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Federal Register

Monday
June 16, 1986

Briefings on How To Use the Federal Register—
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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.

WASHINGTON, DC

WHEN: July 11; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: Abram Primus 202-523-3419
Ina Masters 202-523-3419

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium,
Fourth Floor, Federal Building,
915 2nd Avenue, Seattle, WA.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Seattle 206-442-0570
Tacoma 206-383-5230
Portland 503-221-2222

SAN FRANCISCO, CA

WHEN: July 24; at 1:30 pm.

WHERE: Room 2007, Federal Building,
450 Golden Gate Avenue,
San Francisco, CA.

RESERVATIONS: Call the San Francisco Federal Information Center, 415-556-6600

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Presidential Documents

Title 3—

The President

Proclamation 5501 of June 12, 1986

Baltic Freedom Day, 1986

By the President of the United States of America

A Proclamation

The United States was born in a War of Independence against an oppressive rule. We stood up for inalienable rights given by God and declared that governments that systematically violate those rights lose their claim to legitimacy.

It is a tragedy of our time that many peoples continue to live under the brutal totalitarian rule of the Soviet empire. We will expose the inhumanity of the oppressors and speak out on behalf of the oppressed. We will denounce tyranny and champion the cause of its victims.

Baltic Freedom Day provides these opportunities. On this day, we observe the anniversary of the callous and treacherous subjugation of three independent and freedom-loving states. Forty-six years ago, invading Soviet armies, in collusion with the Nazi regime, overran and occupied the Republics of Estonia, Latvia, and Lithuania. Through police-state tactics, the occupation and subjugation continue. Soviet outrages against these peoples have included massive deportations from their native soil to concentration camps in Siberia and elsewhere. At the same time masses of Russians have been uprooted from their homes and relocated in the Baltic nations in an effort to eradicate the cultural and ethnic heritage of the Baltic peoples. Against all recognized principles of international law, justice, and humanity, the Soviets have continued their domination over Lithuania, Latvia, and Estonia. The United States has never recognized their forced incorporation into the U.S.S.R. It is illegal, indefensible, and iniquitous.

We are engaged in a very real struggle to focus the world's attention on one of the gravest wrongs of our age—the stubborn and contemptuous Soviet disregard for the sovereignty of independent nations and the rights of oppressed peoples. As evidence, we hold up its first victims—the heroic Baltic nations we honor today. To do less is to acquiesce in injustice and to betray our heritage as champions of human freedom.

As a Nation, we are the standard-bearers of freedom and a beacon of hope to the oppressed. Ours is the mission of the prophet Isaiah, "to bind up the brokenhearted, proclaim liberty to the captives, and the opening of the prison to them that are bound."

The Congress of the United States, by Senate Joint Resolution 271, has designated June 14, 1986, as "Baltic Freedom Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim June 14, 1986, as Baltic Freedom Day. I call upon the people of the United States to observe this day with appropriate remembrances and ceremonies and to reaffirm their commitment to the principles of liberty and self-determination for all peoples.

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

Ronald Reagan

[FR Doc. 86-13719
Filed 6-13-86; 11:27 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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Monday, June 16, 1986

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 418, 419, 427, and 429

[Amendment No. 1; Doc. No. 3479S]

Wheat, Barley, Oat, and Rye Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Wheat, Barley, Oat, and Rye Crop Insurance Regulations (7 CFR Parts 418, 419, 427, and 429, respectively), by removing the effect of the provision which cancels the policy for failure to furnish production records for the previous crop year for the 1986 crop year. The intended effect of this rule is to remove a restriction requiring retroactive production records which was inadvertently included in the regulations.

The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Effective date: June 16, 1986.

Comment date: Written comments, data, and opinions on this interim rule must be submitted not later than August 15, 1986, to be sure of consideration.

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

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for the regulations affected by this action are made part of such regulations and remain unchanged.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 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) certifies that this action 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, Supart 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.

Each of the current regulations for crop insurance on wheat, barley, oats, and rye, contains a provision in section 15.c(1) which states that the insured producer must, ninety days before the cancellation date for any crop year, furnish to the Corporation satisfactory production records for the previous crop year or the contract will be canceled for the subsequent crop year.

FCIC, upon review of this provision, has determined that this would require retroactive production records which some producer would find difficult to furnish. This would result in the cancellation of the insurance contract. Taking the action set forth in this rule would remove this restriction for the 1986 crop year and allow producers to maintain crop insurance even though the previous, or prior to previous, crop year's production records are unavailable. FCIC has determined that it will not apply this clause for the 1986 crop year on crops with a September 30, or October 31, 1986, or an April 15, 1987, cancellation date. The records of 1985 crop year production will not be required.

E. Ray Fosse, Manager, FCIC has determined that an emergency situation exists which precludes notice and other public procedure because the current policies for insuring wheat, barley, oat, and rye do not provide the producers sufficient time to furnish the Corporation with adequate production records.

This rule is effective upon publication in the **Federal Register.** Written comments are solicited by FCIC for 60 days following publication of this rule and any comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

This rule will be scheduled for review so that any amendments made necessary by public comment may be published in the **Federal Register** as quickly as possible.

List of Subjects in 7 CFR Parts 418, 419, 427, and 429

Crop insurance; Wheat, Barley, Oat, Rye.

Interim Rule

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Wheat, Barley, Oat, and Rye Crop Insurance Regulations (7 CFR Parts 418, 419, 427, and 429 respectively), in the following instances:

PARTS 418, 419, 427, AND 429 [AMENDED]

1. The authority citation for 7 CFR Parts 418, 419, 427, and 429, continues to read as follows:

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

2. Section 15.c. of the insurance policy in 7 CFR Parts 418, 419, 427, and 429, is revised to read as follows:

15. Life of Contract: Cancellation, Termination, and Production Reporting.

* * * * *

c. This contract will be canceled if you do not furnish to us, on or before the cancellation date, satisfactory records of production for:

(1) The previous crop year in counties having an April 15 cancellation date;

(2) The year prior to the previous crop year in counties having any other cancellation date.

If you show, prior to the cancellation date, to our satisfaction, that records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the previous ten-year average. This provision will not apply for the 1986 crop year on crops with a September 30, or October 31, 1986, or an April 15, 1987, cancellation date. Records of the 1985 crop year production will not be required. You may furnish the records required by this section for any crop year at least 90 days prior to the cancellation date preceding the next crop year (30 days prior to the cancellation date preceding the next crop year for areas with a September 30 or October 31 cancellation date). Your election of this option will result in the inclusion of that crop year's production information in the next crop year's guarantee.

* * * * *

Done in Washington, DC on June 6, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-13473 filed 6-13-86; 8:45 am]

BILLING CODE 3410-08-M

Commodity Credit Corporation

7 CFR Part 1421

Farmer-Owned Grain Reserve Program for 1986 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations at 7 CFR Part 1421 which govern the Farmer-Owned Grain Reserve ("FOR") Program for 1986 and subsequent crops. The interim rule extends the rotation period for corn and grain sorghum pledged as collateral for FOR loans made in accordance with 7 CFR Part 1421 from 15 to 30 days. The interim rule also permits producers with wheat, barley, and oats pledged as collateral for FOR loans to replace this loan collateral with an equivalent quantity of grain of the same type that (1) has been harvested in a prior crop year by the producer; (2) is harvested in the current crop year by the producer; or (3) is purchased from another source. These changes make rotation provisions consistent for all grain reserve stocks.

DATES: Effective Date: This interim rule shall become effective June 13, 1986. Comment date: Comments must be received on or before July 1, 1986, in order to be assured for consideration.

ADDRESS: Send comments to Director, Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jackie Stonfer, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013; (202) 447-8481.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0087.

This final rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1521-1 and Executive Order 12291 and has been classified "not major". It has been determined that the provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this interim rule.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Grain Reserve Program Number—10.067, as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This activity 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).

Need for Immediate Action

Some producers are currently harvesting wheat and will soon harvest grain sorghum which could be sold, fed, or used as replacement stocks for commodities previously pledged as collateral for CCC FOR loans. Accordingly, due to the need for prompt action, it has been determined that it is impractical and contrary to the public interest for CCC to comply with any further rulemaking requirements with respect to this rule. Therefore, this interim rule shall become effective upon the date of filing with the Director, Office of the Federal Register. However, comments with respect to this regulation are requested and should be submitted on or before July 1, 1986, in order to be assured of consideration. This interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

List of Subjects in 7 CFR Part 1421

Grain, Loan programs/agriculture, Price support programs, Warehouses.

Interim Rule

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for part 1421 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); Sec. 110 of the Agricultural Act of 1949, as amended, 91 Stat. 951, as amended (7 U.S.C. 1445e).

2. 7 CFR 1421.752(d) is revised to read as follows:

§ 1421.752 Commingling and replacement of grain.

* * * * *

(d) *Release for sale or livestock feed.* A producer shall be permitted to move farm-stored grain in the Grain Reserve

Program for delivery to a buyer for sale or for use as livestock feed if, prior to the movement of the grain, the following conditions are met: (1) A written request to do so is filed in the county ASCS office; (2) approval of the county ASC committee is granted in writing; (3) a representative of the county ASC committee inspects and measures the grain, at the producer's expense, prior to removal; (4) if the grain is released for livestock feed, such grain will be fed to the producer's own livestock; and, if applicable, (5) an inspection of the unharvested grain, which is made at the producer's expense, indicates that there will be sufficient eligible unencumbered production of the commodity of equal or better quality to replace the grain previously placed in the Grain Reserve Program. Any grain which is removed from the Grain Reserve Program must be replaced within 30 days, or within such other period as may be determined and announced by the Secretary, with an equivalent quantity and quality of grain of the same type which: (i) The producer has previously harvested; (ii) is from the producer's new crop; or (iii) is purchased by the producer.

Signed at Washington, DC, on June 5, 1986.

Richard E. Lyng,

Secretary.

[FR Doc. 86-13444 Filed 6-13-86; 8:45 am]

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Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 84-003F]

Nitrite Levels in Bacon

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal meat inspection regulations by providing alternative procedures for controlling the levels of nitrite added to bacon. Under this rule, processors may continue to use 120 ppm of sodium nitrite or 148 ppm of potassium nitrite and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate) as now required or they may (1) use 100 ppm sodium nitrite (or the equivalent amount of potassium nitrite) and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate), with an approved partial quality control program to precisely control the level of added nitrite and other factors, or (2) use sodium nitrite at a level between 40 and 80 ppm (or the equivalent amount of potassium nitrite) and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate) plus added sugar and starter cultures (lactic acid producing bacteria), with an approved partial quality control program to precisely control the level of added nitrite, added starter cultures (lactic acid producing bacteria) and other factors.

The process used by an establishment will affect the intensity of nitrosamine monitoring to which the establishment will be subject, by having the level of sampling reflect the likelihood of nitrosamines occurring, taking into account such factors as the level of nitrite used, establishment history, and, as applicable, data from the establishment's quality control program. For establishments choosing one of the new alternative procedures, samples for nitrosamine analyses will be randomly selected throughout the production of a lot. The rule retains the current provisions for action if the presence of nitrosamines is detected. Additionally, the chart of approved substances is amended to reflect the use of harmless lactic acid producing bacteria to prevent the growth of *Clostridium botulinum*.

This rule permits manufacturers to lower the amount of nitrite added to bacon. It reduces the potential for nitrosamine formation while assuring that protection against botulinal toxin formation is maintained. The rule also modifies sample selection procedures under the nitrosamine monitoring program to make more efficient use of the Department's laboratory resources.

EFFECTIVE DATE: July 16, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Johnston, Director, Microbiology Division, Science, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4212.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." The rule will not result in an annual effect 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 the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The rule reduces the amount of nitrite levels in bacon and provides establishments preparing bacon added flexibility, thus providing a lesser burden on establishments. The options established are voluntary and should result in less costs to the processors of bacon.

Paperwork Requirements

Under the rule's two new alternatives for controlling nitrite in bacon, establishments are required to develop and submit to the Administrator for approval a partial quality control program designed to assure compliance with the provisions of the chosen alternative. The partial quality control programs require establishments to maintain certain records. The recordkeeping and reporting requirements for Federal meat inspection quality control programs (9 CFR 318.4) have been cleared by the Office of Management and Budget (OMB Clearance No. 0583-0015).

Background

Nitrite has been used for many years in curing meat. Until the late 1960's, the U.S. Department of Agriculture (USDA) believed that acute toxicity from excessive use of nitrite was the only concern with its use. In 1971, USDA and Food and Drug Administration (FDA) analysts reported levels of nitrosamines in the parts per billion (ppb) range in some meat food products (especially bacon) that had nitrite added. Nitrite, when combined with secondary amines that occur in cured bacon under certain conditions, forms nitrosamines, some of which have been found to cause cancer in animals. Nitrosamines can be formed when bacon is fried and nitrite and amines are present. However, nitrite provides necessary protection against growth of *Clostridium botulinum* and the production of its toxin which causes botulism, an often fatal food poisoning.

In 1972, the Department was petitioned by consumer groups to ban or greatly reduce the use of nitrite in meat in order to reduce the concentration of nitrosamines. The Department denied the petition indicating that additional information was needed on the chemistry associated with nitrosamine formation.

A major step in controlling nitrosamines in cured products followed a 1973 discovery of nitrosamines in premixed cures containing spices and nitrite by the Canadian Department of

Agriculture. USDA subsequently confirmed those findings and banned premixed cures.

In 1973 the Secretary of Agriculture appointed an Expert Panel on Nitrites, Nitrates, and Nitrosamines to assess the public health significance of the nitrosamine question and to determine if alternate methods for processing cured meats were available. The Panel held 15 meetings from 1973–1977 at which it heard testimony on nitrosamines. In July 1974, the Panel submitted to the Secretary some preliminary recommendations seeking to limit the use of nitrite wherever it was not essential for protection against botulism. The Panel recommended that nitrate, a source for nitrite, be eliminated in most products (since nitrite is actually the curing agent and residual nitrite could be better controlled by using nitrite instead of nitrate), that the level of nitrite be limited to 156 ppm in most products, and that the permitted level of nitrite be decreased in various products to reflect what is achievable with advanced technology. Action on bacon and several other products was deferred pending additional research data.

In 1975, the Department published proposed regulations (40 FR 52614) concerning the use of nitrate and nitrite in meat food products, including bacon. The proposal, which incorporated some of the preliminary recommendations of the Panel, would have limited the use of sodium nitrite in bacon to 125 ppm with the required addition of 550 ppm sodium ascorbate or erythorbate which inhibits nitrosamine formation. The Department also called on industry to accelerate its studies exploring processing changes that would prevent nitrosamine formation in bacon.

The Department was concerned about growing evidence that fried bacon posed a special problem. The temperature (approximately 340° F.) normally used to fry bacon to its desired crispness can result in the formation of nitrosamines in the fried bacon. Although nitrosamines are not found consistently in all cured meat food products in which nitrite is an additive, nitrosopyrrolidine, a nitrosamine, had been confirmed repeatedly in fried bacon. In the 1975 proposal, the Department recognized this unique problem noting that "greater efforts need to be directed toward the removal of nitrosamines from bacon."

In 1977, the Community Nutrition Institute (CNI) petitioned the Department to ban totally the use of nitrite in meat food products, including bacon. Also in 1977, the American Meat Institute (AMI) petitioned the Department to amend the regulations with respect to bacon to prohibit the use of nitrate, and to require the use of 120 ppm sodium nitrite and 550 ppm sodium ascorbate. In October 1977, the Department published a Notice requesting information as to whether carcinogenic nitrosamines are formed in cured meat food products as a result of ordinary processing and/or preparation for eating. Data submitted in response to this Notice indicated that the nitrosamine problem was generally limited to pumped and dry-cured bacon, with most other products being free of nitrosamines when cooked in their normal manner. Pumped bacon in nearly 99 percent of all bacon produced.

The Expert Panel's final report was published in 1978. The final recommendations included the reduction of nitrite levels for all products, the use of chemical inhibitors in bacon to minimize nitrosamine formation, and the use of the nitrosamine inhibitors in other cured products for a period of 2 years while more data were collected. The Panel recommended a level of 120 ppm added sodium nitrite (or 148 ppm potassium nitrite) for bacon.

In recommending varying levels of nitrite for different products, the Panel recognized the differences in degree of botulinal and nitrosamine hazards from product to product. Because the cooking procedures commonly used for bacon cause the chemical reactions leading to nitrosamine formation, and because the risk of botulism is relatively low in bacon compared to other cured meats, the nitrosamine hazard was weighed very heavily in recommending a considerably lower nitrite level for bacon than for other cured products.

In 1978, the Department published a final regulation based on the 1975 proposal. This action amended the Federal meat inspection regulations (43 FR 20992) to prohibit the use of nitrate in bacon, to require 120 ppm ingoing sodium nitrite (or an equivalent amount of potassium nitrite—148 ppm) and 550 ppm ingoing sodium ascorbate or sodium erythorbate be used in the preparation of bacon, and to provide for a nitrosamine monitoring and regulatory control program.

The nitrosamine monitoring program was designed to provide additional protection against the possibility of nitrosamine hazard in bacon. Under the monitoring program, the Department collects samples of bacon from producing plants and analyzes them for nitrosamines. If tests confirm the presence of nitrosamines, all bacon in the producing establishment and subsequent production of the sampled product are retained until the establishment tightens or changes processing controls or methods and produces bacon which is in compliance. Section 318.7(b)(2) of the Federal meat inspection regulations (9 CFR 318.7(b)(2)) provides the manner of sample collection, the methods of analyses for nitrosamines, and actions to be taken when confirmable levels of nitrosamines are found. Violations have generally decreased since 1978, but are still occasionally found.

In a 1982 report [1] prepared at the request of USDA and FDA, the National Academy of Sciences/National Research Council (NAS/NRC) encouraged regulatory agencies to seek alternatives to the use of nitrite but cautioned them not to abandon the use of nitrite without alternative means of adequate protection against botulism. NAS/NRC also recommended periodic reviews concerning the use of nitrite on a product-by-product basis. The report examined the status of research on proposed alternatives to the use of the nitrite in cured meats and recommended strategies for long-term research on alternatives to nitrite.

The report reviewed alternatives to the conventional use of nitrite in two general categories—agents or treatments that serve as partial or complete replacements for nitrite, and agents that block the formation of nitrosamines in products containing conventional concentrations of nitrite. The report concluded "the following proposed alternatives to be most promising at present: the combination of ascorbate, alpha-tocopherol, and nitrite; irradiation (with or without nitrite); lactic-acid-producing organisms (with or without nitrite); potassium sorbate with low concentrations of nitrite; sodium hypophosphite (with or without nitrite); and several fumarate esters."

On July 5, 1985, the Department published a final rule in the **Federal Register** (50 FR 27573) allowing the use of alpha-tocopherol as an N-nitrosamine inhibitor in pumped bacon. (Alpha-tocopherol had been affirmed as Generally Recognized as Safe (GRAS) by FDA on April 4, 1984 (49 FR 13346).) The Department's action amended § 318.7(c)(4) of the Federal meat inspection regulations (9 CFR 318.7(c)(4)) to permit the use of d- and dl-alpha-tocopherol as inhibitors of N-nitrosamine formation in pumped-cured bacon up to level of 500 ppm. It specified that alpha-tocopherol may be used as an optional ingredient in addition to sodium ascorbate or sodium erythorbate

[1] This report is available for public inspection in the office of the FSIS Hearing Clerk.

already required in the preparation of pump-cured bacon.

