reviewing and determining facility compliance with Medicaid health and safety requirements is referred to as the survey and certification process. Specific requirements for this process are established by law (section 1902(a)(33)(B) of the Act), implemented and enforced by regulations (Part 442, Subpart C), and interpreted in general program instructions (*State Operations Manual*), interpretive guidelines, and program letters and memoranda).

If a facility has requested a provider agreement in order to participate in the Medicaid program, the request must be denied if that facility is found to be not in compliance with participation requirements. If a facility that has a provider agreement is found to be not in compliance, its provider agreement must be terminated.

HCFA has broad oversight responsibility for the Medicaid as well as the Medicare program. HCFA regional offices conduct onsite surveys of a sample of all types of facilities to determine continued compliance with program requirements. When HCFA reviews certifications of facilities that participate only in Medicaid, it is referred to as "look behind". HCFA ascertains whether a facility is in compliance with Medicaid participation requirements, and will cancel a facility's approval to participate in Medicaid if it determines that those requirements are not met. This "look behind" authority is contained in sections 1902(a)(33)(B) and 1910(c) of the Act.

B. Current Survey Process

The current survey system, which has been in effect since 1974, was aimed at addressing the many shortcomings in nursing home care that became evident in the late 1960s and early 1970s. The process focuses on structural requirements (such as written policies and procedures, staff qualifications and functions, the presence of specific agreements and contracts, and a physical plant with particular characteristics) more than on patient outcomes, on the assumption that, if the structural requirements are met, the desired outcome—that is, high quality care—will be attained.

C. Revised Survey Method

Beginning in 1978, the Department approved a number of demonstration projects and experiments with modified survey processes that would focus more directly on actual care provided rather than structural requirements. Each demonstration or experiment sought to develop methods and indicators that would reveal the quality of care provided rather than the facility's capacity to deliver care. In 1982, HCFA began to devise a new survey procedure, based on the results of the demonstrations and experiments. This is commonly referred to as the Patient Care and Services (PaCS) survey.

On May 27, 1982, HCFA proposed changes in the survey and certification procedures (47 FR 23404) which elicited significant public response. This caused HCFA to reexamine the survey process.

As part of this reexamination, HCFA called a series of meetings with representatives of consumer advocacy groups, SAs and the nursing home industry, to identify what might be acceptable changes in the survey and certification process. The work group agreed that the survey process would be substantially improved if it focused on care provided, and identified observation and assessment of patients or residents as the proper primary basis for compliance decisions. The participants gave unanimous support to the reforms embodied in the early version of PaCS and favored eventual implementation of an outcome-oriented survey process on a national basis. With their support, field testing and refining of PaCS began.

In 1984, after some initial pilot tests, HCFA initiated more extensive testing in Connecticut, Rhode Island, and Tennessee. The chief goal was to identify any differences between findings derived from PaCS surveys and those derived from traditional surveys. The focal point was a series of 130 "double surveys" aimed at assessing the validity and reliability of the PaCS process. The results of this testing, plus regional office validation surveys in facilities for which SAs had used the PaCS process showed that—

- Use of the PaCS process increases the number of patient-related findings.
- Adverse effects on patient health and safety are more often described in the deficiencies cited.
- Nursing home administrators were favorably impressed with the PaCS process because it focused on care provided.

Based on the testing results, HCFA now plans to implement the PACS survey process. Just as the forms and procedures of the current survey process are not set forth in the regulations, the new forms and procedures, and any future changes can and will be implemented through general instructions, without changing the regulations. This allows flexibility to revise and improve the survey process as experience is gained.

D. Effect of Court Order

On August 9, 1985, in *The Estate of Smith* v. *Heckler*, the United States District Court for the District of Colorado ordered the Secretary to develop and publish a Notice of Proposed Rulemaking by October 31, 1985 regarding a new survey process that will enable the Secretary to know whether Medicaid nursing facilities are actually providing care of a high quality. The district court's order was the result of a suit filed in 1975 on behalf of residents in a Colorado nursing home. The plaintiffs claimed that the Secretary had failed to carry out a duty to ensure that Medicaid patients in nursing facilities were actually receiving high quality care. The case was ultimately dismissed by the district court on the basis that, although the Secretary had the authority to implement different procedures, she had no mandatory duty to do so. The plaintiffs appealed to the Tenth Circuit Court of Appeals which, in 1985, reversed the district court and remanded the case for further proceedings. The Tenth Circuit found that the Secretary had failed to fulfill a statutory duty to promulgate regulations that would enable her to determine whether Medicaid facilities are providing high quality care.