In August 1983, the American Meat Institute (AMI) submitted a Citizen's Petition,[2] to the Department requesting an amendment to the regulations to reduce the quantity of sodium nitrite used for curing pumped bacon from 120 ppm to 100 ppm (16.6 percent) and the equivalent quantity of potassium nitrite from 148 to 123 ppm. AMI, a national trade association representing meat packers and processors, asserts it is petitioning for "practical procedures which will approach the goal of eliminating potential health hazards from meat products . . . ."

In its petition, AMI states that its views the 1978 regulation as a first step toward eliminating nitrosamines. AMI points out in the petition that the level of 120 ppm sodium nitrite combined with 550 ppm of sodium ascorbate or sodum erythorbate (isoascorbate) has proven safe for the past 5 years. AMI further states that since 1978 the industry has brought processing procedures under even tighter control. It characterizes the proposal to lower sodium nitrite from 120 ppm to 100 ppm as an important second step in assuring the consumer of the safety of bacon by taking advantage of technological improvements which allow a modest reduction in nitrite without compromising safety.

The issue raised by the AMI petition is whether an ingoing sodium nitrite level in bacon of 100 ppm will adequately protect against botulinal toxin while lowering the possibility of nitrosamine formation. Although AMI did state that "current research has led us to conclude that the amount of nitrite used in pumped bacon can be modestly reduced without compromising the product's safety," the petition was not accompanied by analytical data supporting the safety of the reduced level. The petition cited improved processing controls in the pumped bacon industry and a recent assessment of the botulism hazard in bacon derived from 11 innoculated pack studies (Hauschild, A.H.W. 1982, *Food Technology*).[3] It also cited deliberations of the USDA Expert Panel where sodium nitrite levels of 80 and 100 ppm were discussed and considered.

Two industry groups, the Western States Meat Association and the American Association of Meat Processors, have written to the Department objecting to the AMI petition. The Western States Meat Association stated that smaller manufacturers with less precise technological capabilities would have difficulty controlling ingoing nitrite levels precisely at 100 ppm. The American Association of Meat Processors (AAMP) stated that both small and large processors sometimes unintentionally vary from the 120 ppm ingoing sodium nitrite standard. AAMP expressed concern that a 100 ppm ingoing sodium nitrite standard, combined with the possibility that processors would vary from this standard, could lead to safety problems. The AAMP letter also raised several other concerns with the AMI petition and suggested that the Department consider changes in its nitrosamine monitoring program.

Available Data

Since implementation of the 1978 regulation, there have been many scientific studies concerning the effect of nitrite on the production of botulinal toxin in meat food products.[4] These studies, as well as those done before 1978, have generated information on the effects of several levels of nitrite and different combinations of nitrite and potassium sorbate used as an anticlostridial agent. While many of the reports studied bacon, valuable studies were also conducted on other types of meat food products.

These studies showed that at any given level, the antibotulinal activity of nitrite is enhanced by other factors such as a relatively low pH and the presence of sodium chloride, sugar, and lactic acid producing bacteria. However, they also confirmed that nitrites are the most effective compounds in commercial use for protection against botulism.

There have been approximately 30 studies on the antibotulinal aspects of nitrite when used to cure bacon. None of these directly compared levels of 100 and 120 ppm sodium nitrite which is the reduction subject to this rule. In many of the studies, 0 and 120 ppm sodium nitrite levels were use as controls; in others, levels such as 50, 100, and 150, and 80 and 120 ppm were studied. After evaluating these studies, the Department estimated the antibotulinal effects of using sodium nitrite to cure bacon at the 100 ppm level.

The FRI Process

In June of 1980, scientists from the Food Research Institute (FRI) at the University of Wisconsin published a report in the scientific literature on the inhibition of botulinum toxin formation in bacon by acid development.[5] In this bacon process, harmless lactic acid producing bacteria and 0.7 percent sugar were added to the bacon. Bacon was prepared from the lactic acid/sugar pickle at 0, 40 and 120 ppm ingoing sodium nitrite. The results of this study showed that bacon made with the added lactic acid producing bacteria, added sugar, and 0 or 40 ppm added sodium nitrite was more inhibitory to botulinum toxin development than was 120 ppm sodium nitrite bacon without added lactic acid producing bacteria.

The FRI study effect is based on a biological preservation method similar to formentation in products such as cheese, buttermilk, sauerkraut and fermented sausage, which has been utilized for centuries to preserve and protect foods. The bacteria inoculated into the bacon survive the bacon smoking process and are retarded from growth by refrigeration. When the bacon is temperature abused, the bacteria multiply rapidly, convert the sugar present to acid and rapidly reduce the pH of the bacon. The rapid development of acid produces an environment that is inhibatory to the growth of *Clostridium botulinum*. In the FRI bacon process, acid development only occurs if the bacon is temperature abused. Properly prepared and refrigerated bacon would not develop either acid or acid flavors.

The 1980 report was impressive and appeared to offer an alternative processing procedure which would permit reduced nitrite levels in bacon without compromising safety. However, the study was done on laboratory produced product, and many questions arose concerning applicability of the process to commercial bacon. Concerns about the survival of the lactic acid producing bacteria in the pickle and during the smoking procedure of commercial production were critical unanswered questions.

To verify that the conclusions of the laboratory would be valid for commercially prepared bacon, USDA funded a commercial plant study by FRI. A copy of the final report was received in May 1984.[6] This report describes bacon produced by the FRI process in three commercial establishments. The variables include bacon produced at 40 and 80 ppm ingoing sodium nitrite with added sugar and lactic acid producing bacteria, and control bacon prepared with 120 ppm sodium nitrite and no added sucrose and lactic acid producing

[2] Petition is available for public inspection in the office of the FSIS Hearing Clerk.

[3] This study is available for public inspection in the office of the FSIS Hearing Clerk.

[4] These studies are available for public inspection in the office of the FSIS Hearing Clerk.

[5] This study is available for public inspection in the office of the FSIS Hearing Clerk.

[6] This report is available for public inspection in the office of the FSIS Hearing Clerk.

bacteria. In addition, nitrosamine testing was done on samples of each nitrite level prepared at each plant. The results from the three-plant study verified the original laboratory work. Bacon prepared with 40 or 80 ppm sodium nitrite, 0.7 percent sugar, and lactic acid producing bacteria had greater antibotulinal protection and lower incidence of nitrosamines at confirmable levels than control bacon. The lactic acid producing bacteria were not substantially affected by either the pickle or the smoking processes used in the three plants.

When cooked, bacon prepared by the FRI process was as acceptable to experienced taste panelists as control bacon. During processing, the addition of lactic acid producing bacteria and sugar did not create any unusual formulation or usage problems. The visual evaluation of uncooked bacon showed that all were acceptable. However, for uncooked bacon the 120 ppm sodium nitrite control bacon was most preferred, and the 40 ppm sodium nitrite least preferred due to reduced color intensity. Cooked bacon either with 40 or 80 ppm sodium nitrite and lactic acid producing bacteria and sugar was as acceptable, if not preferred, as control bacon processed with 120 ppm sodium nitrite and no added sugar and lactic acid producing bacteria.

The Proposal

Based on the available scientific information, including the recent work by FRI on bacon prepared with lactic acid producing bacteria, and the recent efforts to quantify the potential for outbreaks of botulism resulting from bacon which have found this potential to be lower than expected, the Administrator determined that permitting certain alternatives to the current requirements for nitrite usage in bacon could reduce the incidence of nitrosamine contamination levels and would not result in an increase in the risk of botulism.

On April 15, 1985, the Agency published in the **Federal Register** (50 FR 14711) a proposal to amend the requirements for sodium nitrite in bacon to provide processors with the following two alternatives to the current requirement of 120 ppm ingoing sodium nitrite or 148 ppm ingoing potassium nitrite, and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate):

(1) To use sodium nitrite at a level of 100 ppm ingoing or potassium nitrite at 123 ppm ingoing, and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate), and institute an approved partial quality control program to control the ingoing nitrite and other factors; or

(2) To use sodium nitrite at a level between 40 and 80 ppm ingoing or potassium nitrite at a level between 49 ppm and 99 ppm ingoing and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate) in combination with added sugar and inoculum of lactic acid producing bacteria, and institute an approved partial quality control program to control the ingoing nitrite, lactic acid producing bacteria, and other factors.

The frequency of sampling for the nitrosamine monitoring program would be based on the likelihood of presumptive positive nitrosamine levels, using plant history of nitrosamine levels as a predictor of future levels. In addition, other variables would be considered as appropriate, such as the level of nitrite used and data from a plant's partial quality control program. Since the likelihood of confirmable nitrosamine levels at 100 ppm ingoing sodium nitrite is smaller than the likelihood at 120 ppm ingoing sodium nitrite, establishments using this option would most likely be sampled less frequently than those using the current level of 120 ppm ingoing sodium nitrite. Establishments using the option of 40–80 ppm ingoing sodium nitrite with lactic acid producing bacteria would have an extremely low incidence of nitrosamines at confirmable levels and thus would be subject to a yet less frequent sampling than under the other procedures. Further, for establishments producing bacon under the new alternatives, the samples for nitrosamine analyses would be randomly selected throughout the production of a lot. The actual sampling plans and methods of analysis that would be used would result in approximately the same likelihood as currently exists to producers of having presumptive violations, when the true mean level of nitrosamines in a lot is 10 ppb.

When this rule was proposed, FSIS conveyed its belief that lactic acid producing bacteria is a GRAS substance and solicited information on that point. No such information was received. In response to FSIS's inquiry to FDA regarding the GRAS status of lactic acid producing bacteria, FDA has determined that ample evidence exists as to the safe history of the use of lactic acid starter cultures. On the basis of FDA's determination, FSIS considers harmless lactic acid producing bacteria to be a GRAS substance and safe for use in bacon at levels sufficient to prevent botulism.

Comments on Proposed Rule

FSIS received 20 comments in response to the proposed rule—8 from consumers, 4 from meat associations, 2 from chemical companies, 2 from pork processors, 2 from public interest organizations (1 of these representing 3 consumer groups), 1 from a State cancer center, and 1 from a State university. All commenters supported the proposed rule, but most raised additional issues such as the banning of nitrites, labeling reqirements, and applying the regulation to other products.

The following is a discussion of the comments received and FSIS' response to each.

Use of nitrites

1. *Comment:* All commenters agreed that the proposed rule is a step toward reducing the likelihood of nitrosamine formation, but many of them supported a total ban on nitrites.

Response: A total ban on nitrites was not an issue addressed in the proposed rule. However, it should be pointed out that certain meat products, including bacon, may be produced without nitrites, as specified in § 317.17(b) of the Federal meat inspection regulations (9 CFR 317.17(b)) provided they are similar in size, flavor, consistency, and general appearance to those products prepared with nitrate or nitrite. Unless such products contain an amount of salt sufficient to achieve a brine concentration of 10 percent or more, specific labeling is required on such products. These products must be labeled with their common or usual name or descriptive which is immediately preceded with the term "Uncured" as part of the product name. Additionally, products prepared in such manner must bear the statement (1) "No Nitrate or Nitrite Added", and (2) "Not Preserved—Keep Refrigerated Below 40° F. At All Times" unless they have been thermally processed to F_o3 or more; they have been fermented or pickled to pH of 4.6 or less; or they have been dried to a water activity of 0.92 or less.

2. *Comment:* One comment representing three public interest groups suggested that the level of nitrite used in bacon should be limited to 40 ppm to reduce the risk of cancer to the public. Also, a consumer recommended that since nitrites form nitrosamines which cause cancer, labels of products containing nitrites should bear a warning that nitrites are included.

Response: FSIS is continuously involved in studies to determine safe methods of producing bacon with lower levels of nitrite, as indicated by this

final rule. However, the Administrator has determined that bacon produced under the conditions specified in the current Federal meat inspection regulations and this final rule should not contain confirmable levels of carcinogens when prepared for eating and should not otherwise be hazardous to health.

3. *Comment:* The comment from the three public interest groups and two from consumers suggested the reduction of nitrite usage to be extended to other meat products such as hot dogs and luncheon meats.

Response: The Agency has directed greater efforts toward the removal of nitrosamines from bacon for two reasons. One, the nitrosamine problem is relatively greater for bacon; two, new knowledge has made possible some progress in reducing nitrite levels in bacon. Nitrosamines are not found in all cured meat food products in which nitrite is an additive. However, it has been confirmed that fried bacon contains nitrosopyrrolidine, a nitrosamine. The cooking procedures normally used for bacon cause the chemical reactions leading to nitrosamine formation. Thus, the problem in bacon is well established. Data gathered by USDA do not establish the problem for other cured products.

In addition, it has been established that the risk of botulism is relatively low in bacon compared to other cured meats. The Expert Panel on Nitrites, Nitrates, and Nitrosamines recommended a considerably lower nitrite level for bacon than for other products. The testing of reduced nitrite levels in bacon has confirmed that this can be done without reducing botulism protection. Thus, the Agency believes that nitrite levels in bacon can be reduced safely. Since there has been no nitrosamine problems established for other cured meats, no motivation has existed to generate new knowledge about the safety of reducing nitrite levels in these products.

Nitrosamine monitoring

4. *Comment:* A pork processor, meat association, and chemical company contend that the reduced monitoring program for bacon processors using the lower nitrite levels would constitute unfair treatment toward bacon processors opting to use the higher nitrite levels. They recommend an equitable monitoring program among all bacon producers, regardless of the bacon process used.

Response: In implementing the current nitrosamine monitoring program, FSIS developed a monitoring sampling plan for each establishment's bacon production based upon the establishment's past performance. If testing records show that an establishment's bacon is likely to be free of confirmable levels of nitrosamines, it is tested at least twice a year. Newer establishments with unknown records and those with greater risks of noncompliance may be tested as often as six times a year.

In determining the frequency of sampling under this rule, FSIS will take into account the level of nitrites used and data from an establishment's quality control program. The smaller the level of ingoing nitrite used, the less likely confirmable levels of nitrosamines will be found. Therefore, it is anticipated that processors opting to use the reduced levels of ingoing nitrite will be sampled at a lower frequency than establishments using the 120 ppm ingoing nitrite.

FRI Process

5. *Comment:* A meat association, two pork processors, and a chemical company expressed concern on the safety of the FRI process. They contend that lowering the product pH lessens the potential for toxin development. According to the commenters, in order for the pH to be reduced after processing, lactic acid producing organisms must survive the heat process which ranges from high temperature/short-time treatments to low temperature/long-time treatments. It was recommended that the final rule be amended to require processors using this method to establish a system to ensure the presence of sufficient viable microorganisms after heat processing.

Response: Survival of viable microorganisms has been evaluated in a three-plant commercial study. Excellent survival was observed under all commercial time/temperature conditions tested as mild, moderate, and severe. To assure adequate survival during daily production, a partial quality control program is required to control initial viability, processing times and temperatures (not in excess of those used in the study), and survival after heat processing.

6. *Comment:* One chemical company questions whether bacon produced by the FRI process with reduced levels of nitrite would have an acceptable color to consumers. In addition, the company stated that the FRI process, which requires the addition of sugar to the pickle, would change the cooking characteristics of bacon by causing the bacon to brown and char more readily than bacon processed by other methods.

Response: Whether to use the FRI process will be largely a marketing decision by each bacon producer. The results of the USDA funded study conducted by FRI indicate that cooked bacon prepared by this process was as acceptable to experienced taste panelists as bacon prepared with 120 ppm sodium nitrite. In addition, during processing, the addition of sugar did not create any unusual problems. The uncooked bacon prepared by the FRI process was the least preferred due to the reduced color, but was acceptable.

7. *Comment:* A pork producer contends the proposal is vague in that it did not explain the basis of calculating the use of a minimum of 0.7 percent sucrose or other fermentable carbohydrate under the FRI process. The commenter suggests that the calculation could be based upon the uncured belly weight, pumped weight, or total weight before processing.

Response: The calculation for added sugar is based upon the total weight before processing in the same manner that other bacon factors are calculated.

8. *Comment:* A state university representative and a public interest group suggested that testing be conducted using the FRI process to determine the safety of nitrite-free bacon.

Response: USDA did consider testing nitrite-free bacon under actual plant conditions, but due to a perceived lack of commercial prospects for such a product, bacon producers expressed no interest in conducting such a test. Based on laboratory test data, USDA believes the safety performance of nitrite-free bacon produced using the FRI process is promising, and encourages the industry to reexamine the commercial viability of such a product.

Alternative processes

9. *Comment:* Two chemical companies and a pork processor offered several alternatives to the two new bacon processes proposed and the one currently in use. The recommended methods included permitting various ranges of ingoing nitrite with a minimum brine concentration, the use of encapsulated acidulants in lieu of lactic acid starter cultures, and the use of ingoing nitrite levels above 80 ppm and phosphate blends.

Response: The intent of this proposal is to amend a regulation on nitrite usage. The proposed regulation did not specify a minimum brine concentration, since it is a separate issue and not concerned in this rulemaking proceeding. The use of encapsulated acidulants in lieu of lactic acid starter cultures was not addressed in this proposal but is covered in § 317.17(b) of the meat inspection

regulations. This permits bacon to be produced without nitrite or with reduced levels of nitrite when fermented or pickled to pH 4.6 or less. Research documentation on reduced nitrite levels and phosphate blends has not been provided to FSIS for final consideration. Due to this and the number of potential phosphate blends, the approach was not inlcuded in the proposed rule.

Miscellaneous amendments

10. *Comments:* A pork processor recommended several minor changes for consistency, including the addition of sodium erythorbate/sodium ascorbate for reducing nitrosamine and sodium nitrite as an antibotulinal agent to the chart of approved substances under § 318.7(c)(4).

Response: Although the suggestion would offer consistency, FSIS believes the suggestion goes beyond the intent of the proposal. In addition, it must be noted that the chart of approved substances (9 CFR 318.7(c)(4)) does not list all substances permitted in meat products, which is indicated in the introductory paragraph of § 318.7(c)(4) and 318.7(a)(1).

Final Rule

After careful consideration of the comments received, the Administrator has determined to adopt the proposed rule, as published.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection, Preparation of products.

PART 318—[AMENDED]

Accordingly, Part 318 of the Federal meat inspection regulations is amended as follows:

1. The authority citation for part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*) 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*) 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

2. Section 318.7(b) is amended by adding new subparagraphs (3) and (4) as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(b) * * *

(3) Notwithstanding the provisions of paragraph (b)(1), sodium nitrite may be used at:

(i) 100 ppm ingoing (potassium nitrite at 123 ppm ingoing); and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate) shall be used; provided that the plant has an approved partial quality control program as provided in § 318.4 (d), (e), and (g) such as to result in compliance with this provision, or

(ii) A predetermined level between 40 and 80 ppm (potassium nitrite at a level between 49 and 99 ppm); 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate); and additional sucrose or other similar fermentable carbohydrate at a minimum of 0.7 percent and an inoculum of lactic acid producing bacteria such as *Pediococcus acetolactii* or other bacteria demonstrated to be equally effective in preventing the growth of botulinum toxin at a level sufficient for the purpose of preventing the growth of botulinum toxin; provided that the plant has an approved partial quality control program as provided in § 318.4 (d), (e), and (g) such as to result in compliance with this provision.