The court has required us to initiate rulemaking procedures by October 31, 1985.

E. The PaCS Survey Process

PaCS has two key features. First, it is more outcome-oriented than the current system, i.e. it would focus more directly on observing actual care received by individual patients. It would provide a more valid estimate of the quality of care furnished by the facility. By bringing surveyors face to face with a representative sample of patients or residents, it would enable surveyors to identify their needs and problems more accurately and, subsequently, to determine how well care is being provided to meet those needs. Second, by requiring surveyors to follow specific procedures and to review according to a specified checklist, it would achieve greater consistency than is currently achieved in survey methods and findings. For example, in the traditional process, surveyors could merely evaluate policies and procedures to ascertain that grooming and personal hygiene rules were designed to satisfy patient needs. In the PaCS process, surveyors must actually determine that these needs are satisfied. This requires the surveyor to observe residents and to determine that they are in fact clean and well groomed. As a result of the PaCS process, suveyors must interview alert residents in their sample. Information supplied by the resident can be used to determine whether their needs are met. For example, in the traditional process surveyors could merely review a sample of medical records to determine if restorative nursing procedures were performed daily and recorded. In the PaCS process, surveyors would be required to speak with residents about the frequency of the care and treatments received, in addition to observing and documenting the frequency of the care, as recorded in the medical record.

Although the PaCS process does not examine each requirement of the regulations that is reflected in current survey form, the modified long-term care survey method represents a complete survey of a facility's compliance with program paticipation requirements. Facilities would still be required to be in continuous compliance with all regulations in order to be certified. At the time of initial survey, the facility would be measured against all the items of the current survey form to ensure that it meets all participation requirements. At the time of resurvey, to determine whether continuing participation is justified, the facility would be required to sign a statement that it not only continues to meet those participation requirements that are not directly assessed by the outcome-oriented process, but that it agrees to notify the SA immediately if conditions in the facility are so changed as to raise questions of whether it continues to comply with all participation requirements. Subsequent resurveys may verify compliance with requirements not included in the PaCS process.

The PaCS survey forms would include components from 14 of the 18 SNF conditions of participation—those that most directly affect the health, safety, and well-being of patients or residents—and from an equivalent selection from the ICF participation requirements. All facilities would receive a life safety code survey. Evaluation of the physical environment would continue to be a major component of the PaCS survey process, but the most innovative PaCS components are the three activities that

focus on a sample of the patients or residents in three areas:

- *General care.*—Indepth review of furnished care through observation, interview, and review of records.
- *Nutrition.*—Evaluation of meals, dining, and eating assistance.
- *Medication Administration.*—Evaluation of drug administration.

First, the surveyor would evaluate the physical condition of each patient or resident in the sample against a prescribed set of criteria that include such things as the person's ability to perform activities of daily living, plus grooming, hygiene, alignment and position, skin condition, and behavior. The second function, interviewing, would be carried out concurrently with the observation function. The surveyor would observe the provision of care and services such as dressing changes or decubitus care and note whether the care was provided appropriately.

Following the observation/interview, the surveyor would be required to review the medical record of each patient in the sample to determine whether the facility has adequately assessed all the problems and needs, developed a plan of care that addresses those needs, provided care according to the plan, and evaluated the effectiveness of care. Through review of records, the surveyor determines the proportion of undesirable patient conditions that are not under the control of the facility, those that are being appropriately addressed, and those that have been overlooked or neglected.

By observing how patients or residents are being fed, how much help they need, and how much food they eat, in conjunction with determining if food trays agree with diet orders, the surveyor determines whether the facility is actually providing proper nourishment.

The drug administration component of PaCS would require surveyors to note drugs as they are poured for each patient or resident, to observe them as they are given, and finally, to check drug orders to determine whether both the pour and administration were done as ordered. As a result, facility staff and surveyors can discuss deficient practices rather than whether the drug was properly adminstered, even though not properly documented.

After completing each step of the PaCS process, the surveyor would identify patterns and areas where the facility appears to have difficulty in addressing the problems and providing care. The surveyor must then determine, based on the nature and number of these findings, whether deficiencies exist.

Finally, the survey team would be required to perform an exit conference with facility staff to discuss all findings and the deficiencies that will be cited.