(4) The Department shall collect samples of bacon from plants producing under paragraph (b)(3) of this section and analyze them for the level of nitrosamines. Samples shall be randomly selected throughout the production of a lot. The actual sampling plans and methods of analysis that are used will result in approximately the same likelihood as under paragraph (b)(2) of this section of having a presumptive positive result when the true mean level of nitrosamines in a production lot is 10 ppb. In the event of a presumptive positive result, the plant shall become subject to the provisions of paragraph (b)(2) of this section.

* * * * *

3. Under the Class of Substance identified as "Flavoring agents; protectors and developers" in the chart in § 318.7(c)(4), the "Substance" after "Harmless bacteria starters" (republished for the convenience of the user) and before "Benzoic acid (sodium, potassium and calcium salts)" is revised to read as follows:

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
	Harmless bacteria starters of the acidophilus type, lactic acid starter or culture of *Pediococcus cerevisiae*.	To develop flavor	Dry sausage, pork roll, thuringer, lebanon bologna, cervelat, and salami.	0.5 percent.
	Harmless lactic acid producing bacteria.	To prevent growth of *Clostridium botulinum*.	Bacon	Sufficient for purpose.
*	*	*	*	*

Done at Washington, D.C., on June 11, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-13538 Filed 6-13-86; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Industrial Radiography Radiation Surveys and Licensee's Performance Inspection Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations applying to industrial radiography. The amendments require industrial radiography licensees to perform an additional survey of any radiography device at any time the device is put into storage, eliminate an existing requirement for recording of the last-use survey, and require instead a record of the last time-of-storage survey performed in the workday. A definition of storage area is provided. In addition, the amendments clarify the regulations to more accurately reflect existing licensing practice by requiring that each applicant describe the program it will use when it becomes a licensee to evaluate the safety performance of each radiographer and radiographer's assistant at intervals not to exceed 3 months. These performance audits are intended to ensure that radiographers are following the Commission's regulatory requirements and the licensee's operating and emergency procedures when performing radiography.

EFFECTIVE DATE: July 16, 1986.

FOR FURTHER INFORMATION CONTACT: Alan K. Roecklein, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 427-4358.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is adopting the amendments to its regulations described below pertaining to industrial radiography, 10 CFR Part 34. One amendment requires licensees to perform an additional radiation survey of the radiographic exposure device at any time the device is placed in storage, deletes an existing requirement to record the radiation survey made of the device immediately after the last exposure prior to storage, and adds a requirement to make and maintain a record of the "time-of-storage" survey when it is the last storage survey performed during the workday. This storage survey requirement would have to be met any time the device is placed into storage, including when the device is secured in a vehicle for transport. This amendment to 10 CFR 34.43 provides a method of ensuring that the sealed source is in the shielded position within the device when the device is stored or secured for transport.

A second amendment revises § 34.11(d) to specify that each license application must describe a program by which the licensee will evaluate the performance of each radiographer and radiographer's assistant at intervals not exceeding 3 months. An acceptable operational definition of "3 months" is a 13-week calendar quarter. This amendment clarifies the requirements for the description of the licensees' inspection program that the applicant must provide in its license application and codifies existing licensing practice.

A third amendment provides a definition of "storage area" in § 34.2, *"Definitions"*. This definition is provided to clarify the locations and time of the storage survey. "Storage area" is defined as any location, facility or vehicle, which is used to store, to transport, or to secure a radiographic exposure device, a storage container or source when it is not in use, and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, storage container or source.

Background

Time of Storage Radiation Survey and Record

After the receipt of a petition for rulemaking (assigned Docket No. PRM-34-3) from the Chicago Bridge and Iron Company, the Commission requested comments on the petition in the **Federal Register** on November 23, 1982 (47 FR 52722). The petition suggested an amendment to 10 CFR 34.43(c) that would require each licensee to survey a radiographic exposure device when it is placed in storage. This storage survey would occur at or near the place of storage, and would provide a record showing that the radiographic exposure device had been stored with the sealed source in a safe location within the device. This final rule in effect grants this petition and completes NRC action in response to PRM-34-3.

Under current regulations, § 34.43(b) requires that, after each radiographic exposure, the radiographer perform a radiation survey of the radiographic device to ensure that the sealed source has been returned to its shielded position. Paragraph (c) of § 34.43 requires that the radiographer record the results of the survey following the last radiographic exposure made before locking the device and ending direct surveillance of the operation. The licensee must retain a record of this "last-use" survey for 3 years.

The petitioner contended that there is a potential for a source to become dislodged during transit if the required locking procedures were omitted and that a source might then be stored in an unshielded position. Thus it was recommended that the radiographer perform a final survey at the time of storage and at a point on the device specified by the licensee in its operating procedures. This measurement of the exposure rate at a specific point would provide unequivocal assurance that the source was properly located within the device, and would also provide a check on the decay of the sealed source and the constancy of the survey instrument. The petitioner also contended that it was easier to record the survey data at the storage location rather than the last-use location because of weather and work conditions encountered in field radiography.

The Commission received one telephone and three written comments on the petition for rulemaking. Three commenters concurred completely with the petition. One commenter said that the survey should be made at the sealed source outlet port with the safety plug installed. Another said that licensees should not be required to submit modified procedures for review until it was time for them to renew their licenses.

Although the Commission is aware of only one overexposure that was caused by failure of the locking mechanism (NUREG/BR-0024 Working Safely in Gamma Radiography, p. 153, case 46[1]), several incidents have been observed where radiographic devices were stored with the source in an unshielded position as a result of failure to lock the mechanism. The Commission has determined that the probability of occurrence and the consequences of this type of event are of sufficient magnitude to justify the time-of-storage survey requirement suggested by the petitioner. In addition it is considered to be a reasonable safety practice to survey at the time-of-storage, and many radiographers include this survey in their routine procedures. Therefore, the Commission agreed that it is desirable to require that the time-of-storage survey be made and recorded.

A Notice of Proposed Rulemaking was published in the **Federal Register** on October 4, 1984 (49 FR 39168). The proposed amendment would require that a time-of-storage survey be made around the entire circumference of the radiographic exposure device, consistent with existing survey procedure (10 CFR 34.43(b)), and that the survey include a measurement of the radiation exposure rate at the source outlet port with the safety plug installed. It also would require that a record be made and maintained for the time of storage survey and that the recordkeeping requirement for the last-use survey be deleted.

Eighteen letters of public comment were received on the proposed rule. Nine of the commenters supported the time-of-storage survey requirement and five opposed it. Nine letters offered suggested changes. After reviewing the five comments opposing this rulemaking the Commission has determined that its previous basis for this requirement is sound and that it should be adopted. The suggested changes are addressed as follows.

One commenter recommended that 10 CFR 34.22 be amended to require that radiographic exposure devices be locked

[1] Copies of NUREG/BR-0024 may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 27082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

when they are transported. The Commission notes that 10 CFR 34.32, "Operating and emergency procedures" requires each licensee to develop written instructions for transporting and securing radiographic exposure devices, storage containers, and sealed sources when not in use and that these procedures are subject to licensing review and inspection. The Commission has determined that these requirements, with the addition of the new time-of-storage survey, provide adequate regulatory assurance of safe storage and transport.

Another commenter suggested that the "last-use" survey requirement should remain intact because the necessity to record this survey provides some assurance that the source is secure before transport. The Commission notes that the requirements for performing a last-use survey and for securing a device before transport are not relieved by the new rule. The rule (Section 34.43(b)) provides that a survey be made after each exposure to determine that the sealed source has been returned to its shielded position. The Commission has determined that recording the time-of-storage survey, rather than the last-use survey provides a greater degree of safety without increasing licensees' recordkeeping burden. It is important to note in this context that any source in transit is not considered by the Commission to be under the direct surveillance of a radiographer, and therefore must be locked.

Several commenters questioned the applicability of the time-of-storage survey for "fixed" radiographic sources. The Commission considers fixed source facilities which comply with 10 CFR 34.29, "Permanent radiographic installations," to be storage areas when locked or secured. Thus for these facilities the "last-use" survey and the "time-of-storage" survey are considered to be the same, and this rule does not change procedures for licensed fixed source facilities.

One commenter suggested that the time-of-storage survey should includes the source guide tube. The Commission does not agree because the last-use survey required by 10 CFR 34.43(b) include survey of the guide tube, ruling out the possibility of a disengaged source or severe contamination resulting from a leaking source. Because the guide tube is disconnected, and the radiographic device locked before transport or storage or both, there would be no need to survey the guide tube again at the time of storage.

A commenter questioned how a source could shift to an unshielded position with the safety plug installed. He believes that the last-use survey assures that the source is properly located in the device at the time of storage. The Commission does not agree because the time-of-storage survey is intended to provide final assurance that all of the required precautions such as surveying and removing the guide tube, installing a safety plug and locking a device have been done before transport or storage. If these precautions are omitted and a source dislodged during transit to a storage area, there would be severe consequences including possible radiation exposure to members of the public.

Several commenters questioned the need for taking a measurement of the exposure rate at the source outlet port with the safety plug installed. The commenters observed that this element of the proposed time-of-storage survey was not applicable to fixed source facilities and that the information to be obtained on source decay and instrument operability was obtained continuously during routine survey operations. The Commission agrees that this element of the proposed time-of-storage survey has little justification, and has deleted it from the final rule.

A detailed summary of public comments and staff responses is available on request (see For Further Information Contact).

As a result of the analysis of public comments, the Commission has decided to delete that part of the proposed rule which would have required that the time-of-storage survey include a measurement of the radiation exposure rate at the source outlet port. The petitioners has suggested that this component of the survey procedure would provide useful data on source decay and instruments performance. Commenters observed that the source decay data and instrument constancy can be determined easily from decay charts and end-of-use surveys respectively. The additional time, cost and exposure expended in making this measurement is not justified by the information obtained.

Because the time-of-storage survey and recordkeeping procedures are similar to the currently required last-use survey and recordkeeping procedures, licensees would not be required to submit modified procedures for review. A copy of the final rule will be sent to each licensee including a cover letter to inform the licensee of the new survey and recordkeeping requirements and that a license amendment is unnecessary. The Commission will review licensee renewal applications for incorporation of the new procedural requirements.

Performance Inspection of Radiographers and Radiographers' Assistants

Section 34.11(d) presently requires that in order to receive a specific license for radiography, an applicant must have an inspection system adequate to assure that Commission regulations, Commission license provisions, and the applicant's operating and emergency procedures are followed by its radiographers and radiographers' assistants. The inspection system must include the performance of inspections at intervals not to exceed three months.

The Commission has consistently interpreted this section to require that a description of the inspection system be provided in a license application and that the inspection include quarterly performance inspections of all radiographers and radiographers' assistants. This final rule codifies current licensing practice and provides clarifying language.

Eighteen letters of public comment were received on this part of the proposed rule. Thirteen approved it or provided suggestions. The primary negative comment was that quarterly audits under field conditions are costly in travel and management time and that no improvement in safety results. The Commission does not agree. Because the quarterly inspection program has been a license condition, licensees will not generally incur additional costs. The Commission has determined that quarterly performance audits for all radiographers and assistants provide motivation for safe practice, evaluate training effectiveness, demonstrate management commitment to safety, and provide needed assurance that the Commission's regulations and license conditions are followed. Given the potentially serious consequences of error in industrial radiography, both to workers and the public, the additional assurance of safety provided by a quarterly inspection program is justified.

One commenter suggested that clarification is needed in defining who performs the evaluations. The Commission has determined that considering the variability in licensee size, type (fixed or field) and staffing, it is not reasonable to require uniform qualification for auditors. The description of the license's inspection program should identify who is responsible for inspection and thus subject to license review and approval and inspection and enforcement.

Another commenter suggested that annual refresher training is adequate to assure safe performance. The

Commission has determined that a good training program is essential to safety in radiography. Training, however, can only assure that a worker knows the procedures but cannot assure that safe practices are implemented in the field.

The Commission intends that the applicant describe, in its license application, the program that it will use to inspect the work methods of each of its radiographers and radiographers' assistants during an actual radiographic operation to ensure that each individual is following applicable regulatory requirements and operating and emergency procedures. Each inspection should be conducted by having a designated individual who knows the applicable requirements and procedures observe each worker when performing an actual work-related radiographic exposure to ensure that the worker is following the requirements and procedures.

Some license applicants and licensees believe that a system of spot checks of radiographers and radiographers' assistants is sufficient to meet the Commission's present regulatory requirements. The Commission does not agree that spot checks are adequate to provide assurance that all radiographers are working safely. Therefore it has revised these regulations to specify that a description of the inspection program be included in the license application and that the inspection program provide for the inspection of the work methods of each radiographer and radiographers' assistant actively engaged in radiography, at intervals not to exceed 3 months. If a radiographer or assistant has not participated in a radiographic operation for more than three months, the rule provides that individual's performance be observed and recorded the next time he or she participates in a radiographic operation. An acceptable operational definition of "three months" is a thirteen week calendar quarter.

Promulgation of these rules will not result in a new round of license amendments. Licensees will be instructed by transmittal letter to implement the changes within 30 days of publication of the rule and that no license amendment will be required until the next scheduled license renewal date.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3) (i) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3051 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0007.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. This analysis examines the costs and benefits of the alternatives considered. The analysis is available for inspection in the Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Alan K. Roecklein, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4358.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The NRC has currently issued 369 licenses for the performance of industrial radiography; these licensees are affected by this rule. Although a substantial number of these licensees would be considered small entities, the requirements are not expected to have a significant economic impact on these licensees.

The time-of-storage radiation survey and recordkeeping amendment requires an additional survey upon storage of the radiographic device; this is considered a minimal regulatory burden. The amendment substitutes an end-of-day storage survey recordkeeping requirement for the currently required last-use survey record, which is already a part of reasonable safety practice and thus imposes no additional regulatory burden. The quarterly performance inspection of each radiographer and radiographer's assistant is already required of most licensees by license condition. The final rule clarifies what information must be submitted with a license application and codifies the quarterly inspection requirement.

The additional time-of-storage survey is estimated to cost about $1.00 per survey or a maximum of $500.00 per radiographer per year. This is based on: each radiographer working 250 days each year; placing a device into storage on the average twice each day; an estimate that it takes about 1 minute to complete a storage survey; and that the hourly wage for the average radiographer, plus overhead, is $60.00. The benefit of this additional survey requirement is significantly increased assurance that radiographic sources are safely stored in a shielded position.

Because the quarterly performance inspection of radiographers is already required by most license conditions, there will be little new or additional burden on NRC licensees. The total cost of the quarterly performance inspection program, whether required by license condition or regulation, is about $240 per worker each year, assuming each inspection takes one-half hour of worker time and one-half hour of inspector time.

The NRC does not believe these costs constitute a significant economic impact on small entities.

Backfit Analysis

The staff has determined that a backfit analysis is not required for this rule since these amendments do not apply to 10 CFR Part 50 licensees.

List of Subjects in 10 CFR Part 34

Packaging and containers, Penalty, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 34.

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

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

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.32 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 34.22, 34.23, 34.24, 34.25 (a), (b), and (d), 34.28, 34.29, 34.31 (a) and (b), 34.32, 34.33 (a), (c), and (d), 34.41, 34.42, 34.43(a), (b), and (c), and 34.44 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 34.11(d), 34.25 (c) and (d), 34.26, 34.27, 34.28(b), 34.29(c), 34.31(c), 34.33 (b) and (e), and 34.43(d) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)). §§ 34.2, 34.11, 34.22, 34.28, 34.29, 34.31, 34.32, 34.33, 34.43, 34.44, 34.51, and Appendix A—[Amended]

2. Remove the authority citations following §§ 34.2, 34.11, 34.22, 34.28,

34.29, 34.31, 34.32, 34.33, 34.43, 34.44, 34.51, and Appendix A.

3. In § 34.2, the paragraph designations for the defined terms are removed, the definitions are arranged in alphabetical order, and a definition of the term "storage area" is added to read as follows:

§ 34.2 Definitions.

* * * * *

"Storage area" means any location, facility, or vehicle which is used to store, to transport, or to secure a radiographic exposure device, a storage container, or a sealed source when it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

* * * * *

4. In § 34.11, paragraph (d) is revised to read as follows:

§ 34.11 Issuance of specific licenses for use of sealed sources in radiography.

* * * * *

(d) The applicant has established and submits to the Commission a description of its inspection program adequate to ensure that its radiographers and radiographers' assistants follow the Commission's regulatory requirements and the applicant's operating and emergency procedures. The inspection program must:

(1) Include observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed three months;

(2) Provide that, if a radiographer or a radiographer's assistant has not participated in a radiographic operation for more than three months since the last inspection, that individual's performance must be observed and recorded the next time the individual participates in a radiographic operation; and

(3) Include the retention of inspection records on the performance of radiographers or radiographers' assistants for three years.

* * * * *

5. Section 34.43 is revised to read as follows:

§ 34.43 Radiation surveys.

The licensee shall ensure that:

(a) At least one calibrated and operable radiation survey instrument is available at the location of its radiographic operations whenever radiographic operations are being performed, and at the storage area, as defined in § 34.2, whenever a radiographic exposure device, a storage container, or source is being placed in storage.

(b) A survey with a calibrated and operable radiation survey instrument is made after each exposure to determine that the sealed source has been returned to its shielded position. The entire circumference of the radiographic exposure device must be surveyed. If the radiographic exposure device has a source guide tube, the survey must include the guide tube.

(c) A survey with a calibrated and operable radiation survey instrument is made at any time a radiographic exposure device is placed in a storage area, as defined in § 34.2, to determine that the sealed source is in its shielded position. The entire circumference of the radiographic exposure device must be surveyed.

(d) A record of the storage survey required in paragraph (c) is made and is retained for three years when that storage survey is the last one performed in the work day.

Dated at Bethesda, Maryland, this 28 day of May, 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86-13386 Filed 6-13-86; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Docket Nos. 0544, R-0552, and R-0558]

Collection of Checks and Other Items and Wire Transfers of Funds; Regulation J

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted nine amendments to Regulation J. These amendments will:

(1) Permit the owner of a check or other item who is allegedly injured by a Reserve Bank's alleged failure to exercise ordinary care or act in good faith in collecting an item to bring an action against the Reserve Bank, regardless of whether that person is a "sender" as defined in Regulation J;

(2) Establish, beginning on January 1, 1990, a two-year limitation period for actions against a Reserve Bank for alleged mishandling of items under subpart A or wire transfer items or requests under subpart B, and, beginning August 1, 1986, a two-year limitation period for actions against paying banks for failure to comply with the notification of nonpayment requirements of subpart A;

(3) Permit Reserve Banks to require any prior indorser to defend a breach of indorsement warranty suit even if the Reserve Bank has not been sued directly;

(4) Authorize Reserve Banks to collect instruments drawn on payors located in foreign countries;

(5) Clarify that Reserve Banks are not liable for consequential damages in handling wire transfers of funds;

(6) Add the Commonwealth of the Northern Mariana Islands to the Twelfth District for collection purposes;

(7) Adopt the definitions of the Uniform Commercial Code for terms that are used but not defined in Regulation J;

(8) Effective January 1, 1987, require paying banks that close voluntarily on days that are banking days for their Reserve Banks to pay on such days for cash items that Reserve Banks make available to them on such days;

(9) Make permanent in slightly modified form the temporary amendment adopted on October 3, 1985, creating a standard holiday schedule to be applied to Regulation J's notification of nonpayment provision.