II. Changes in the Regulations

Although the court order applies only to Medicaid facilities, the survey and certification process applies to the Medicare program as well. Accordingly, in Subpart S of Part 405 of the Medicare regulations, § 405.1906 would be amended to specify that the survey agency must follow whatever methods and procedures are prescribed by HCFA in current general instructions. (General instructions means instructions of general applicability, that is, instructions that must be followed by HCFA's employees, agents and contractors.) We would also amend § 442.30(a) of the Medicaid rules (which deal with the "look behind" process) to emphasize that unless the survey agency followed current instructions there could be a finding that the Medicaid provider agreement is not evidence of the facility's compliance with the Medicaid program requirements.

III. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed "major rule". A major rule is any regulation that is likely to result in:

- An annual impact on the economy of $100 million or more;
- A major increase in costs 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 enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish an initial regulatory flexibility analysis for a proposed rule unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities.

The provisions of this proposed rule would not meet any of the criteria for a major rule, and a regulatory impact analysis under E.O. 12291 is therefore not required. The planned PaCS survey process described earlier in this preamble could affect a substantial number of nursing homes, which are small entities under the RFA. However, such effects would not be a result of these proposed regulations, since regulations are not necessary to authorize implementation of PaCS. The regulation changes we are proposing would affect only States. States are not small entities under the RFA, and we have therefore determined, and the Secretary certifies, that this proposed rule would not, if implemented, have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act of 1980

Section 405.1906(b) of this proposed rule contains information collection requirements that are subject to the Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980. The PaCS survey forms are currently approved through March 1986 under OMB control number 0938–0400 for demonstration purposes only. The PaCS survey forms will be submitted to OMB for approval prior to nationwide implementation. A notice will be published in the **Federal Register** when OMB approval is obtained. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB (address above).

V. Response to Comments

Because of the large number of items of correspondence that we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments received timely and, if we proceed with a final rule, we will respond to those comments in the preamble of that rule.

VI. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Chapter IV would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart S—Certification Procedures for Providers and Suppliers of Services

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

Authority: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881, and 1883, of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, and 1395tt).

2. Section 405.1906 is revised by designating the current content as paragraph (a) and revising it and adding a new paragraph (b) to read as follows:

§ 405.1906 Determining compliance.

(a) The decision as to whether there is compliance with a particular condition of participation or condition for coverage will depend upon the manner and degree to which the provider or supplier satisfies the various standards within each condition. Evaluation of a provider's performance against these standards will enable the State survey agency to document the nature and extent of deficiencies, if any, with respect to a particular function, and to assess the need for improvement in relation to the prescribed conditions.

(b) The State survey agency must use the survey methods, procedures, and forms that are prescribed by HCFA in current general instructions and approved by the Office of Management and Budget under the Paperwork Reduction Act.

PART 422—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

1. The authority citation for Part 442 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 442.30(a), the introductory statement is revised to change "Subchapter" to "chapter" and "the Administrator" to "HCFA", and paragraph (a)(4) is revised to make clear that survey agencies must follow the HCFA instructions, that are current at the time of survey. As revised, the introductory text of § 442.30(a) and paragraph (a)(4) read as follows:

§ 442.30 Agreement as evidence of certification.

(a) Under §§ 440.40(a) and 440.150 of this chapter, FFP is available in expenditures for SNF and ICF services only if the facility has been certified as meeting the requirements for Medicaid participation, as evidenced by a provider agreement executed under this part. An agreement is not valid evidence that a facility has met those requirements if HCFA determines that—

* * * * *

(4) The survey agency failed to use the Federal standards, and the forms methods and procedures prescribed by HCFA in current general instructions, as required under § 431.610(f)(1) of this chapter, for determining the qualifications of providers; or

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program; and No. 13.773, Medicare—Hospital Insurance)

Dated: October 7, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: October 29, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-26208 Filed 10-30-85; 10:34 am]

BILLING CODE 4120-01-M

federal register

Thursday,
October 31, 1985

Part VII

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 250, 284, 375, 381 and 389

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Reporting and Recordkeeping Requirements; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 250, 284, 375, 381 and 389

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Reporting and Recordkeeping Requirements

Issued October 28, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Notice of OMB control numbers.

SUMMARY: On October 9, 1985, the Federal Energy Regulatory Commission (Commission) issued a final rule in Docket No. RM85-1-000, 50 FR (42408, October 18, 1985) that established a simplified transportation program, made available a new optional expedited certificate under section 7 of the Natural Gas Act, and reaffirmed its earlier policy statement regarding buy-outs of take-or-pay contracts. This notice states the OMB control numbers for §§ 2.76, 2.77, 157.100, 157.102 and 157.103, 250.15, 284.7 through 284.12, 284.102, 284.122, and 284.223 and 284.224, and Parts 250 and 284, Subpart H, which were promulgated or amended in this docket.

EFFECTIVE DATE: November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ellen Brown, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8272.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982), and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1985), require that OMB approve certain information collection requirements imposed by agency rules. On October 25, 1985, OMB approved the information collection requirements of §§ 2.76, 2.77, 157.100, 157.102 and 157.103, 250.15, 284.7 through 284.12, 284.102, 284.122, 284.223 and 284.224, and Parts 250 and 284, Subpart H, and issued control numbers 0005, 0051, 0052, 0055, 0060, 0070, and 0086, for those sections. Therefore, the regulations promulgated in Docket No. RM85-1-000 are effective on the dates stated in the final rule.

PART 389—[AMENDED]

Accordingly, Part 389, Chapter I, Title 18, *Code of Federal Regulations* is amended as set forth below:

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 389.101 [Amended]

2. The Table of OMB control numbers in § 389.101(b) is amended as follows:

(a) In the OMB control number column, by removing "0056" and inserting, in its place, "0051, 0052, 0055" in the position that corresponds to "2.76" in the section column;

(b) In the OMB control number column, by removing "0056" and inserting, in its place, "0051, 0052, 0055" in the position that corresponds to "2.77" in the section column;

(c) In the OMB control number column, by removing "0060" and inserting, in its place, "0005, 0051, 0052" in the position that corresponds to "157.100" in the section column;

(d) By inserting "157.102" in numerical order in the section column and "0060" in the corresponding position in the OMB control number column;

(e) By inserting "157.103" in numerical order in the section column and "0060, 0070" in the corresponding position in the OMB control number column;

(f) By inserting "Part 250" in numerical order in the section column and "0086" in the corresponding position in the OMB control number column;

(g) By inserting "250.15" in numerical order in the section column and "0086" in the corresponding position in the OMB control number column;

(h) By inserting "284.7" in numerical order in the section column and "0086" in the corresponding position in the OMB control number column;

(i) By inserting "284.8" in numerical order in the section column and "0060, 0086" in the corresponding position in the OMB control number column;

(j) By inserting "284.9" in numerical order in the section column and "0060, 0086" in the corresponding position in the OMB control number column;

(k) By inserting "284.10" in numerical order in the section column and "0060, 0086" in the corresponding position in the OMB control number column;

(l) By inserting "284.11" in numerical order in the section column and "0086" in the corresponding position in the OMB control number column;

(m) By inserting "284.12" in numerical order in the section column and "0005" in the corresponding position in the OMB control number column;

(n) By inserting "284.102" in numerical order in the section column and "0086" in the corresponding position in the OMB control number column;

(o) By removing "284.107" in the section column and "0060" in the corresponding OMB control number column;

(p) By inserting "284.122" in numerical order in the section column and "0086" in the corresponding position in the OMB control number column;

(q) By removing "284.127" in the section column and "0060" in the corresponding OMB control number column;

(r) By removing "Part 284 Subpart F" in the section column and "0086" in the corresponding OMB control number column;

(s) By inserting "284.223" in numerical order in the section column and "0060, 0086" in the corresponding position in the OMB control number column;

(t) By inserting "284.224" in numerical order in the section column and "0060" in the corresponding position in the OMB control number column;

(u) In the OMB control number column, by removing "0086" and inserting, in its place, "0060, 0086" in the position that corresponds to "Part 284 Subpart H" in the section column.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26002 Filed 10-30-85; 1:55 pm]

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Federal Register

Vol. 50, No. 211

Thursday, October 31, 1985

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Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

39953-40180.....1
40181-40324.....2
40325-40474.....3
40475-40796.....4
40797-40954.....7
40955-41126.....8
41127-41328.....9
41329-41468.....10
41469-41654.....11
41655-41834.....15
41835-42004.....16
42005-42136.....17
42137-42506.....18
42507-42668.....21
42669-42900.....22
42901-43114.....23
43115-43374.....24
43375-43564.....25
43565-43644.....28
43645-45074.....29
45075-45386.....30
45387-45590.....31

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.