Items 1 through 7 were proposed for comments on March 22, 1985, 50 FR 12310 (Mar. 28, 1985); item 8 was proposed on November 18, 1985, 50 FR 47772 (Nov. 20, 1985); and item 9's temporary rule became effective on October 3, 1985, 50 FR 41335 (Oct. 10, 1985).

EFFECTIVE DATES: The amendments are effective on the following dates.

January 1, 1987: § 210.9(a)

January 1, 1990: §§ 210.6(c) and 210.38(b)(2)

All other amendments take effect on August 1, 1986.

The amended rules will apply to checks and other items (for amendments to subpart A) or transfer items or requests (for amendments to subpart B) received by a Reserve Bank on or after the applicable effective date.

FOR FURTHER INFORMATION CONTACT: Earl G. Hamilton, Assistant Director, Division of Federal Reserve Bank Operations (202/452-3879); Joseph R. Alexander, Attorney, Legal Division (202/452-2489); or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202/452-3544).

SUPPLEMENTARY INFORMATION:

1. Reserve Bank Liability To Remote Parties

Section 210.6(a) of Regulation J presently provides that in collecting items a Reserve Bank acts only as the agent of its sender (i.e., the depository institution that forwards an item to a Reserve Bank for collection) and is not an agent for any other party in the transaction. This rule is referred to as the "sender rule". Because the liability of a collecting bank, such as a Reserve Bank, is predicated upon its status as agent, this provision has the effect of insulating a Reserve Bank from liability in collection cases from all parties except the sender. Accordingly, a third party that does not immediately precede a Reserve Bank in the collection process cannot bring an action against the Reserve Bank, even if it is able to demonstrate that is has been injured by the Reserve Bank's failure to exercise ordinary care in handling an item. This provision has been upheld by several courts. *See, e.g., Childs* v. *Federal Reserve Bank,* 719 F.2d 812 (5th Cir. 1983).

Under section 4–201(a) of the Uniform Commercial Code ("U.C.C."), a collecting bank other than a Reserve Bank is an agent or subagent of the owner of an item. Accordingly, the collecting bank may be held liable to parties other than the immediately preceding party if its improper handling of an item causes them harm.

The sender rule dates from the 1920s, before the state laws on check collection were standardized. At that time, the sender rule was in effect in a number of states, and the U.S. Supreme Court had previously approved the sender rule in cases where federal law was to be applied. *See, Exchange National Bank* v. *Third National Bank,* 112 U.S. 276 (1884); *see also, Federal Reserve Bank* v. *Malloy,* 264 U.S. 160, 164 (1924). The U.C.C., however, adopted a different rule, and it is the U.C.C. rule that is now almost universal.

The Board proposed to amend Regulation J to delete the sender rule so that Reserve Banks are subject to suit by the same parties that may bring actions against collecting banks, and to make it clear that warranties made by collecting banks and other prior parties under state law run to Reserve Banks as well as other collecting banks. All of the commenters supported the Board's proposal, and the Board has adopted the amendment as proposed.

2. Limitation Period

a. Action Against a Reserve Bank

Regulation J is silent as to the time limits in which a person may bring action against a Reserve Bank for mishandling checks or other items (in subpart A) and wire transfer items or requests (in subpart B). Consequently, courts may apply state law. This has resulted in a lack of uniform treatment among Reserve Banks, since applicable laws vary from state to state,[1] and it is often unclear even within a state which limitation period applies. *See Bank of America N.T. & S.A.* v. *Security Pacific National Bank,* 23 Cal. App. 3d 638, 100 Cal. Rep. 438 (1972); *First State Bank* v. *Tanner,* 495 S.W.2d 267 (Tex. Civ. App. 1973). Given the identical functions performed by Reserve Banks and their offices in collecting checks and handling wire transfers, the Board proposed to establish a uniform two-year limitation period for the commencement of actions against Reserve Banks for mishandling check collections and wire transfers.

Forty-one commenters responded to this proposal: 18 of them (44 percent) supported it; 23 (56 percent) opposed it. Opposing commenters based their opposition largely on their belief that this proposal represents an abuse of the Federal Reserve's regulatory authority by creating an advantage for Reserve Banks which is not enjoyed by their private sector counterparts. Opposing commenters pointed out that private sector collecting banks would not receive any benefit from this rule, and would still be subject to liability for up to six years. Nevertheless, most of the commenters, even those opposed to this proposal, supported the concept of a uniform statute of limitations for all depository institutions involved in check collection and wire transfer cases. This is especially important in light of the increasing importance of interstate banking.

This proposal, like all the proposals the Board is here adopting, was not intended to give a competitive advantage for Federal Reserve Banks vis-a-vis private sector institutions. Rather, the Board believes that the present state of the law, as regards both Reserve Banks and private sector institutions, is unsatisfactory. While the Uniform Commercial Code has standardized the responsibilities and liability of collecting banks throughout the nation, there has as yet been no attempt to standardize the time for which institutions may be held liable for mishandling checks. Thus, a collecting bank in Massachusetts may be held liable for three years, while one in Illinois id held liable for five years and one in California is held liable for four years,[2] even though the plaintiffs' actions against them may arise from exactly the same kinds of actions.

This problem will intensify as interstate banking becomes more of a reality, and it could result in inefficiencies in the check clearing process if banks shift their clearing operations to states with the most favorable laws. The Board believes that collecting banks, whether they are Reserve Banks or private sector correspondents, perform nearly identical functions regardless of where they are located, and should not be subject to differing periods of liability merely because of their location.

If a Reserve Bank does mishandle a check or wire transfer, the results of the mishandling should be apparent almost immediately. Requiring the injured party to sue within two years after the injury occurs does not appear to impose any significant hardship on any affected parties. A two-year period provides an adequate time for the institution involved to identify the problem, and if it cannot be resolved through discussions with its Reserve Bank, to bring an appropriate action against the Reserve Bank. The Board further believes that establishement of a two-year limitation on actions against Reserve Banks may serve as a model to encourage state legislatures to enact similar limitation periods.

In order to address the issues of comparability between Reserve Banks and collecting banks, one commenter suggested that the Board delay the effectiveness of this amendment until January 1, 1988, to give the states time to adopt similar legislation. The Board believes that this is a useful approach—it allows the Federal Reserve to encourage an improvement in payments law, while at the same time avoiding the appearance of the Federal Reserve's abusing its regulatory authority for competitive gain that some may see in this action. The Board believes, however, that a January, 1988, effective date would not give the states sufficient time to act, given the usual time for changes in uniform laws, and, therefore,

[1] While state statutes of limitations sometimes provide for specific limitations periods arising out of specific kinds of actions (*see e.g.,* Cal. Civ. Pro. Code § 340.5 (West 1982), which provides that, with certain exceptions, an action for professional negligence against a health care provider must be commenced within the shorter of three years after the date of the injury, or one year after the plaintiff either discovers the injury or should have discovered it through the use of reasonable diligence), such statutes generally do not address actions arising out of the collection of checks or the transferring of funds by wire. Rather, such actions are covered by more general statutes.

[2] *See,* Mass. Gen. Laws Ann . ch. 20, § 2A (West Supp. 1984); Ill. Stat. Ann. ch. 110, § 13–205 (Smith-Hurd 1982); Cal. Civ. Proc. Code § 343 (West 1982).

the Board is delaying the effective date of this amendment until January 1, 1990.

Accordingly, the Board has determined to adopt a two-year limitation, period for actions against a Reserve Bank for alleged mishandling of items under subpart A or wire transfer items or requests under subpart B. This amendment will take effect on January 1, 1990.

b. Action Against a Paying Bank for Failure To Give Notice of Nonpayment

In February, 1985, the Board adopted an amendment to Regulation J requiring paying banks to provide notice to depositary banks when they return unpaid large-dollar items presented by Reserve Banks. This amendment took effect on October 1, 1985. In responding to the Board's proposal, one commenter asked what statute of limitations applied to the depositary bank's claim against the paying bank for failure to comply with the notification requirement. As is the case with actions against a Reserve Bank, the limitations period of the state in which the paying bank is located would ordinarily be applied.

The Board sought comment on whether it would be appropriate to establish a two-year limitation period applicable to actions against a paying bank for failing to make the required notice of nonpayment. In the absence of such a rule, the application of different state limitation statutes could result in a paying bank in one state being in jeopardy for a longer period than a paying bank in another state even though both would be alleged to have violated a uniform requirement of a federal regulation in exactly the same way.

The commenters overwhelmingly supported the proposal. Of the 32 respondents commenting on this issue, 26 (81 percent) supported it.

Those commenters opposing the proposal generally believed that the limitation period for the notice of nonpayment requirement should be consistent with the limitation period for actions against Reserve Banks, and that both should be consistent with state law.

The Board believes the notification requirement should be applied uniformly, and that it should not work in conjunction with varying state laws to subject some persons to liability longer than others. Accordingly, the Board has adopted the proposed amendment.

3. Tender of Defense

Section 210.5 of Regulation J establishes a procedure that allows a Reserve Bank, when sued by a subsequent collecting or paying bank, to demand that the sender undertake defense of the action. This "tender of defense" provision simplifies forged indorsement cases by requiring the party that should have obtained a proper indorsement to come into the action and defend.[3] This provision, however, applies only when the action has been brought directly against a Reserve Bank. Litigation may be reduced by eliminating the requirement that an action must be brought against a Reserve Bank before defense is tendered by a Reserve Bank to a prior party. Accordingly, the Board sought comment on a proposed amendment that would accomplish this result.

The proposed amendment also incorporated a provision found in the uniform provisions of the Reserve Banks' operating circulars on the collection of cash items that provides that if a Reserve Bank tenders defense of an action to a prior party, the Reserve Bank is not responsible for defending the action.

Thirty-six comments were received on the proposal; 28 (78 percent) of them supported the proposal as eliminating multiple lawsuits. The eight comments opposing the proposal generally thought that Reserve Banks would be given an unfair advantage over private sector banks because of their ability to recover the amount of their liability by charging the sender's account.

The Board believes that the proposal will provide a more efficient way of handling forged indorsement cases. Further, the Board also believes that adoption of the proposal will not result in a significant increased advantage for Reserve Banks over competing private sector banks. The Reserve Banks already have the right to charge back under present procedures; this amendment would merely add a relatively limited class of cases to those instances when the charge-back would be applied under the current regulation. Further, many private sector institutions would be collecting checks only for parties that have accounts with them (e.g. other banks or individuals or corporate depositors), and could exercise a banker's right of set-off to recover amounts that they had been held liable for, thus approximating the Reserve Banks' right to charge back.

[3] A similar provision is found in U.C.C. § 3-803. The U.C.C. provision differs from the Regulation J tender provision in that the U.C.C. allows the person tendered defense to require other prior parties to defend the action. The U.C.C. provision also does not clearly permit the person tendering defense to recover the amount of the judgment and expenses of litigation by charging the prior indorser's account.

4. Deposit of Foreign Items

Regulation J defines the term "item" to include only instruments payable within a Federal Reserve District. Federal Reserve Districts include the United States, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa.[4] This definition effectively excludes from the coverage of Regulation J instruments drawn on payors located outside the United States, and consequently Reserve Banks do not collect such instruments. Many smaller institutions have indicated that this restriction imposes substantial hardships on them, because it requires them to maintain a separate relationship with a correspondent bank that would handle foreign items, and because foreign items inadvertently sent to a Reserve Bank are returned by the Reserve Bank, causing undue delay. Consequently, they have requested that Reserve Banks collect such items in order to reduce the operating burden the current limitation imposes.

Accordingly, the Board proposed an amendment to Regulation J that would allow depository institutions to deposit with their Reserve Banks items payable in foreign countries. At the time the Board proposed the amendment, Board and Reserve Bank staffs had not developed a proposal that would add the collection of foreign items to the priced services offered by the Reserve Banks. Thus, the proposed amendment did not specify a particular service arrangement, but would merely clear the regulatory obstacle to the service's implementation.

Forty-seven commenters addressed this proposal, 26 (55 per cent) opposed it, while 21 (45 per cent) supported it.

The negative commenters generally argued that, contrary to the Board's criteria for the introduction of new services; the Federal Reserve had not demonstrated any need for a foreign collection service, and that the Federal Reserve was using foreign collections as a means of gaining market share. Consequently, if the Board adopted the new service it would be abusing its regulatory power in order to advance the Reserve Banks' business interests. Several commenters also said that the Board had not provided sufficient detail in its proposal regarding such issues as operational procedures and prices.

After reviewing the comments, Board and Reserve Bank staffs undertook an effort to define the proposed service further in light of the commenters

[4] After Board action today, the Northern Mariana Islands also are within a Federal Reserve District.

concerns. The Board believes that a limited service will meet the objections to a more comprehensive Federal Reserve foreign collection service.

Accordingly, the Board has approved the proposed amendment to Regulation J, and is simultaneously adopting a policy applicable to Federal Reserve Banks under which the collection of foreign items will be an incidental service oriented toward existing depositors. Under this policy:

1. Each Reserve Bank will have the option to offer the service, and will determine which foreign items it will collect for its depositors.

2. Foreign items will be accepted only as an incidental service from regular depositors of domestic items. Further, Reserve Banks will not promote this service independently of regular check collection services.

3. Each Reserve Bank offering the service will solicit written proposals from depository institutions interested in collecting foreign items for the Reserve Bank.

The depository institutions should be asked to specify the terms for their service, including per item fees, availability, exchange rates, and other factors deemed important by the Reserve Bank. The Reserve Bank will then select an institution based upon the Reserve Bank's determination of the best combination of terms available among the proposals. No contract with a correspondent institution for foreign collections will be for a period of more than two years, after which time the Reserve Bank will solicit new proposals.

4. Reserve Bank prices will be based on the prices and terms obtained from the solicitation process. A Reserve Bank's price will include the fees paid to the correspondent and the Reserve Bank's full costs for handling the item. The PSAF will be applied to the appropriate Reserve Bank costs; it need not be applied to the correspondent's fees, which already will include the costs (such as taxes and return on capital) imputed with the PSAF.

Because of the limited nature of this new service, the Board does not expect that it will have any significant long-run effects on the nation's payments system, and accordingly it is not necessary under the Board's pricing principles to publish for public comment the prices and service arrangements.

5. Damages for Wire Transfers

Regulation J currently provides that a Reserve Bank may be liable for damages if it fails to exercise ordinary care or act in good faith in handling a wire transfer of funds. Regulation J, however, does not clearly specify that a Reserve Bank is liable only for direct damages and is not liable for consequential damages.

The Board proposed to amend Regulation J to limit a Reserve Bank's liability for mishandling wire transfer items and requests to damage that is directly and immediately attributable to the mishandling and to make it clear that a Reserve Bank will not be liable for consequential damages.

Of the 38 comments received on this proposal, 25 (66 per cent) supported it, while 13 (34 per cent) were opposed. Those opposing the proposal generally acknowledged that institutions have amended their contracts with customers to avoid liability for consequential damages, but said that contractual arrangements could not provide them with the same level of security that a federal regulation would provide to the Reserve Banks. Therefore, adoption of the amendment would give an advantage to the Reserve Banks that results from the exercise of regulatory authority and not the competitive merits of the Fedwire service.

The Board believes that these objections are not well founded. Even those that opposed this amendment generally acknowledged that the standard that the proposal seeks to achieve for the Reserve Banks is the standard of the industry, and the Board does not believe that it would be appropriate for Reserve Banks to bear a substantially greater risk of liability than the rest of the banking industry.

Although it may be true that a federal regulation would provide more protection to a Reserve Bank than a similar provision in a wire transfer agreement would provide to private sector institutions, the Board does not believe that this is sufficient reason for not going forward with a desirable change to Regulation J. As with the proposal regarding the period during which actions may be commenced against a Reserve Bank for mishandling checks and wire transfers, the Board believes that this concept is a desirable one for the industry as a whole, and, to the extent that institutions transmitting wire transfers on the behalf of customers cannot protect themselves through agreements, state laws should be amended to insulate transmitting banks from liability for consequential damages in the area of wire transfers.[5] The Board believes that it can best induce these changes by taking the lead and adopting this proposal.

6. Northern Mariana Islands

The San Francisco Reserve Bank had received a request from a bank in the Northern Mariana Islands for a routing number so that collecting banks could automatically process checks drawn on it. Because the Northern Marianas are not now located in any Federal Reserve District for collection purposes, Regulation J would have to be amended. Because of precedent in amendments to Regulation J that redefined the Twelfth District to include Guam and American Samoa, the Board proposed to include the Northern Mariana Islands within the Twelfth District.

There was no opposition to the proposal in the public comments, and the Board has adopted it.

7. Incorporating U.C.C. Definitions

Regulation J defines several terms used in the regulation. For the most part, these definitions define terms that are not found in the U.C.C. (e.g., "paying bank" and "sender") or define terms differently than the U.C.C. does (e.g., "bank"). Other terms, however, are not defined in Regulation J, such as "good faith," "presentment," and "holder." As these terms are used without explicit definition, the Board proposed to amend Regulation J to adopt the terminology of the U.C.C. where it is not inconsistent with the definitions specifically provided in the regulation or where the context does not require a different interpretation.

There was no significant opposition to this proposal in the public comments, and the Board has adopted it.

8. Holiday Schedule for Notice of Nonpayment Provision

In October, 1985, the Board adopted as an interim rule an amendment to Regulation J that defined a holiday schedule for purposes of the requirement that paying institutions give notice of nonpayment for large-dollar checks directly to the depositary bank. The holidays adopted by the Board include all Saturdays and Sundays and the ten

[5] While the law has not been completely settled on this point, a leading case holds that consequential damages may not be awarded unless the transmitting bank is put on notice of the special circumstances giving rise to them. *Evra Corp.* v. *Swiss Bank Corp.*, 673 F.2d 951 (7th Cir. 1982). The Board, however, does not believe that this is a practical solution. It is not clear what kind of information would have to be available to the Reserve Bank, or how the Reserve Bank would have to be informed; nor is it clear whether the Reserve Bank would be in a position to evaluate the information that the customer provided. Rather, the Board believes that the customer originating the transfer is in the best position to know of the consequences of a failure to make a timely payment, and that customer should be required to take prudent steps to avoid these consequences and should bear the risks if those steps prove to be inadequate.

holidays observed by the federal government.[6]

One significant issue that was raised by the commenters concerned the treatment of fixed-date holidays (such as July 4) falling on Saturday or Sunday. Under the temporary rule, a holiday falling on a Sunday would be observed on the following Monday, and one falling on a Saturday would be observed on the previous Friday. The commenters agreed with the treatment of holidays falling on Sundays, but several said that usual banking industry practice was not to close on the previous Friday if the holiday falls on a Saturday. They also pointed out that, for example, Friday, December 31, would probably be an important business day for customers, and that it would be useful to get notification of nonpayment on such days.

The Board agrees with these comments, and, in making the temporary rule final, it has amended the rule by deleting the clause that provides that a fixed-date holiday falling on a Saturday will be observed on the previous Friday.[7]

9. Nonstandard Holiday Float

In November, 1985, the Board proposed that Regulation J be modified so that a paying institution electing to close on a voluntary nonstandard holiday would be given the option of accepting the debit for checks that would have been presented to it if it were open for business or paying for the value of the float.[8] The Board noted that the increasing prevalence of interstate banking created the potential for increases in such float, and that current procedures for deferring credit to senders for nonstandard holiday float are generally limited to those instances where all banks in a state are closed.[9]

Against this background, the Board proposed to require paying banks that voluntarily close on nonstandard holidays to pay for cash items made available to them on such days. If the nonstandard holiday is mandatory, the paying bank would not have to pay for items made available by its Reserve Bank.

Because it is difficult to distinguish between mandatory and voluntary holidays, a preliminary list of proposed mandatory nonstandard holidays was issued as part of the Board's request for public comment. In order to provide sufficient time to identify all mandatory holidays, an implementation date of January 1, 1987, was proposed.

Forty-three of the 45 commenters on this proposal supported it. Two comments opposed this proposal, albeit for different reasons. One commenter suggested that the proposal was unfair to small, rural banks; the other commenter suggested that the problem of interstate banking, which increases the potential for nonstandard holiday float, is unique to Delaware and, as such, the proposal should only apply to institutions in that state.

The Board does not believe that the proposal is unfair to small, rural banks or other institutions. Some institutions may observe more voluntary nonstandard holidays than others, but the Board believes that this is a voluntary decision made by the institutions, and it is reasonable that the institutions be made responsible for the float incurred by their actions. The Board also believes that a national policy to deal with float resulting from the observance of voluntary nonstandard holidays is appropriate given the expansion of interstate banking throughout the United States.

Accordingly, the Board has approved the proposed amendment to Regulation J that will give a paying bank electing to close on a voluntary nonstandard holiday the option of accepting the debit for cash items that would have been presented to it if it had been open for business or of paying for the value of the float.

Regarding the Board's request for comment on a preliminary list of mandatory nonstandard holidays, a number of commenters offered suggestions for changing or adding to the list. Suggestions were made to add Patriot's Day, Seward's Day, Easter Monday, Alaska Day, and the day after Christmas to the list of mandatory nonstandard holidays for various states.

The Board believes that some of the holidays may in fact be mandatory, but that these issues should be resolved locally. Each Reserve Bank whose District contains states observing mandatory nonstandard holidays should publish as an appendix to its operating circular on the collection of cash items a list of mandatory nonstandard holidays observed in its District.

Regulatory Flexibility Analysis

The Board does not believe that these amendments will have a significant economic impact on a substantial number of small businesses or organizations.

List of Subjects in 12 CFR Part 210

Banks, banking, Federal Reserve System.

PART 210—[AMENDED]

Pursuant to its authority under section 13 of the Federal Reserve Act, 12 U.S.C. 342; section 16 of the Federal Reserve Act, 12 U.S.C. 248[o] and 360; section 11(i) of the Fedeal Reserve Act, 12 U.S.C. 248(i); section 19(f), 12 U.S.C. 464; and other provisions of law, the Board hereby amends 12 CFR Part 210, Regulation J, as set forth below:

1. The authority citation for Part 210 continues to read as follows:

Authority: Federal Reserve Act, sec. 13, 12 U.S.C. 342; sec. 11(i), 12 U.S.C. 248(i) sec. 16, 12 U.S.C. 248(o) and 360; and sec. 19(f), 12 U.S.C. 464.

2. By adding a new undesignated paragraph to the end of § 210.2, and by revising footnote 1 to read as follows:

§ 210.2 Definitions.

* * * * *

Unless the context otherwise requires, the terms not defined herein have the meanings set forth in the Uniform Commercial Code.

[1] For purpose of this subpart, the Virgin Islands and Puerto Rico are deemed to be in the Second District, and Guam, American Samoa, and the Northern Mariana Islands in the Twelfth District.

3. In § 210.3, new paragraph (e) is added to read as follows:

§ 210.3 General provisions.

* * * * *

(e) *Foreign items.* A Reserve Bank also may receive and handle certain items payable outside a Federal Reserve District, as provided in its operating circulars. The handling of such items in a state is governed by this subpart, and the handling of such items outside a state is governed by the local law.

4. In § 210.5, paragraphs (a) (2), (b), and (c) are revised to read as follows:

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[6] In a related action today, the Board approved a Reserve Bank proposal to adopt a standard holiday schedule beginning in 1987.

[7] This treatment conforms to the standard Reserve Bank holiday schedule referred to in note 7.

[8] Daily average nonstandard holiday float in cash item collection services is now approximately $5 million.

[9] The Board noted in its original proposal, 50 FR 47,772 (Nov. 20, 1985), that the Delaware State Bank Commissioner permits banks located in that state to close on any day they choose, provided they give the public advanced notice. Banks with affiliates in other states may take advantage of this fact to close on days that their out-of-state affiliates are closed, regardless of whether other banks in Delaware are closed, and regardless of whether the Philadelphia Reserve Bank is observing the holiday. The Board noted that this situation creates the potential for substantial increases in nonstandard holiday float, and that cases like this are likely to increase as interstate banking becomes more prevalent.

§ 210.5 Sender's agreement; recovery by Reserve Bank.

(a) * * *

(2) Warrants to each Reserve Bank handling the item that: (i) The sender has good title to the item or is authorized to obtain payment on behalf of one who has good title (whether or not this warranty is evidenced by the sender's express guaranty of prior indorsements on the item); and

(ii) To the extent prescribed by state law applicable to a Reserve Bank or subsequent collecting bank handling the item, the item has not been materially altered; but this subparagraph (a)(2) does not limit any warranty by a sender or other prior party arising under state law; and

* * * * *

(b) *Recovery by Reserve Bank.* If an action or proceeding is brought against (or if defense is tendered to) a Reserve Bank that has handled an item, based on:

(1) The alleged failure of the sender to have the authority to make the warranty and agreement in paragraph (a)(1) of this section;

(2) Any action by the Reserve Bank within the scope of its authority in handling the item; or

(3) Any warranty made by the Reserve Bank under § 210.6(b) of this subpart, the Reserve Bank may, upon entry of a final judgment or decree, recover from the sender the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay because of the judgment or decree of the tender of defense, together with interest thereon.

(c) *Methods of recovery.* The Reserve Bank may recover the amount stated in paragraph (b) of this section by charging any account on its books that is maintained or used by the sender (or if the sender is another Reserve Bank, by entering a charge against the other Reserve Bank through the Interdistrict Settlement Fund), if:

(1) The Reserve Bank made seasonable written demand on the sender to assume defense of the action or proceeding; and

(2) The sender has not made any other arrangement for payment that is acceptable to the Reserve Bank.

The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged through the Interdistrict Settlement Fund may recover from its sender in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (a)(3) of this section.

* * * * *

5. In § 210.6, paragraph (a)(1) is revised, and, effective January 1, 1990, new paragraph (c) is added as set forth below:

§ 210.6 Status, warranties, and liability of Reserve Bank.

(a)(1) *Status and liability.* A Reserve Bank shall act only as agent or subagent of the owner in respect of an item. This agency terminates not later than the time the Reserve Bank receives payment for the item in actually and finally collected funds and makes the proceeds available for use by the sender. A Reserve Bank shall not have or assume any liability in respect of an item or its proceeds expect for the Reserve Bank's own lack of good faith or failure to exercise ordinary care and except as provided in paragraph (b) of this section.

* * * * *

(c) *Time for commencing action against Reserve Bank.* A claim against a Reserve Bank for lack of good faith or failure to exercise ordinary care shall be barred unless the action on the claim is commenced within two years after the claim accrues. A claim accrues on the date when a Reserve Bank's alleged failure to exercise ordinary care or to act in good faith first results in damages to the claimant.

6. Effective January 1, 1987, the last sentence of § 210.9(a)(2) is revised to read as follows:

§ 210.9 Payment.

* * * * *

(a) * * *

(2) * * * A paying bank that closes voluntarily on a day that is a banking day for the Reserve Bank shall either pay on that day by the close of the Reserve Bank's banking day for cash items that the Reserve Bank makes available to the paying bank on that day, or compensate the Reserve Bank for the value of the float associated with the items in accordance with procedures provided in its Reserve Bank's operating circular; in such circumstances, the paying bank is not considered to receive the item until its next banking day.

7. In § 210.12, paragraph (c)(10) is revised and new paragraph (c)(11) is added as set forth below:

§ 210.12 Return of cash items.

(c) * * *

(10) The following days shall not be considered banking days for purposes of the deadline for notice of nonpayment: Saturdays and Sundays, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, and December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next following Monday shall not be considered a banking day for purposes of this subsection.

(11) A claim for failure to comply with the requirements of this paragraph (c) is barred unless the action on the claim is commenced within two years after the date upon which the notice was required to be received by the depositary bank.

8. In § 210.38, paragraph (b) is revised to read as follows:

§ 210.38 Reserve Bank liability.

* * * * *

(b) *Damages.* A Reserve Bank is liable to its immediate transferor for a failure to credit the amount of a transfer item or request to the transferee's account caused by a Reserve Bank's failure to exercise ordinary care or act in good faith. A Reserve Bank's liability for such a failure to credit is limited to damages that are attributable directly and immediately to the failure to credit, but does not include damages that are attributable to the consequences of the failure to credit, even if such consequences were foreseeable at the time of such failure.

* * * * *

9. Effective January 1, 1990, in § 210.38, paragraph (b) is redesignated paragraph (b)(1), and new paragraph (b)(2) is added as follows:

§ 210.38 Reserve Bank liability.

* * * * *

(b) * * *

(2) A claim against a Reserve Bank for failure to exercise ordinary care or to act in good faith shall be barred unless the action on the claim is commenced within two years after the claim accrues. A claim accrues on the date a Reserve Bank's alleged failure to exercise ordinary care or to act in good faith first results in damages to the claimant.

* * * * *

By order of the Board of Governors, June 6, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-13219 Filed 6-13-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Nos. 85-AWA-7 and 85-AWA-10]

Establishment of Airport Radar Service Areas

Correction

In FR Doc. 86-11991 beginning on page 19490 in the issue of Thursday, May 29, 1986, make the following corrections:

1. On page 19493, in the third column, in the second complete paragraph, seventeenth line, "data" should read "date".

PART 71—[CORRECTED]

2. On page 19496, in the second column, the authority citation should read:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Corrected]

3. On page 19496, in the second column, under the heading "Dallas Love Field. . .", the first word should read "That".

4. On page 19496, in the third column, under the heading "Dulles International Airport. . .", fifteenth line, "the" should read "that".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification; Progesterone and Estradiol Benzoate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Syntex Agribusiness, Inc., providing for use of progesterone and estradiol benzoate in combination in subcutaneous ear implants for increased rate of weight gain in suckling beef heifer calves intended for breeding purposes.

EFFECTIVE DATE: June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, has filed a supplemental NADA 9-576 providing for use of Cynovex® C (progesterone and estradiol benzoate) in an ear implant for increased rate of weight gain in suckling beef heifer calves intended for breeding purposes. The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(5).

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.1940 [Amended]

2. In § 522.1940 *Progesterone and estradiol benzoate in combination* in paragraph (d)(1)(ii) by revising the phrase "Growth promotion" to read "Increased rate of weight gain" and in paragraph (d)(1)(iii) by revising the phrase "do not use in veal calves or calves intended for reproduction" to read "do not use in veal calves or in bull calves intended for reproduction".

Dated: June 9, 1986.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.

[FR Doc. 86-13441 Filed 6-13-86; 8:45 am]

BILLING CODE 4100-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 19

[T.D. ATF-230; Re: Notice No. 575]

Distilled Spirits Plants; Mixtures of Distilled Spirits and Wines

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends regulations containing the definition of "Spirits or distilled spirts", which were promulgated in T.D. ATF-198, 50 FR 8456 (1985), to exclude those mixtures of wine and spirits which are removed and sold as wine. The amended definition conform the regulations to 26 U.S.C. 5362(b)(2) which prohibits the removal of wine from the bonded premises of a distilled spirits plant for consumption or sale as wine.

EFFECTIVE DATE: July 16, 1986.

FOR FURTHER INFORMATION CONTACT: Shirley C. Osborne or J.R. Whitley, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. Telephone: (202) 566-7531.

SUPPLEMENTARY INFORMATION:

Regulatory Analysis

Prior to the Distilled Spirits Tax Revision Act of 1979 (Pub. L. 96-39, 93 Stat. 273), taxpaid wine could be received on the bottling/rectifying premises of a distilled spirits plant (DSP) for bottling or rectifying as a wine or wine product or for use in the manufacture of a distilled spirits

product. A DSP proprietor who used the wine for a wine or wine product, could become liable for additional wine taxes as a result of (1) the increase in volume of the wine, (2) an increase in the taxable grade of the wine, or (3) the manufacture of a wine product.

With the all-in-bond concept, enacted in the Distilled Spirits Tax Revision Act of 1979, the bottling and rectifying operations of a DSP were required to be conducted on bonded premises. However, Congress made it clear that wine transferred to the bonded premises of a DSP could be used only in the production of a distilled spirits product and that a wine product must be produced only on bonded wine cellar premises. Accordingly, Congress amended 26 U.S.C. 5262(b) to provide that wine could be transferred from a bonded wine cellar to the bonded premises of a DSP, but "Any wine transferred to the bonded premises of a distilled spirits plant . . . may not be removed from such bonded premises for consumption or sale as wine."

Congressional intent was stated in the Senate Report (S. Rep. No. 96–249, on H.R. No. 4537, 96th Cong., 1st Sess. 226 (1979)) as follows: "such wine (which has been transferred to the bonded premises of a DSP) must be used solely in the manufacture of a distilled spirits product . . . All other operations involving the rectification or bottling of wines formerly done on the premises of a distilled spirits plant will be required to be conducted on the premises of a bonded wine cellar or taxpaid wine bottling house."

In promulgating the final rule for 27 CFR Part 19, ATF took the position that mixtures of distilled spirits and wine containing more than 50 percent wine on a proof gallon basis and bottled at 48° proof or less were excepted from the requirements relating to liquor bottles, labels and strip stamps, and that such mixtures were subject to the formula requirements in 27 CFR Part 5 relating to distilled spirits and to the labeling, advertising and standards of fill regulations in 27 CFR Part 4 relating to wine. The effect of this position was to tax such mixtures as distilled spirits, and to require such products to be labeled as wine.

It has come to our attention that this position produces a serious adverse effect on the excise tax revenues derived from these mixtures. This is because such mixtures, when taxed as a distilled spirits product, on a proof gallon basis, may be taxed at a rate as little as 7 cents a gallon, whereas a like product is taxed at a rate of 17 cents or $2.40 a gallon if produced at a bonded wine cellar. This result may occur because the product can be increased in volume by proof dilution or carbonated on DSP premises without an increase in tax liability.

However, it is clear from law and legislative history that Congress never intended such a result. As a result, we have reevaluated our position and determined that these products are wine and that as such their removal from a distilled spirits plant is precluded by section 5362(b).

Rulemaking Procedure

Based on the foregoing, ATF published a notice of proposed rulemaking [Notice No. 575, December 17, 1985, 50 FR 51408], proposing to amend the regulations in 27 CFR Parts 5 and 19 containing the definition of "Spirits or distilled spirits" to exclude mixtures of wine and distilled spirits containing more than 50 percent wine on a proof gallon basis and bottled at 48° proof or less.

In response to Notice No. 575, ATF received one comment from Heublein, Inc. They stated that they understand our desire to ensure that appropriate tax rates are used for products which contain both wine and distilled spirits. However, they disagree with our approach. As an alternative, they suggested that each component of the mixture be tax determined (at the applicable distilled spirits or wine rate) at the point of processing. We believe this procedure is contrary to the provisions of 26 U.S.C. 5612 since it would result in tax determined wine and distilled spirits being allowed to remain on bonded premises. We therefore cannot adopt this comment.

Accordingly, this final rule amends the regulation in 27 CFR Parts 5 and 19 which contains the definition of "Spirits or distilled spirits" to make it clear that mixtures of distilled spirits and wine containing more than 50 percent wine on a proof gallon basis and bottled at 48° proof or less are not distilled spirits products for tax purposes and that such products are wine. In addition, §§ 19.36 and 19.381 are amended to prohibit the removal of such wine from the bonded premises of a distilled spirits plant for consumption or sale as wine.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) A significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 19

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

Drafting Information

The principal authors of this document are Shirley C. Osborne and J.R. Whitley, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

For the reasons set out in the preamble, the Director amends Subchapter A, Chapter I, Title 27 of the Code of Federal Regulations.

Section A: Part 5 is amended as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Paragraph 1. The authority citation for Part 5 is revised to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

§ 5.11 [Amended]

Par. 2. Section 5.11 is amended by removing the last sentence of the definition for distilled spirits.

Section B: Part 19 is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.11 [Amended]

Par. 2. Section 19.11 is amended by revising the definition for spirits or distilled spirits to read as follows:

* * * * *

Spirits or distilled spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced) but not denatured spirits unless specifically stated. The term does not include mixtures of distilled spirits and wine, bottled at 48° proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

* * * * *

§ 19.36 [Amended]

Par. 3. Section 19.36 is amended by adding a sentence at the end of paragraph (a) reading as follows:

* * * Wine may not be removed from the bonded premises of a distilled spirits plant for consumption or sale as wine.

§ 19.381 [Amended]

Par. 4. Section 19.381 is amended by adding a sentence immediately after the first sentence in paragraph (e) reading as follows:

* * * However, wine may not be removed from the bonded premises of a distilled spirits plant for consumption or sale as wine. * * *

Signed: May 13, 1986.

Stephen E. Higgins,

Director.

Approved: May 30, 1986.

Francis A. Keating III,

Assistant Secretary (Enforcement).

[FR Doc. 86-13523 Filed 6-13-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Ch. XXV

Technical Amendment of Rules Relating to Pension and Welfare Benefits

Correction

In FR Doc. 86-13081 appearing on page 21163 in the issue of Wednesday, June 11, 1986, make the following correction:

In the first column, the **EFFECTIVE DATE** should read "June 11, 1986".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 80

[CGD 84-091]

International Regulations for Preventing Collisions at Sea; 1972, COLREGS Demarcation Lines

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared on pages 7785 thru 7788 of the **Federal Register** on Thursday, March 6, 1986, [51 FR 7785]. This action is necessary to correct minor errors in descriptions of five COLREGS Demarcation Lines.