1 CFR

Proposed Rules:
305.....42712

3 CFR

Administrative Orders:
Presidential Certifications:
No. 86-01 of October 21, 1985.....45387
Presidential Determinations:
No. 85-15 of July 12, 1985.....40183
No. 85-18 of September 28, 1985.....43375
Memorandums:
September 19, 1985.....41469
September 30, 1985.....40321
Executive Orders:
11145 (Continued by EO 12534).....40319
11183 (Continued by EO 12534).....40319
11287 (Continued by EO 12534).....40319
11776 (Continued by EO 12534).....40319
12131 (Continued by EO 12534).....40319
12190 (Continued by EO 12534).....40319
12196 (Continued by EO 12534).....40319
12216 (Continued by EO 12534).....40319
12293 (Amended by EO 12536).....41477
12296 (Continued by EO 12534).....40319
12331 (Revoked by EO 12537).....45083
12332 (Revoked by EO 12534).....40319
12335 (Revoked by EO 12534).....40319
12345 (Continued by EO 12534).....40319
12367 (Continued by EO 12534).....40319
12369 (Revoked by EO 12534).....40319
12382 (Continued by EO 12534).....40319
12395 (Revoked by EO 12534).....40319
12399 (Superseded by EO 12534).....40319
12400 (Revoked by EO 12534).....40319
12401 (Revoked by EO 12534).....40319
12412 (Revoked by EO 12534).....40319
12421 (Revoked by EO 12534).....40319
12426 (Revoked by EO 12534).....40319
12428 (Revoked by EO 12534).....40319
12433 (Revoked by EO 12534).....40319
12439 (Revoked by EO 12534).....40319
12462 (Amended by EO 12533).....40317
12468 (Revoked by EO 12534).....40319
12489 (Superseded by EO 12534).....40319
12499 (Revoked by EO 12534).....40319
12502 (Revoked by EO 12534).....40319
12532 (See EO 12535).....40325
12533.....40317
12534.....40319
12535.....40325
12536.....41477
12537.....45083
Proclamations:
5368.....59953
5369.....59955
5370.....59957
5371.....40181
5372.....40323
5373.....40797
5374.....40955
5375.....40957
5376.....40959
5377.....41329
5378.....41331
5379.....41333
5380.....41471
5381.....41473
5382.....41475
5383.....41655
5384.....41657
5385.....41835
5386.....41837
5387.....41839
5388.....41841
5389.....41843
5390.....42137
5391.....42139
5392.....42141
5393.....42143
5394.....42507
5395.....42669
5396.....43115
5397.....45075
5398.....45077
5399.....45079
5400.....45081

5401.....45085

5 CFR

307.....42509
316.....42509
530.....40178
531.....40178, 45389
536.....40178, 45389
540.....40178
870.....42005
871.....42005
872.....42005
873.....42005
890.....42005

Proposed Rules:

531.....40865
532.....40879
591.....42531

7 CFR

2.....45087
29.....41127
51.....40185, 40961
301.....43117
354.....40186
403.....43645
404.....43652
405.....43652
408.....43652
409.....43660
411.....43666
413.....43672
439.....43679
446.....43685
713.....43377
800.....45389
905.....45087
906.....41659, 45088
910.....41659
917.....40961
920.....41660
929.....41659
944.....45088
948.....41659
966.....41659
984.....41659
985.....41479
989.....40475, 40476
1079.....41660
1421.....42509
1423.....42511
1540.....43691
1772.....43693
1822.....39959
1864.....40187
1872.....39959
1930.....39959
1940.....43695
1942.....43378
1944.....39959
1951.....39959, 39967
1980.....39959

Proposed Rules:

51.....40200
70.....43204
301.....43406
431.....45410
701.....40980
958.....40981
981.....40562
982.....40200, 42537
1032.....42549
1033.....43719
1140.....40982
1772.....40865, 42029

8 CFR

100.....40327, 42513
103.....40327
212.....41314
214.....42006
238.....40799, 40962, 43565
341.....41480

9 CFR

50.....40962
78.....40799
85.....42145
91.....40328
92.....40477, 40801
98.....43560
352.....41984

Proposed Rules:

302.....41524
303.....41524
381.....41524

10 CFR

1.....42145
2.....41662, 45399
7.....41480
9.....40329, 41127
40.....41852
50.....41128
72.....41662, 45398
150.....41852
600.....42354

Proposed Rules:

30.....41904
40.....41904
61.....41904
70.....41904
72.....41904

11 CFR

2.....39968
3.....39968

Proposed Rules:

7.....42553

12 CFR

11.....45276
207.....45398
210.....41335
211.....39974
217.....41672
220.....45398
221.....45398
224.....45398
265.....40329
338.....39986
545.....45089
563.....45089
584.....45089
611.....42513
792.....41673

Proposed Rules:

18.....45372
303.....41361
309.....41361
353.....43209
563b.....45414
571.....42958

13 CFR

117.....41646

Proposed Rules:

121.....40032

14 CFR

39.....39990, 40188, 40189, 40802, 40803, 41129, 41130 41336, 41481, 41482, 41674 42146–24154, 42514, 42901, 43565, 43566, 45097, 45098
71.....40035, 30046, 40190, 40479, 41483–41485, 41866, 42008–42009, 42515, 45401, 45402
73.....40191
75.....42009, 43379
91.....41326
93.....42671
97.....43380, 45099
1204.....43125
1261.....43127

Proposed Rules:

21.....42368
29.....42126
39.....40034, 40201, 40202, 40562, 40866, 40867, 42561–42566, 42714, 43222, 43223, 43572, 45115, 45116
61.....40982
71.....40035, 40036, 40203, 40564, 40566, 40868, 41524–41526, 41693, 41904, 42567, 42715, 43407, 45423
73.....41904, 45423
75.....41905
93.....41906
121.....41452
135.....42364
139.....43094
241.....42870

15 CFR

303.....43567
371.....41131
376.....39993
377.....41131
379.....39993
399.....39993, 41131

Proposed Rules:

Ch. III.....42568
10.....43573

16 CFR

2.....42671
3.....41485, 42671
13.....41677, 42010–42011, 43695, 43697
305.....42902

Proposed Rules:

13.....41693, 42032
424.....43224
801.....43407
802.....43407
803.....43407
1632.....40869

17 CFR

3.....45101
12.....40330, 41678
31.....40963
190.....40963
200.....40479
239.....40479
240.....41337, 41867, 42672
249.....40479, 41867
259.....40479
269.....40479
270.....40479, 42680
274.....40479
275.....42903

Proposed Rules:

Ch. I.....41696
230.....41162
240.....41162, 41687, 41907, 42716, 42961
249.....41162
260.....41162

18 CFR

2.....40332, 42408, 45590
32.....40347
33.....40347
34.....40347
35.....40347
36.....40347
37.....43381
45.....40347
101.....40347
152.....40332
154.....40332
157.....40332, 42408, 45590
250.....42408, 45590
271.....40192, 40193, 40359, 40361, 45102
282.....45103
284.....40332, 42408, 45590
292.....40347
375.....40332, 40347, 42408, 45590
381.....40332, 40347, 42408, 45590
389.....45590

Proposed Rules:

35.....41164, 43720
154.....42372
271.....43407
290.....41164, 43720
357.....43720
410.....41908

19 CFR

18.....42516
24.....45104
101.....41488
113.....40361
114.....42516
134.....42683
141.....40361
172.....40361
177.....40364

Proposed Rules:

101.....40982, 42035–42036
143.....42569

20 CFR

302.....39993
416.....42683

Proposed Rules:

234.....43575
237.....43575
238.....43575

21 CFR

107.....45106
172.....42929
175.....40964
178.....40964
184.....42011
189.....42929
436.....41678, 42156, 42932, 43384
440.....42156, 42932, 43384, 45403
442.....45106
446.....41678
455.....42156, 43384
510.....40965, 41134, 41340, 42011, 43698
520.....41488, 43384

522.....40965, 41488
524.....41488
540.....41134, 41488
546.....41488
558.....39994, 40521, 41340, 42011, 42156, 42517, 42934, 43698
561.....41341
1000.....42156
1040.....42156
1304.....40522
1308.....43698

Proposed Rules:
70.....45530
74.....45117
133.....43720
182.....40204, 43233
186.....40204, 43233
201.....40405
211.....40405
348.....40260
355.....43233
500.....45530
514.....40405, 45530
559.....40405
571.....45530
884.....40950, 43721
1301.....42184
1306.....42184
1308.....42186

22 CFR
41.....41315
208.....39994

23 CFR
635.....41882

Proposed Rules:
12.....43233, 45423

24 CFR
27.....41344
107.....41680
201.....43516
203.....40194
251.....40195
813.....45403
913.....45403
990.....40196, 41699

Proposed Rules:
200.....41680

25 CFR

Proposed Rules:
11.....43235

26 CFR
1.....42012, 42688, 42691
48.....41490, 42518
51.....39998, 40966, 40971
602.....39998, 40966, 40971, 42518

Proposed Rules:
1.....40205, 40983, 45423
48.....45429
301.....42188
601.....45423
602.....40983