FOR FURTHER INFORMATION CONTACT: LCDR Charles K. Bell, Commandant (G-NSR-3), U.S. Coast Guard, 2100 Second Street SW., Washington, D.C. 20593; (202) 245-0108. The following corrections are made in CGD 84-091 appearing on page 7785 of the **Federal Register**, in the issue of March 6, 1986:

1. On page 7786, column two, in § 80.520, paragraph (a) is correctly revised to read:

§ 80.520 Cape Hatteras, NC to Cape Lookout, NC.

(a) A line drawn from Hatteras Inlet Lookout Tower (30°11.8′ N 75°44.9′ W) 255° true to the eastern end of Ocracoke Island.

2. On page 7786, column three, in § 80.735, paragraph (a) is correctly revised to read:

§ 80.735 Miami, FL to Long Key, FL.

(a) A line drawn from the southernmost extremity of Fisher Island 212° true to the point latitude 25°45.0′ N. longitude 80°08.6′ W. on Virginia Key.

* * * * *

3. On page 7786, column three, § 80.740 is correctly revised to read:

§ 80.740 Long Key, FL to Cape Sable, FL.

A line drawn from the microwave tower charted on Long Key at approximate position latitude 24°48.8′ N. longitude 80°49.6′ W. to Long Key Light 1; thence to Arsenic Bank Light 2; thence to Sprigger Bank Light 5; thence to Schooner Bank Light 6; thence to Oxfoot Bank Light 10; thence to East Cape Light 2; thence through East Cape Daybeacon 1A to the shoreline at East Cape.

4. On page 7787, first column, § 80.753(d) is correctly revised to read:

§ 80.753 St. Petersburg, FL to the Anclote, FL.

* * * * *

(d) A line drawn from the northernmost extremity of Honeymoon Island to Anclote Anchorage South Entrance Light 7; thence to Anclote Key 28°10.0′ N. 82°50.6′ W; thence a straight line through Anclote River Cut B Range Rear Light to the shoreline.

5. On page 7788, first column, § 80.1225 is correctly revised to read:

§ 80.1225 Santa Cruz Harbor, CA.

A line drawn from the seaward extremity of the Santa Cruz Harbor East Breakwater to Santa Cruz Harbor West Breakwater Light; thence to Santa Cruz Light.

Signed: June 10, 1986.

W.J. Brogdon, Jr.,

Captain, U.S. Coast Guard; Acting Chief, Office of Navigation.

[FR Doc. 86-13485 Filed 6-13-86; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 1

Collection of Social Security Numbers

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) is amending its regulation which governs the collection and safeguarding of social security numbers in veterans benefits matters. The revised regulation is designed to assure compliance with the Privacy Act, the Debt Collection Act of 1982, and the Tax Reform Act of 1984.

EFFECTIVE DATE: These final regulations will be effective July 16, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 389–3042.

SUPPLEMENTARY INFORMATION: On August 2, 1984, the VA published in the **Fedeal Register** (49 FR 30979) proposed regulations to authorize collection of social security numbers from persons applying for VA guaranteed home loans. Section 4 of Pub. L. 97–365 (96 Stat. 1749), the Debt Collection Act of 1982, requires each Federal agency administering an "included Federal loan program" to require any person applying for a loan under such program to furnish their taxpayer identification number, which in the case of an individual is the social security number. Section 7 of Pub. L. 97–365 authorizes the Secretary of the Treasury, upon written request, to disclose to the head of the Federal agency administering any "included Federal loan program" whether or not an applicant for a loan under such program has a tax delinquent account. An "included Federal loan program" is defined as any program under which the United States or a Federal agency makes, guarantees, or insures loans, and with respect to which there is in effect a determination by the Director of OMB (Office of Management and Budget), published in the **Federal Register**, that the disclosure will substantially prevent or reduce future delinquencies under such program. OMB has made this determination with respect to the VA loan guaranty program (47 FR 57595, December 27, 1982).

Four public comments were received on the proposed regulations, all from the mortgage lending community. Three of the commentators expressed concern over the inconvenience, delays, and increased cost which could result to all veteran homebuyers, not just delinquent taxpayers. They observed that timeliness of service is a key consideration in mortgage lending, and that excessive delay in screening applicants for tax debts could jeopardize the relationship between realtors and the mortgage bankers they work with to the detriment of veteran homebuyers and the VA loan guaranty program. They urged that the system not be implemented until adequately tested. The VA is acutely aware of the importance of timely loan processing, as was the Congress in enacting Pub. L. 97–365. On page 25 of the Senate Committee report on the bill, Report No. 97–378, discussing section 7, it is noted that: "It is imperative that the Internal Revenue Service respond as soon as practicable to the request of the lending agency." VA agrees that a rapid and accurate record check is essential if veteran homebuyers are to continue to enjoy the advantages of a VA guaranteed home loan.

Two of the commentators requested greater specificity in the regulation. They requested a definition for the term "delinquent taxpayer," a description of the procedure for notifying the applicant of the requirement for a social security number and the uses to which it will be put, clarification of responsibility for collecting and forwarding the social security number, especially for lenders with automatic authority, and whether prescribed forms or a telephone procedure would be employed. While this regulatory amendment authorizes collection of social security numbers from loan applicants, as required by Pub. L. 97–365, veterans' loan applications will not be delayed for taxpayer screening unless timely and efficient systems can be developed and tested for such screening.

Recent discussions with the Internal Revenue Service indicate that a check of loan applicants against delinquent taxpayer records would have to be performed under Revenue Procedure 84–20. Under that procedure, VA would be required to collect, batch and encode the necessary information onto magnetic tape for forwarding to IRS and matching against their tapes. It appears that an average of one to two months would elapse on the average case in determining whether the applicant was in delinquent taxpayer status. Loan processing delays of this magnitude would effectively preclude all veteran home purchasers, not just those who may be delinquent taxpayers, from using their home loan benefit. Therefore, a program to screen loan applicants will not be implemented until such screening can be done in a manner that will not substantially hinder loan applicants from receiving VA guaranteed loans in a timely manner.

One commentator suggested that, contrary to the Regulatory Flexibility Act certification for the proposed regulations, there would be a substantial economic impact upon small entities. The commentator observed that taxpayer screening would cause unreasonable delays and be troublesome and costly for all veterans, real estate firms, home builders and others associated with the housing industry. The VA does plan to implement a taxpayer screening program, but it will not be implemented until the screening method is developed that would not unduly slow down the processing of loan applications. The Regulatory Flexibility Act certification has been revised to note that the collection of taxpayer identification numbers from VA loan applicants is required by Pub. L. 97–365, and any economic impact is the result of the law, not the regulation.

Title 38, Code of Federal Regulations, § 1.575(b), previously authorized collection and safeguarding of social security numbers in connection with payment of certain compensation and pension benefits. This section is also amended to authorize collection, with appropriate safeguards, of social security numbers from all applicants for loans and existing borrowers under chapter 37, Title 38, United States Code. Section 7(a) of the Privacy Act, Pub. L. 93–579, prohibits the denial of any right or privilege based upon a person's refusal to provide his or her social security numbers (SSN) (26 U.S.C. 6109(d)), and the borrower is required to provide this number to VA so that VA can make these reports. Therefore, the mandatory VA collection of social security numbers or other taxpayer identification number from loan applicants and existing borrowers is required by Federal statutes; hence it is authorized under the Privacy Act.

Section 1.575(c) provides safeguards on the use of social security numbers and limits their use and disclosure to specified instances when required by law. This section is amended to include disclosure to the Internal Revenue Service, to make reports required by laws as an additional allowable disclosure. The final regulations have been expanded from the proposed version to include all loan applicants (guaranteed, vendee and direct loan applicants), as authorized under Pub. L. 97–365. Vendee loans are loans made by the VA to finance the purchase of properties acquired by VA as a result of foreclosure of a guaranteed loan. Direct loans are those made by VA to a home purchaser, and are presently limited to recipients of specially adapted housing grants. We have also added the phrase "or taxpayer identification number," to

provide for any case in which the loan applicant or existing borrower does not have a social security number or is a corporate entity. For existing direct and vendee borrowers, specific authority has been added to disclose social security or taxpayer identification numbers to the Internal Revenue Service in connection with reporting of interest paid to VA by those borrowers and reporting of foreclosures and abandonments, as required by Pub. L. 98–369. The language providing for screening against IRS delinquent tax records, which was included in the proposed regulation, has been deleted.

The changes from the proposed regulations to authorize collection of SSNs from existing direct and vendee loan borrowers and disclosure to IRS in connection with reporting of mortgage interest paid, foreclosures and abandonments of property are required by Pub. L. 98–369 and section 6109 of the Internal Revenue Code. Republication of these regulations in proposed form to obtain public comment would serve no useful purpose and would delay implementation of the law. Accordingly, these provisions are being published as final regulations at this time.

The Administrator hereby certifies that these regulation changes will not have a significant economic impact on any small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. sections 601–612. The collection of taxpayer identification numbers is required by Public Law 97–365 and Pub. L. 98–369. Therefore, any economic impact is the result of the law, not the regulations. Pursuant to 5 U.S.C. 605(b), these regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The amendments have been reviewed pursuant to Executive Order 12291, Federal Regulation, and have been found to be nonmajor regulations. The regulation changes will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

These amendments are adopted under authority granted to the Administrator by section 210(c) of title 38, United States Code, and section 4 of Pub. L. 97–365.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, claims, employment, government employees, Freedom of Information and Privacy, government property.

Approved: May 9, 1986.

PART 38—[AMENDED]

Thomas K. Turnage,

Administrator.

In 38 CFR Part 1, General, §§ 1.575 (b) and (c) are revised to read as follows:

§ 1.575 Social security numbers in veterans' benefits matters.

* * * * *

(b) The VA may require mandatory disclosure of a claimant's or beneficiary's social security number (including the social security number of a dependent of a claimant or beneficiary) on necessary forms as prescribed by the Administrator, as a condition precedent to receipt or continuation of receipt of compensation (where affected by outside income) or pension payable under the provisions of Chapter 11, 13, and 15 of Title 38, United States Code. The VA may also require mandatory disclosure of an applicant's social security number as a condition for receiving loan guaranty benefits and a social security number or other taxpayer identification number from existing direct and vendee loan borrowers and as a condition precedent to receipt of a VA-guaranteed loan, direct loan or vendee loan, under chapter 37 of title 38, United States Code. (Pub. L. 97–365, sec. 4)

(c) A person requested by the VA to disclose a social security number shall be told, as prescribed by § 1.578(c), whether disclosure is voluntary or mandatory. The person shall also be told that the VA is requesting the social security number under the authority of Title 38, United States Code, or in the case of existing direct or vendee loan borrowers, under the authority of 26 U.S.C. 6109(a) in conjunction with sections 145 and 148 of Pub. L. 98–369, or in the case of loan applicants, under the authority of section 4 of Pub. L. 97–365. The person shall also be told that it will be used in the administration of veterans' benefits in the identification of veterans or persons claiming or receiving VA benefits and their records, that it may be used in making reports to the Internal Revenue Service where required by law, and to determine whether a loan guaranty applicant has been identified as a delinquent taxpayer by the Internal Revenue Service, and that such taxpayers may have their loan applications rejected, and that it may be used to verify social security benefit entitlement (including amounts payable) with the Social Security Administration and, for other purposes where authorized by both Title 38, United States Code and the Privacy Act of 1974, (Pub. L. 93–579), or, where required by another statute. (Pub. L. 97–365, sec. 4)

[FR Doc. 86–13296 Filed 6–13–86; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Three-Digit Sortation of ZIP + 4 Presort Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rulemaking establishes optional mail preparation procedures that permit qualifying ZIP + 4 Presort First-Class mailings to be presorted to 3-digit ZIP Code areas only. The sortation of qualifying pieces to the 5-digit ZIP Code level will no longer be required. This change will eliminate unnecessary mail separations and enhance the ability of mailers to prepare additional qualifying Presort mail pieces bearing the ZIP + 4 code. Use of these new procedures is completely voluntary; mailers may continue to prepare ZIP + 4 Presort First-Class Mail as they currently do.

These optional procedures are limited in several respects: each piece in a qualifying mailing must be destined for a 3-digit area served by a postal facility with automated mail processing equipment, each mailing must have a minimum ZIP + 4 addressing level of 85 percent, and all pieces in a mailing must meet optical character readability requirements.

New verification and documentation procedures are also adopted for combined Presort mailings. Moreover, the current waiver of the ZIP + 4 addressing minimum for regular (non-optional) ZIP + 4 Presort mail is extended.

EFFECTIVE DATE: June 29, 1986.

FOR FURTHER INFORMATION CONTACT: Gerald J. Robinson, (202) 268–2983.

SUPPLEMENTARY INFORMATION: On January 23, 1986, the Postal Service published in the **Federal Register**, for

comment, a proposed rule concerning optional 3-digit mail preparation procedures for combined ZIP+4 Presort First-Class mailings. 51 FR 3079–3085. As explained more fully in the supplementary information accompanying the proposed rule, the change was proposed to improve the efficiency of postal operations and to simplify mailer preparation of ZIP+4 mailings.

These benefits occur because mail bearing a ZIP+4 code can be processed to the correct carrier route using optical character readers (OCRs) and bar code sorters (BCSs). At facilities where this automated equipment has been installed, ZIP+4 mail, presorted by the mailer into 3-digit ZIP Code groups, can be distributed to the carrier with one OCR and one BCS sort. Because mail must be processed first on an OCR to apply the bar code, ZIP+4 mail presorted to the 5-digit ZIP Code level also requires these two automated processing steps. Thus, the Postal Service can achieve the same processing efficiencies for ZIP+4 mail whether it is presorted to the 3- or the 5-digit level. Consequently, the Postal Service proposed to permit ZIP+4 Presort mailers to be eligible for the Presort discount on each piece in a qualifying ZIP+4 Presort mailing that is presented in a group of 50 or more properly prepared pieces addressed for delivery in a specified 3-digit area. The mailer would be relieved of the unnecessary preparation step of presorting the mailing to the 5-digit level first.

These proposed optional procedures were limited in several respects in order to avoid postal inefficiencies during the period of transition to comprehensive postal automation. To ensure that the 3-digit optional preparation procedures apply only where the automated processing on which they are based is available, qualifying mailings would be limited to mail that is destined for areas served by facilities with currently installed automated mail processing equipment. A 3-digit ZIP Code list for those areas is adopted as part of this final rule. To achieve the highest reasonable level of automated processing, each mailing would have to have a minimum ZIP+4 addressing level of 85 percent and all pieces in a mailing would be required to meet the optical character readability requirements currently applicable only to the ZIP+4 portion of combined mailings.

New verfication and documentation procedures were also proposed for combined Presort mailings entered either under the current regular preparation procedures or the proposed 3-digit preparation option.

The Postal Service received 25 comments in response to the proposed rule. The commenters consisted of two trade associations, nine representatives of the presort service bureau industry, seven business firms, four software and list processing companies, two public utilities, and the Postal Rate Commission, an independent establishment of the federal executive branch.

The majority of the commenters favored the 3-digit option rule the Postal Service adopts today. One commenter described the rule as "the only process that makes sense for both the U.S.P.S. and the mailer." Another stated that "we are in total agreement with the proposed changes" and "delighted that the Postal Service is constantly seeking ways to cut costs to mailers without diminishing its services." Yet another commenter described the benefits of the 3-digit option as follows:

> The proposed regulation change would allow us to sort a normal day's statement volume in one pass on our sorters. We view this, understandably, as an efficient new tool for our staff and a customer service enhancement since more of our statements will be completed early in the day for same-day presentment to the San Francisco and the Los Angeles Post Office.

In addition to voicing an opinion on the general desirability of the proposal, many commenters had more specific comments as well. Summaries of those comments, as well as the disposition of those comments in the final rule, are arranged by subject matter in the following paragaphs.

1. Legality of 3-Digit Presort Option

Two commenters raised concerns about the Postal Service's authority to permit mail sorted only to the 3-digit ZIP Code level to receive the Presort discount. The first questioned whether the proposal is consistent with the legal definition of Presort First-Class Mail, specifically footnote 1 of the First-Class Rate Schedule. The other commenter asserted that the proposal is contrary to the stipulation signed by the parties to the classification proceeding in which Presort First-Class Mail was established.

The first commenter's concerns appear to be based upon a misinterpretation of the pertinent postal rate and classification provisions. The basic sources for determining whether the Postal Service may implement new preparation procedures for ZIP + 4 Presort First-Class Mail are the Postal Reorganization Act, and the Domestic Mail Classification Schedule (DMCS) and the rate schedules established pursuant to it. The applicable language of the DMCS and the Act (*see, for example,* 39 U.S.C. 403, 404 and 3661) is very broad, and gives the Postal Service the necessary authority to alter the sequence of mail presortation. The general provision defining Presort First-Class Mail, DMCS section 100.022, states:

> Presorted first-class mail is first-class mail other than zone-rated (priority) mail which is presented in a single mailing of 500 or more pieces, properly prepared and presorted.

Proper preparation and presortion means prepared and presorted in accordance with requirements set by the Postal Service within the definitional boundaries of the DMCS. This is established by two additional sections within the First-Class Classification Schedule under section 100.04, Preparation of Mail:

> 100.041 First-Class Mail mailed under section 100.022 must be presorted in accordance with regulations prescribed by the Postal Service.
>
> 100.042 First-Class Mail mailed under section 100.022 must be prepared as follows:
>
> a. All pieces in a mailing must be presented in a manner specified by the Postal Service that preserves the presort and uniform orientation of the pieces.
>
> b. All pieces in a mailing must bear markings identifying them as presorted First-Class Mail, as required by the Postal Service.

The only requirement for presortation appears in footnote one to Rate Schedule 100, First-Class Mail. That footnote, which the commenter cited in support of its argument, states, in relevant part, that:

> Presorted First-Class Mail must be presented in a single mailing of at least 500 pieces properly prepared and presorted. The 5-digit presort rate applies only to each piece of a group of ten or more pieces destined for the same 5-digit ZIP code or each piece of a group of 50 or more pieces destined for the same 3-digit ZIP code.

The commenter claimed that ". . . the most obvious meaning of [this language] is that when 10 pieces for the same five-digit destination exist in a mailing submitted at the Presort Rate, they must be made up as a 10-piece group." However, the commenter provided no explanation as to why it believed this is "the most obvious meaning."

The Postal Service disagrees with this interpretation. Because this language uses the conjunction "or," its plain meaning is that the Postal Service has the option of requiring preparation of Presort First-Class Mail in 10-piece packages to 5-digit ZIP Code areas, or preparation of this mail in 50-piece packages to 3-digit ZIP Code areas, or a

combination of both. There is no language anywhere in the DMCS or the rate schedules which necessitates the preparation that the Postal Service currently requires by regulation—that all mail which can be made up in 10-piece packages to 5-digit areas must be so made up, and that only the remaining pieces can be prepared in 50-piece packages to 3-digit areas. As was explained in the proposed rule, postal operating efficiency has been the basis for this regulation and it is now the basis for the proposed change.