27 CFR
9.....43128
47.....42157
178.....40523
179.....41680

Proposed Rules:
7.....41701
9.....41364
245.....41701

28 CFR
0.....40196, 43385
2.....40365-40374
50.....40524
503.....40104
527.....40105
540.....40106

Proposed Rules:
21.....43409
540.....40113-40115
544.....40116

29 CFR
500.....40974, 42162
1910.....41491
1952.....43131
1960.....40268

Proposed Rules:
1601.....41135
1627.....40870
1926.....42571
1928.....42660

30 CFR
Ch. VII.....40375
913.....45110, 45111
924.....43569

Proposed Rules:
75.....41784
250.....40405
252.....43256
256.....40406
402.....42188
700.....41365
701.....41365
785.....41365
800.....43722
817.....41365
827.....41365
870.....41909
906.....45117, 45430
915.....43411
917.....43413, 45118, 45431
935.....45120
936.....43724, 43726
938.....43726
942.....41164

31 CFR
10.....42014
103.....42691
355.....42518
545.....41682

32 CFR
169a.....40804
218.....42520
505.....42163
706.....40526, 42693-42695
806b.....40197

Proposed Rules:
43.....45432
276.....45432

33 CFR
51.....41494
100.....45403
110.....40829-40831, 42525-42526, 43386
117.....40832, 41345, 41684, 43133, 43134, 43387
165.....40832, 41345-41347, 41685, 45403
204.....42696
207.....42696
334.....42696

Proposed Rules:
117.....40407, 40871, 41366, 41704, 43257, 45436
165.....41705
167.....45436
207.....42191

34 CFR
Ch. VI.....43542
76.....43542
208.....43542
324.....43702

36 CFR
7.....43387
223.....41498
251.....43570

Proposed Rules:
7.....40567
12.....43581
66.....43587
79.....41527
800.....41828
1258.....42572

37 CFR
201.....40833

Proposed Rules:
201.....42965

38 CFR
3.....45580
21.....43134

Proposed Rules:
21.....42191, 42726

39 CFR
10.....41135
111.....42935, 43702
601.....40376
3001.....43388

Proposed Rules:
10.....42966
310.....41462, 42729
320.....41462, 42729
3001.....43414

40 CFR
52.....40377, 41348, 41501, 41686
60.....40158
62.....41136, 41137
81.....41138, 41139
123.....42526
150.....42019
152.....41143
153.....42020
163.....41143
164.....41143
165.....41143
166.....41143
167.....41143
169.....41143
170.....41143
171.....41143
172.....41143
173.....41143
180.....41144, 41349, 42020, 45113
191.....40003
261.....42936
271.....40377, 40526, 42181, 42936
421.....41144
434.....41296
455.....40672
464.....45212
716.....42182
799.....41865

Proposed Rules:
52.....40872, 41909-41912, 45438
60.....40280
65.....41916
152.....40408
155.....41919
158.....40408
180.....45121
228.....40274, 40568
261.....40292, 41125
264.....40412
265.....40412
414.....41528
416.....41528
435.....40983
716.....40874, 42966
754.....42037
797.....45123
799.....45123

41 CFR
101-17.....43135
101-20.....41145
101-26.....42021
101-40.....43135, 43136
101-45.....41145
105-64.....43138

Proposed Rules:
201-32.....43258

42 CFR
22.....43144
400.....41886
405.....40168, 41503, 41886, 43570, 43703
412.....41886, 43570
420.....40003, 41886
433.....41886
462.....41886
466.....41886
473.....41886
474.....41886
476.....41886

Proposed Rules:
405.....45584
442.....42192, 45584

43 CFR
2.....45113
4.....43703
3430.....42022
3450.....42022
3480.....40197
8200.....42122

Proposed Rules:
426.....45438
3040.....42967
3100.....42967
3130.....42967
3200.....42967

44 CFR
1.....40004
2.....40004
3.....42023
5.....40004
6.....40004
8.....40004

9 40004
10 40004
11 ..... 40004, 42023
12 40004
59 ..... 40004, 43706
61 43706
64 ..... 41146, 41512, 41687, 41691, 42943, 45405
65 ..... 42023, 43706
67 ..... 43146, 45405
205 ..... 40004, 42023
300 40004
301 40004
303 40004
304 40004
311 40004
350 40004
351 40004

Proposed Rules:
67 ..... 41705, 43728

45 CFR

205 40120
302 41887
304 41887
305 ..... 40120, 41887, 45114
306 ..... 41887, 45114
1206 42023
1321 41514
1328 41514

46 CFR

69 40008
552 43393

Proposed Rules:
Ch. II 41531
2 40413
10 ..... 43258, 43316–43374
15 43316–43374
35 43316–43374
157 43316–43374
160 40036
175 43316
185 43316–43374
186 43316–43374
187 43316–43374
281 40876

47 CFR

Ch. I 40379, 42182–42268, 42945
0 40012
1 ..... 40012, 40836, 41151, 41153
2 40016
21 41154
25 ..... 40019, 40862
43 ..... 41151, 41153
64 42699
67 45405
69 ..... 41350, 42707, 43707
73 ..... 40012, 40021, 40022, 40395, 41155, 41691, 41692, 42528, 43156, 43157, 43393, 43395, 43713
74 40012
76 ..... 40012, 40836, 41692
78 ..... 40012, 40862, 45406
81 40023
83 ..... 40023, 40863
87 40023
90 ..... 40975, 40976
94 40976
97 41895

Proposed Rules:
Ch. I 41714
1 43730
2 ..... 40880, 41170, 41366
15 42729
18 42967
43 43730
64 43735
69 43587
73 ..... 40414, 40415, 41176, 41718, 42047, 43259, 43415–43419, 43740–43744, 45133, 45439, 45441
76 42729
81 41170
83 41170
87 41177
90 ..... 42573, 42732
94 42734

48 CFR

208 41156
213 41157
214 43158
215 43158
217 41157
227 43158
252 ..... 41156, 41157, 43158
516 43713
525 43395
552 ..... 43395, 43713
702 40528
705 40976
706 ..... 40528, 40976

Proposed Rules:
9 43633
27 ..... 40416, 40984, 45442
31 ..... 41179, 42657
52 ..... 40416, 40984, 43636, 45442
227 41180
252 41180
514 41180
515 41180
528 41180
532 41180
552 41180
716 41367
752 41367
815 40420
915 43589
970 43589

49 CFR

1 43165
171 41516
172 ..... 41092, 41516, 41521
173 ..... 41092, 41516, 41521, 41895
174 41516
176 ..... 41516, 41521
177 ..... 41516, 41521
178 41521
179 41516
219 45406
386 40304
509 40023
531 40528
533 40398
541 43166
567 43166
571 41356
1002 ..... 40024, 41158, 41899, 43193
1003 ..... 40027, 40029
1033 43715
1043 40029
1047 40549
1135 43395
1171 40029
1241 41899
1312 43395

Proposed Rules:
7 ..... 42049, 43260
23 40422
71 43745
391 40040
571 ..... 41368, 42195, 42735, 42970
1039 40984
1057 41532
1312 40985

50 CFR

13 45407
17 45407
20 ..... 41359, 42026
23 42027
285 43396
604 40977
611 ..... 40977, 42027, 43571, 43716, 43717
630 41159
646 41692
650 42028
651 40558
654 ..... 41159, 45114
661 ..... 41159, 42530
663 41159
671 ..... 41159, 41902, 45114
672 ..... 41903, 42027, 43193, 43716
675 ..... 40977, 43716, 43717
681 40558

Proposed Rules:
17 ..... 40424, 42196, 43260, 43420, 43423, 45443
285 45134
611 41533
641 40206
651 43261

LIST OF PUBLIC LAWS

Last List October 25, 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. 1349/Pub. L. 99–130

To provide for the use and distribution of funds awarded in docket 363 to the Mdewakanton and Wahpekute Eastern or Mississippi Sioux before the United States Court of Claims and Claims Court. (Oct. 28, 1985; 99 Stat. 549; 4 pages) Price: $1.00

S.J. Res. 92/Pub. L. 99–131

To designate October 1985 as "National Foster Grandparent Month". (Oct. 28, 1985; 99 Stat. 553; 2 pages) Price: $1.00

S.J. Res. 104/Pub. L. 99–132

To proclaim October 23, 1985, as "A Time of Remembrance" for all victims of terrorism throughout the world. (Oct. 28, 1985; 99 Stat. 555; 1 page) Price: $1.00

H.R. 2174/Pub. L. 99–133

To provide for the transfer to the Colville Business Council of any undistributed portion of amounts appropriated in satisfaction of certain judgements awarded the Confederated Tribes of the Colville Reservation before the Indian Claims Commission. (Oct. 28, 1985; 99 Stat. 556; 1 page) Price: $1.00

H.J. Res. 79/Pub. L. 99–134

To designate the week beginning October 6, 1985, as "National Children's Week". (Oct. 28, 1985; 99 Stat. 557; 1 page) Price: $1.00

H.J. Res. 386/Pub. L. 99–135

To designate November 24, 1985, as "National Day of Fasting to Raise Funds to Combat Hunger". (Oct. 28, 1985; 99 Stat. 558; 1 page) Price: $1.00

H.J. Res. 407/Pub. L. 99–136

Designating the twelve-month period ending on October 28, 1986, as the "Centennial Year of Liberty in the United States". (Oct. 28, 1985; 99 Stat. 559; 1 page) Price: $1.00