The second commenter raised the related argument that the proposed rule is contrary to an agreement of the parties in Postal Rate Commission (PRC) Docket No. MC76–5, the proceeding initiated to establish a full and complete DMCS. The commenter argued that a stipulated agreement, which was approved by the PRC, included a provision requiring that Presort First-Class Mail be presorted to the maximum extent possible in bundles of ten or more pieces to 5-digit destinations, with the remaining volumes sorted in bundles of fifty or more to 3-digit destinations. The commenter goes on to claim that the Governors of the Postal Service deleted this specific requirement from the DMCS recommended to them by the PRC in Docket No. MC76–5.

The Postal Service has been unable to discover any support for this commenter's view of the history of the Presort provisions. The Governors did not delete a presort density provision from the recommended DMCS, and the only stipulation pertaining to presort density appeared in the first mail classification case initiated pursuant to 39 U.S.C. § 3623, PRC Docket No. MC73–1. In fact, in Docket No. MC76–5, the Commission specifically refused to include such a provision. The commenter seems to be confused about these two dockets and some of the details of each. In order to clarify this matter, the Postal Service has set out an accurate history below. It shows that the presort density priority of ten or more pieces to 5-digit areas is not required by any provision of the DMCS.

PRC Docket No. MC73–1, which established the Presort category of First-Class Mail, was settled in 1976 by a stipulation and agreement which the PRC approved. The stipulation was signed by all of the major participants in the proceeding, including the Postal Service. The stipulation provided, in pertinent part, that

> "The Postal Service's regulations governing presorting requirements will provide that this mail be presorted to five digits, to the greatest extent possible with the minimum of 10 pieces per five digit ZIP, the remainder presorted to 3-digits, to the greatest extent possible with a minimum of 50 pieces per three-digit ZIP; Postal Service regulations will encourage, but not require that the remainder be presorted to destination State.

This language is repeated by the PRC in its recommended decision to the Governors of the Postal Service. There is no subsequent Postal Service promise or statement requiring these preparation rules for Presort First-Class Mail. However, in Docket No. MC76–5, Mail Classification Reform Schedule—Proper Scope and Extent of Schedule, the PRC was faced with this issue once again. No provision relating to presort density was included in the stipulation and agreement signed by the parties to that proceeding, which was intended to create a classification schedule to replace the interim one adopted as a result of Docket No. MC73–1. However, the officer of the commission appointed in accordance with 39 U.S.C. 3624(a) to "represent the interests of the general public" proposed 50 non-stipulated, additional provisions to the PRC for inclusion in the DMCS. Among these was a provision setting forth specific presort density requirements. The officer of the commission argued that they should be made a part of the DMCS because they described particular conditions of mail eligibility. The Postal Service disagreed and argued that these provisions were operational in nature, and that inclusion of precise and elaborate provisions relating to presortation in the DMCS would inhibit the Postal Service's flexibility to modify or adjust its procedures to account for operational changes. The PRC rejected the proposed alternative, except to add the words that mail subject to the Presort provisions "be presorted in accordance with regulations prescribed by the Postal Service." Opinion and Recommended Decision, Basic Mail Classification Reform Schedule—Proper Scope and Extent of Schedule, Docket No. MC76–5 (November 29, 1978) at 66. Thus, while the PRC concluded that a general requirement of presortation was a condition of eligibility and should be included in the DMCS, it decided that it was not necessary to require any specific form of presortation, outside of the footnote to the rate schedule noted above. *Id.* at 67.

When the Governors subsequently adopted the PRC's recommended decision, they commented on the Postal Service's authority to retain flexibility and discretion to interpret the general provisions of the DMCS. Specifically, they wrote:

> We also note with approval the Commission's express recognition that maximum operational flexibility is necessary for the Service's management to introduce more efficient operations and procedures. We expect that the recognition of this reality, with which we fully agree and which we believe to be incontrovertible, in both the Commission's and our decision will establish it as a criterion to be addressed each time an interpretation is made of a DMCS provision which bears upon the Service's ability to operate in a reasonable and efficient manner under the schedule.

Decision of the Governors of the United States Postal Service Re Recommended Decision of the Postal Rate Commission Regarding the Proper Scope and Extent of the Mail Classification Schedule (April 3, 1979) at 7. Contrary to the opinion of the commenter, the Governors did not delete any DMCS provision relating to Presort First-Class Mail.

Thus, it is reasonable to conclude that the PRC and the Governors rejected the view that the Postal Service is required to maintain its presort hierarchy despite changes that might occur in postal operations. This, by itself, would seem to obviate the need to closely examine the stipulation in Docket No. MC73–1. However, even if an interpretation of that document is relevant, it is clear that it does not prevent the Postal Service from making this change in its regulations.

A settlement agreement of this type is both an agreement, or contract, between the parties signatory to it, and an administrative act. The substantive portions of a settlement have no life unless recommended by the PRC and adopted by the Governors pursuant to the statutory scheme of the Reorganization Act. It can be interpreted in varous ways. Its meaning can be found within the four corners of the document, without reference to any extraneous materials; or with additional reliance on aids to construction, including the circumstances surrounding the formation of the order. It can also be interpreted in light of its purpose.

Following these principles of interpretation, it is clear that the commenter's view—that every detail of the stipulation permanently binds all parties—is incorrect. The purpose of the stipulation was to allow the adoption of an interim DMCS while preventing the Postal Service from using adoption of such a schedule as a means for implementing any basic mail classification changes under its temporary rate and classification change authority. This view is supported by several of the additional terms and conditions attached to the stipulation. For example, paragraph 9 of Part E states that:

Pending the outcome of a subsequent classification proceeding which addresses and establishes the substantive framework for future classification changes, the Postal Service will not change the status quo as it exists on the date on any subsequent Requests under 39 U.S.C. 3623, by implementing any major classification change, pursuant to its temporary authority under 39 U.S.C. § 3641, earlier than 1 year following the issuance of a finding by the Commission determining that a major classification change is advanced in such a request. . . .

Similarly, paragraph 6 of Part E states that:

No provisions, other than rates, included in the mail classification schedule which pertains (sic) to the Phase I proposals will be changed until addressed in a further decision or opinion of the Postal Rate Commission.

This need to establish a classification schedule, without worrying about all the directions that changes in the mail classification system should take, appears even more clearly in the PRC's recommended decision. For example, the PRC states that:

[I]t is evident that the parties have in mind the fact that the subsequent basic reform may alter greatly the arrangements agreed upon. . . . The settlement agreement is so written as not to foreclose consideration of any subsequent change in the matters it covers, and we are recommending the establishment of the mail classification schedule on the same understanding.

Opinion and Recommended Decision, Mail Classification Schedule, 1973, Docket No. MC73–1, Phase I (April 15, 1976) at 7.

Thus, the stipulation was not meant to bind the Postal Service for all time, but only to prevent the Postal Service from making any basic classification changes, including changes in the new Presort First-Class Mail category, before the "scope and extent" phase of the proceeding was completed. Since that phase ended with the completion of Docket No. MC76–5 in 1979, the stipulation is no longer binding on the Postal Service. Moreover, neither this commenter nor anyone else has ever questioned that the restrictions on the Postal Service's use of its temporary authority contained in the same stipulation lapsed after the adoption of the full and complete DMCS.

2. Restriction of Optional Procedure to Automated Areas

One commenter speculated that the limitation of the 3-digit sortation option to mail destinating at automated facilities could be a violation of the law requiring uniform letter rates. Specifially, this commenter suggested that the propsal might not conform with the requirement of 39 U.S.C. 3623(d) that the rate for "each such class [of mail for the transmission of letters sealed against inspection] shall be uniform throughout the United States." Six commenters from the presort service bureau industry submitted a related comment generally complaining that the proposed rule is unfair to mailers whose mail destinates at non-automated facilities.

Although the Presort and ZIP + 4 discounts would not vary under our proposal, the first commenter still sees a problem because a mailer's preparation requirements could vary according to the nature of the destinating facility. This suggestion would give "uniformity" a broader meaning than it in fact has. "Uniform" in the context of section 3623(d) means only that the same rate schedule be in effect throughout the country. Put another way, there cannot be different rates for similarly situated mailers. On the other hand, "uniformity" as used in section 3623(d) does not preclude rates that vary by destination (compare this language with section 3683 which, in addition to requiring that special fourth-class and library rates "shall be uniform for such mail of the same weight," also states that those rates "shall not vary with the distance transported"). Indeed, zone-rated (Priority) First-Class Mail rates have always varied by the distance from origin to destination and the implementation of non-distance variable rates for the lower weight increments for Express Mail service is relatively recent. Likewise, the PRC has, in its discussion of the local rate proposal in Docket No. MC76–1, recognized that rates can also vary according to destination without violating the uniformity requirement. The commenter even refers to this discussion. Thus, so long as the same rates are available to all similarly situated mailers throughout the United States, even though they might be different rates, for mail of different weights, different destinations, or going different distances, the uniformity requirement will have been met. Moreover, for practical purposes, there is often a distinction in the ability of mailers to meet preparation requirements for mail going to different destinations. For example, because of the difference in the number of delivery points, it is often easier for a mailer to meet the presort minimums for city carrier mail than for rural carrier or box section mail.

The Postal Service believes that the 3-digit option proposal complies with the uniform rate requirement of 39 U.S.C. 3623(d). In the first place, the combined 4.5 cent ZIP + 4 Presort discount will remain the same throughout the country. Thus, the same rate is in effect everywhere. What varies is not the rate, but the preparation requirements for the mail. Further, even if the variation in preparation requirements could be considered to create different rates depending on destination, they would still be lawful because rate uniformity does not prohibit destination-dependent rates so long as the same destination-dependent rates are available everywhere, just as the ZIP + 4 preparation requirements are applicable everywhere.

Consequently, there is no legal bar to the proposal because of its restricted application to mail destinating in automated areas. The proposed rule merely gives mailers the option of presenting the portion of their ZIP + 4 Presort mail which is destined for automated areas in groups of at least 50-pieces addressed to the same 3-digit ZIP Code area. Consequently, those mailers who find this procedure overly burdensome need not utilize it. As was explained in detail in the proposed rule, the separation of mail by automated and non-automated areas is necessary because the Postal Service can efficiently utilize 3-digit presorted mail only at destinating automated facilities. As deployment of automated mail processing equipment progresses in coming years, the percentage of First-Class Mail that will not destinate at an automated facility is expected to become even smaller than it is today.

3. Effect of Change on Presort Discounts

Two commenters stated that they fear that a reduction in the First-Class Mail Presort discount will eventually result from adoption of the proposed rule.

These commenters appear to believe that if mailers can qualify for the Presort discount by preparing most of their mail in 3-digit trays, then the value of that presortation to the Postal Service is less than the current primarily 5-digit presortation for mail intended to be processed on mechanized letter sorting machines (LSMs). To the extent that this might prove to be true, the cause of such a change in postal cost avoidance would be the Postal Service's automation program, not this proposal. The proposal is simply a recognition of the processing changes associated with that automation.

The proposed rule merely permits mailers presenting ZIP+4 Presort mailings to prepare that mail in groups of at least 50 pieces to a 3-digit area, rather than preparing packages of 10 pieces to each 5-digit area prior to any 3-digit sortation. It affects neither current Presort discounts nor postal cost

savings. Automated mail processing equipment—already purchased and deployed in the 118 facilities serving the areas for which the option would be available—has rendered 5-digit separations unnecessary for qualifying ZIP+4 Presort mail, and maintaining a requirement of wasted mailer tasks would contribute nothing to the cost basis for Presort discounts. Thus, we are proposing only to relieve mailers of a preparation requirement that is no longer necessary for efficient postal operations. Indeed, the 3-digit option for ZIP+4 mail should improve Postal Service efficiency in processing this mail because the Postal Service will no longer be required to break open 5-digit packages and combine them with other mail destined for the same 3-digit area before processing this mail on an OCR.

4. Compliance With the Administrative Procedure Act

In a related comment, one commenter asserted that this rulemaking is in violation of the Administrative Procedure Act (APA) because the Postal Service did not disclose that the rule change would have the probable effect of leading to a reduction in the Presort discount.

This comment is incorrect for several reasons. First, it mistakenly applies APA requirements to Postal Service rulemaking. Second, it overlooks the fact that the Postal Service fully complied with APA notice requirements, even though not required to do so. Finally, it would have the Postal Service proceed in a manner contrary to the APA.

Section 410(a) of title 39 of the United States Code exempts the Postal Service from the application of the APA. In relevant part section 410(a) states:

> Except as provided by subsection (b) of this section and except as otherwise provided in this title or insofar as such laws remain in force as rules or regulations of the Postal Service, no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, *including the provisions of chapters 5 and 7 of title 5*, shall apply to the exercise of the powers of the Postal Service.

39 U.S.C. 410(a) (emphasis added). The APA is codified in chapter 5 of title 5, United States Code, and section 410(a) particularly designates it as one of the laws not applicable "to the exercise of the powers of the Postal Service." Although subsection (b) of section 410 lists the many exceptions to the inapplicability of specific federal laws to the Postal Service, the APA is not among them. Thus, Congress has specifically exempted the Postal Service from the requirements of the APA.

The commenter who raised the issue of the applicability of the APA cited two cases in support of its proposition, *Chelsea Neighborhood Ass'n* v. *United States Postal Service*, 516 F.2d 378 (2d Cir. 1975); and *National Retired Teachers Ass'n* v. *United States Postal Service*, 430 F. Supp. 141 (D.D.C. 1977), *aff'd*, 593 F.2d 1360 (D.C. Cir. 1979). *Chelsea* dealt with the application of the National Environmental Policy Act to construction projects undertaken by the Postal Service, and is not relevant here. In *NRTA*, a federal district court did apply the APA to Postal Service rulemaking, but concluded that notice-and-comment procedures were unnecessary in the promulgation of the challenged regulation. The Court of Appeals for the District of Columbia, following conventional decisional principles, found it unnecessary to reach the question of APA applicability, as there was no conflict between the APA's requirements and the challenged action. Moreover, in a lengthy footnote, the Court restated the Postal Service's arguments against APA applicablility. Thus, the two cases cited by the commenter do not form a persuasive basis for the Postal Service to alter its long-standing position that its rulemaking activities are exempt from the APA, a position for which there is substantial judicial support. *See, e.g.*, the more recent decision of the Court of Appeals for the District of Columbia in *National Easter Seal Society* v. *U.S. Postal Service*, 656 F.2d 754, 766–68 (1981).

Although the Postal Service is exempt from the requirements of the APA in promulgating this regulation, it has fully complied with those requirements. Specifically, the Postal Service fully disclosed the "subjects" and "issues" involved in the rulemaking. To repeat the salient effects of the proposal, the change in presortation procedures presented in the proposed rule, and adopted in this final rule, is an option; it has no effect on any mailer who does not wish to use the new procedure, nor does it affect any mailing entered under existing provisions of the Domestic Mail Manual. For those mailings entered under the new, optional procedure, the mailer is offered simplified mail preparation requirements, coupled with requirements related to eligible destinations, OCR readability and minimum levels of ZIP+4 addressing. These are the effects of the proposed rule, and of the final rule, and they have been fully set out by the Postal Service, both in the text of the proposed rule, and in the accompanying explanatory material. *See* 51 FR 3079–85.

The commenter's claim that the "probable effects" of the change were not disclosed is based upon a misunderstanding of the effects. The commenter believes that adoption of the proposed rule will lead to a reduction in presortation discounts. However, as is explained above, presortation discounts are based upon costs avoided by the Postal Service through presortation, rather than upon a measurement of mailer effort. If a preparation requirement does not contribute to cost savings by the Postal Service, its elimination can have no adverse effect upon cost avoidance. Thus, the comment is incorrect in assessing the effects of the proposed and final rules. Moreover, while all postal rates are subject to change, any such changes would be made pursuant to the procedures laid out in some detail in chapter 36 of title 39.

Finally, given the commenter's misunderstanding of the relationship between preparation requirements and rate discounts, any claim by the Postal Service that such effects were probable would misrepresent the subjects and issues involved in the rulemaking. This would be contrary to the purposes of the APA.

5. Benefit to Current ZIP+4 Mailers

Six commenters, all representatives of the presort service bureau industry, argued that the three-digit option favors mailers already in the ZIP+4 program.

This is not the basis for an "unfairness" argument. The only advantage mailers who have already entered the ZIP+4 program would have is the fact that they have already converted their mailing lists, something that other Presort mailers are free to do.

6. Mailstream Separation Concerns

These same six commenters also argued that they cannot economically separate mail by automated and non-automated areas. They assert this would require that they set up two separate processing streams, a procedure they cannot efficiently accomplish. In related comments, two commenters stated that separating mail by automated and non-automated areas would be too burdensome and suggested that the Postal Service offer additional discounts for such sortation.

These commenters overlooked one essential aspect of the proposed rule—it is optional. Consequently, those mailers which benefit from the 3-digit preparation may elect it; those which do not benefit may decline.

7. Effect on Acceptance Costs

Six commenters also argued that the proposed rule should not be adopted because it will cause more small mailers to separately qualify their mailings for Presort rates under the 3-digit option with a resultant increase in acceptance costs.

One purpose of the proposed rule is to simplify mailer preparation, thereby enhancing the ability of mailers to prepare additional qualifying Presort mail pieces bearing the ZIP+4 code. The Postal Service anticipates that adoption of the 3-digit optional preparation rule will encourage new Presort ZIP+4 mail volume. If this proves correct, the resultant cost savings, which derive from the ability to process this mail by automation, should be worth far more than whatever additional acceptance effort such new mailings might cause. It is also not clear that acceptance costs would increase as these commenters envision because optional mailings will have far fewer separations to be verified because of the elimination of the 5-digit make-up requirement.

8. Updating the List of Automated Facilities

Two commenters asked the Postal Service to update the list of automated areas on a regular basis. One commenter further suggested that the Postal Service delay implementation of the optional rule until more facilities are automated. A related comment also suggested that the Postal Service test the 3-digit preparation procedures for a specific period before permitting them to become permanent options.

The number of automated facilities is not likely to increase in the near future because the next scheduled automation deployment will initially put more OCRs in currently automated facilities. Thus, regular updates are not necessary at this time. For the same reason, delaying implementation of the proposed rule is not warranted. When the number of automated facilities increases significantly, the Postal Service will issue an update, and if the number of new automated facilities increases rapidly at some time, regular updates may be necessary.

With regard to the suggestion that the rule be issued on a temporary basis, such experimental or temporary implementation can be useful where a new rule might create both new burdens, for mailers or the Postal Service, and advantages. During the interim period the burdens and advantages could be weighed. In this case, the new rule merely provides optional mail preparation procedures which mailers may decline; it places no new requirements on mailers. Moreover, the rule will increase Postal Service efficiency because it eliminates the need for combining small packages of 5-digit presorted mail prior to their entry into the Postal Service's automated machinery. Because the rule will place no new burdens on mailers and will serve to increase Postal Service efficiency, there is no need for an experimental period.

9. Further Discounts for Bar Coding

Two commenters asked the Postal Service to offer discounts for mail presented with mailer-applied bar codes.

Although this idea has merit, it is not part of the current proposed rule and the Postal Service will not act on it at this time. However, the Postal Service considers this concept worthy of further study.

10. Mail Acceptance of Optional Mailings

One commenter asked that we modify the mailing cycle concept described in the proposal to permit mailers who present mail from the same mailing list on several different days to present mail under the optional rule on some days and to present regular 3- and 5-digit presorted mail other days.

The proposed rule was drafted to permit the mailer to define its own mailing cycle. The intent of the rule is to allow mailers substantial flexibility. The commenter's particular question is a narrow technical one and the Postal Service will contact the commenter and determine if its procedures can be accommodated.

11. Alternative Proposal

One commenter suggested that optional rule mail be prepared in a different manner: local ZIP+4 Presort mail would continue to be sorted to 5-digits and non-local mail would be prepared to 3-digits, with no separation for mail destined for automated or non-automated areas.

This suggestion is not appropriate under the mail processing procedures for ZIP+4 Presort mail as explained in the proposed rule. There is no purpose for Presort ZIP+4 mail to be presented in 5-digit packages when it destinates at an automated facility. Presort ZIP+4 mail presented in 3-digit groupings can be sorted to carrier route with the same automated handlings as 5-digit sorted mail. Moreover, the Postal Service does not want to encourage the presentation of 3-digit sorted ZIP+4 mail at non-automated facilities because such facilities would need to use extra LSM or manual handlings to sort this mail to carrier routes.

12. 85 Percent Commingling Limit

Four commenters requested that the Postal Service relax the proposed requirement that 85 percent of 3-digit option ZIP+4 mail contain correct ZIP+4 codes.

As was explained in the proposed rule, the Postal Service requires a high minimum ZIP+4 addressing level for 3-digit optional mailings to minimize the amount of non-ZIP+4 Presort mail that must be sorted back to the 5-digit level.

Prior to the issuance of the proposed rule, the Postal Service considered the appropriate level for minimum ZIP+4 addressing standards. The goal was to establish a level that would be "consistent with the match rates that mailers, with well-maintained address lists, might reasonably expect to achieve using state-of-the-art software available at the time." *See* 51 FR 3081. To this end, the Postal Service "examined its manual list conversion experience, studied the current state of the conversion software market, and surveyed those customers that are currently entering ZIP+4 Presort mail." *Id.* The results of these inquiries indicated that an 85 percent level was appropriate.

As noted in the proposed rule, the survey showed that, of Presort mail entered under the ZIP+4 program, 97 percent of the volume is entered in mailings at or above an 85 percent ZIP+4 addressing level. In addition, there was little improvement in the mail volume or the number of mailers qualifying for the ZIP+4 Presort program at a minimum qualifying percentage of 80 percent; but mail volume and the number of qualifying mailers decreased rapidly when the minimum qualifying percentage was increased to 90 percent. The Postal Service determined similar results from its experience with its manual list conversion service. The contractor's average conversion rate was 87 percent. Consequently, the Postal Service proposed an 85 percent ZIP+4 addressing level for 3-digit option mail.

Although several commenters argue that this level is too high, they present no reason to believe that with efforts similar to those exerted by other current users and the Postal Service's list conversion contractor they cannot also achieve an 85 percent ZIP+4 addressing level. Thus, we continue to believe that the 85 percent level is an appropriate balancing of Postal Service operational needs and mailer's ability to comply. Consequently, it will be retained.

Moreover, as described below, the Postal Service is extending full commingling for regular ZIP+4 Presort mail. Consequently, those mailers whose conversion efforts have not yet achieved 85 percent ZIP+4 addressing levels may continue to present Presort mail under the current rules. The 3-digit option is restricted to those mailers whose superior ZIP+4 conversion efforts provide the Postal Service with the increased efficiency of higher ZIP+4 addressing levels.

13. General Waiver of Commingling Requirement

Six commenters asked that the Postal Service extend the general waiver of the commingling requirement for regular (non-optional) ZIP+4 Presort mail.

In 1985, the Postal Service amended its regulations to allow full commingling of regular and ZIP+4 Presort mailings in order to lessen the financial impact upon Presort mailers caused by their difficulty in obtaining complete matching of their mailing lists with the ZIP+4 directory. At that time, the Postal Service waived the ZIP+4 coding requirement until April 6, 1986. 50 FR 13569–73 (April 5, 1985). In response to these comments and many more that have been received outside of the rulemaking process, the Postal Service decided that a continuation of this waiver was warranted because many mailers have not yet attained a high match rate and others are currently in the process of converting to the ZIP+4 usage. This extension will give these mailers additional time to improve their conversion efforts. The waiver will apply only to those ZIP+4 Presort mailers who do not or can not use the optional preparation procedures adopted by this final rule. As noted in item 12 above, optional procedure mailers must meet an 85 percent ZIP+4 addressing minimum. Recently, the Postal Service announced in the Postal Bulletin that the waiver would be extended. We are including with this final rule an amendment to Domestic Mail Manual §§ 365.2 and 365.3 to reflect that the waiver will now be extended until at least January 1, 1987.

14. Nonpresort Commingling

One commenter suggested that the Postal Service permit commingling of ZIP+4 addressed nonpresort mail with 5-digit ZIP Code addressed nonpresort mail.

This suggestion is not directly relevant to the current rulemaking which only concerns the ZIP+4 Presort mail. Thus, we do not address it here. However, this idea has merit and will be given further study.

15. Cost Justification for the ZIP+4 Discounts

One commenter questioned the cost justification for the ZIP+4 discounts currently being offered, and implied that any future discount proposals should be subjected to close scrutiny. These views are essentially general complaints and observations about the postal ratemaking process, not comments specifically addressed to the subject rulemaking. Consequently, the Postal Service will not address them here.

A number of editorial changes have been made in the preparation of the final rule. Within section 365.431(b), the explanation of the additional postage necessary for residual pieces not physically separated or described by a print-out has been clarified. In addition, throughout the text of the final rule, the appropriate General Manager of the Rate and Classification Center has been substituted for the General Manager, Accounting and Revenue Protection Division. Finally, citation errors and other errors have been corrected.

Ordinarily when the Postal Service seeks comment on a proposed change in its rules, it publishes the final rule not less than 30 days before its effective date. In this case, however, we believe it is appropriate to alter that practice, since the final rule does not impose any new requirement on mailers, but rather offers an additional option to those mailers who wish to use the new procedure. For this reason, the effective date is delayed only as long as necessary for the Postal Service to ready itself to offer the option. Accordingly, the Postal Service hereby adopts the following final regulations on this subject as an amendment to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 122—ADDRESSES

2. In 122.6, add new Exhibits 122.63m, 122.63n and 122.63o to read as follows:

122.6 ZIP Code System

* * * * *

.63 Assignment of ZIP Codes

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EXHIBIT 122.63M.—3-DIGIT LABELING LIST FOR OPTIONAL COMBINED ZIP+4 AND PRESORTED FIRST-CLASS MAIL

[ZIP Codes authorized for inclusion in program as single ZIP Coded trays. First line of tray label to include the appropriate 3-digit ZIP Code prefix reflecting the tray's contents.]

3-digit ZIP Code prefix	Label for single ZIP Coded tray
017, 020–022	Boston, MA 3-D ZIP
018, 019	Middlesex-Essex, MA 3-D ZIP
027–029	Providence, RI 3-D ZIP
030–034	Manchester, NH 3-D ZIP
060–061	Hartford, CT 3-D ZIP
063–066	New Haven, CT 3-D ZIP
070–073	Newark, NJ 3-D ZIP
074, 075, 078	Paterson, NJ 3-D ZIP
076	Hackensack, NJ 076
080–084 DSo. Jersey, NJ 3-D ZIP.	
085–087	Trenton, NJ 3-D ZIP
088, 089	New Brunswick, NJ 3-D ZIP
100–102	New York, NY 3-D ZIP
104	Bronx, NY 104
105–108	Westchester, NY 3-D ZIP
112	Brooklyn, NY 112
113	Flushing, NY 113
114	Jamaica, NY 114
115	W. Nassau, NY 115
117, 118	Hicksville, NY 3-D ZIP
120–123	Albany, NY 3-D ZIP
130–132	Syracuse, NY 3-D ZIP
140–143	Buffalo, NY 3-D ZIP
144–146	Rochester, NY 3-D ZIP
150–152	Pittsburgh, PA 3-D ZIP
170–172, 178	Harrisburg, PA 3-D ZIP
180–181, 183	Lehigh Valley, PA 3-D ZIP
189, 193, 194	Southeast ern, PA 3-D ZIP
190, 191	Philadelphia, PA 3-D ZIP
197–199	Wilmington, DE 3-D ZIP
200, 202–205	Washington, DC 3-D ZIP
206–209	Prince Georges, MD 3-D ZIP
210–212, 214, 219	Baltimore, MD 3-D ZIP
220–223	No. Virginia, VA 3-D ZIP
224, 225, 230–232, 238	Richmond, VA 3-D ZIP
233–237	Hampton Roads, VA 3-D ZIP
250–253	Charleston, WV 3-D ZIP
270–274	Greensboro, NC 3-D ZIP
275–277	Raleigh, NC 3-D ZIP
280–282	Charlotte, NC 3-D ZIP
290–292	Columbia, SC 3-D ZIP
297	Charlotte, NC 297
300–303	Atlanta, GA 3-D ZIP
320, 322	Jacksonville, FL 3-D ZIP
327–329	Orlando, FL 3-D ZIP
330–332	Miami, FL 3-D ZIP
333	Ft. Lauderdale 333
334	W. Palm Beach, FL 334
335–337, 342	Tampa, FL 3-D ZIP
350–353, 355	Birmingham, AL 3-D ZIP
360, 361	Montgomery, AL 3-D ZIP
370–372	Nashville, TN 3-D ZIP
380–381, 386	Memphis, TN 3-D ZIP
390–392	Jackson, MS 3-D ZIP
400–402	Louisville, KY 3-D ZIP
410	Cincinnati, OH 410
430–433	Columbus, OH 3-D ZIP
434–436	Toledo, OH 3-D ZIP
440, 441	Cleveland, OH 3-D ZIP
442, 443	Akron, OH 3-D ZIP
450–452	Cincinnati, OH 3-D ZIP
453–455	Dayton, OH 3-D ZIP
460–462	Indianapolis, IN 3-D ZIP
470	Cincinnati, OH 470
471	Louisville, KY 471
480, 483	Royal Oak, MI 3-D ZIP
481, 482	Detroit, MI 3-D ZIP
488, 489	Lansing, MI 3-D ZIP
490, 491	Kalamazoo, MI 3-D ZIP
493–495	Grand Rapids, MI 3-D ZIP
500–503	Des Moines, IA 3-D ZIP
515, 516	Omaha, NE 3-D ZIP
530–534	Milwaukee, WI 3-D ZIP
535–538	Madison, WI 3-D ZIP
540, 550, 551	Saint Paul, MN 3-D ZIP
553, 554	Minneapolis, MN 3-D ZIP
600–603	No. Suburban, IL 3-D ZIP
604, 605	So. Suburban, IL 3-D ZIP
606	Chicago, IL 606
620, 622	St. Louis, MO 3-D ZIP
625–627	Springfield, IL 3-D ZIP
630, 631, 633	St. Louis, MO 3-D ZIP
640, 641, 660–662	Kansas City, MO 3-D ZIP

EXHIBIT 122.63M.—3-DIGIT LABELING LIST FOR OPTIONAL COMBINED ZIP+4 AND PRESORTED FIRST-CLASS MAIL—Continued

[ZIP Codes authorized for inclusion in program as single ZIP Coded trays. First line of tray label to include the appropriate 3-digit ZIP Code prefix reflecting the tray's contents.]

3-digit ZIP Code prefix	Label for single ZIP Coded tray
670-672	Wichita, KS 3-D ZIP
680, 681	Omaha, NE 3-D ZIP
700, 701	New Orleans, LA 3-D ZIP
707, 708	Baton Rouge, LA 3-D ZIP
720-722	Little Rock, AR 3-D ZIP
723	Memphis, TN 723
730, 731	Oklahoma City, OK 3-D ZIP
740, 741, 743	Tulsa, OK 3-D ZIP
750-753	Dallas, TX 3-D ZIP
760, 761, 764	Fort Worth, TX 3-D ZIP
770-772, 774, 775	Houston, TX 3-D ZIP
780-782, 788	San Antonio, TX 3-D ZIP
786, 787, 789	Austin, TX 3-D ZIP
800-804	Denver, CO 3-D ZIP
835, 838	Spokane, WA 3-D ZIP
840, 841, 843, 844	Salt Lake City, UT 3-D ZIP
850, 852, 853	Phoenix, AZ 3-D ZIP
855, 856, 857	Tucson, AZ 3-D ZIP
870-872, 875	Albuquerque, NM 3-D ZIP
900	Los Angeles, CA 900
902-905	Inglewood, CA 3-D ZIP
906-908	Long Beach, CA 3-D ZIP
910-912	Pasadena, CA 3-D ZIP
913-916	Van Nuys, CA 3-D ZIP
917, 918	Alhambra, CA 3-D ZIP
920, 921	San Diego, CA 3-D ZIP
923-925	San Bernadino, CA 3-D ZIP
926-928	Santa Ana, CA 3-D ZIP
936, 937	Fresno, CA 3-D ZIP
940, 941, 943, 944	San Francisco, CA 3-D ZIP
945-948	Oakland, CA 3-D ZIP
950, 951	San Jose, CA 3-D ZIP
952, 953	Stockton, CA 3-D ZIP
956-958	Sacramento, CA 3-D ZIP
967-969	Honolulu, HI 3-D ZIP
970-972	Portland, OR 3-D ZIP
980, 981	Seattle, WA 3-D ZIP
983, 984	Tacoma, WA 3-D ZIP
986	Portland, OR 986
990-992	Spokane, WA 3-D ZIP

EXHIBIT 122.63N.—SECTIONAL CENTER FACILITY (SCF) LABELING LIST FOR OPTIONAL COMBINED ZIP+4 AND PRESORTED FIRST-CLASS MAIL

[ZIP Codes Authorized for SCF Tray Make-Up]

3-digit ZIP Code prefix	Label for SCF tray
017, 020-022	SCF Boston, MA 020
018, 019	SCF Middlesex-Essex, MA 018
027-029	SCF Providence, RI 028
030-034	SCF Manchester, NH 030
060, 061	SCF Hartford, CT 060
063-066	SCF New Haven, CT 064
070-073	SCF Newark, NJ 070
074, 075, 078	SCF Paterson, NJ 074
080-084	SCF So. Jersey, NJ 080
085-087	SCF Trenton, NJ 085
088, 089	SCF New Brunswick, NJ 088
100-102	New York, NY 100
105-108	SCF Westchester, NY 105
117, 118	SCF Hicksville, NY 117
120-123	SCF Albany, NY 120
130-132	SCF Syracuse, NY 130
140-143	SCF Buffalo, NY 140
144-146	SCF Rochester, NY 144
150-152	SCF Pittsburgh, PA 150
170-172, 178	SCF Harrisburg, PA 170
180, 181, 183	SCF Lehigh Valley, PA 180
189, 193, 194	SCF Southeastern, PA 189
190, 191	SCF Philadelphia, PA 190
197-199	SCF Wilmington, DE 197
200, 202-205	Washington, DC 200
206-209	SCF Prince Georges, MD 207
210-212, 214, 219	SCF Baltimore, MD 210
220-223	SCF No. Virginia, VA 220
224, 225, 230-232, 238	SCF Richmond, VA 230
233-237	SCF Hampton Roads, VA 233

EXHIBIT 122.63N.—SECTIONAL CENTER FACILITY (SCF) LABELING LIST FOR OPTIONAL COMBINED ZIP+4 AND PRESORTED FIRST-CLASS MAIL—Continued

[ZIP Codes Authorized for SCF Tray Make-Up]

3-digit ZIP Code prefix	Label for SCF tray
250-253	SCF Charleston, WV 250
270-274	SCF Greensboro, NC 270
275-277	SCF Raleigh, NC 275
280-282	SCF Charlotte, NC 280
290-292	SCF Columbia, SC 290
297	SCF Charlotte, NC 280
300-303	SCF Atlanta, GA 330
320, 322	SCF Jacksonville, FL 320
327-329	SCF Orlando, FL 327
330-332	SCF Miami, FL 330
335-337, 342	SCF Tampa, FL 335
350-353, 355	SCF Birmingham, AL 350
360, 361	SCF Montgomery, AL 360
370-372	SCF Nashville, TN 370
380, 381, 386	SCF Memphis, TN 380
390-392	SCF Jackson, MS 390
400-402	SCF Louisville, KY 400
410	SCF Cincinnati, OH 450
430-433	SCF Columbus, OH 430
434-436	SCF Toledo, OH 434
440, 441	SCF Cleveland, OH 440
442, 443	SCF Akron, OH 442
450-452	SCF Cincinnati, OH 450
453-455	SCF Dayton, OH 453
460-462	SCF Indianapolis, IN 460
470	SCF Cincinnati, OH 450
471	SCF Louisville, KY 400
480, 483	SCF Royal Oak, MI 480
481, 482	SCF Detroit, MI 481
488, 489	SCF Lansing, MI 488
490, 491	SCF Kalamazoo, MI 490
493-495	SCF Grand Rapids, MI 493
500-503	SCF Des Moines, IA 500
515, 516	SCF Omaha, NE 680
530-534	SCF Milwaukee, WI 530
535-538	SCF Madison, WI 535
540, 550, 551	SCF Saint Paul, MN 550
553, 554	SCF Minneapolis, MN 553
600-603	SCF No. Suburban, IL 600
604, 605	SCF So. Suburban, IL 604
620, 622	SCF St. Louis, MO 630
625-627	SCF Springfield, IL 625
630, 631, 633	SCF St. Louis, MO 630
640, 641, 660-662	SCF Kansas City, MO 640
670-672	SCF Wichita, KS 670
680, 681	SCF Omaha, NE 680
700, 701	SCF New Orleans, LA 700
707, 708	SCF Baton Rouge, LA 707
720-722	SCF Little Rock, AR 720
723	SCF Memphis, TN 380
730, 731	SCF Oklahoma City, OK 730
740, 741, 743	SCF Tulsa, OK 740
750-753	SCF Dallas, TX 752
760, 761, 764	SCF Fort Worth, TX 760
770-772, 774, 775	SCF Houston, TX 770
780-782, 788	SCF San Antonio, TX 780
786, 787, 789	SCF Austin, TX 786
800-804	SCF Denver, CO 800
835, 838	SCF Spokane, WA 990
840, 841, 843, 844	SCF Salt Lake City, UT 840
850, 852, 853	SCF Phoenix, AZ 852
855, 856, 857	SCF Tucson, AZ 856
870-872, 875	SCF Albuquerque, NM 870
902-905	SCF Inglewood, CA 902
906-908	SCF Long Beach, CA 907
910-912	SCF Pasadena, CA 910
913-916	SCF Van Nuys, CA 913
917, 918	SCF Alhambra, CA 917
920, 921	SCF San Diego, CA 920
923-925	SCF San Bernadino, CA 923
926-928	SCF Santa Ana, CA 926
936, 937	SCF Fresno, CA 936
940, 941, 943, 944	SCF San Francisco, CA 940
945-948	SCF Oakland, CA 945
950, 951	SCF San Jose, CA 950
952, 953	SCF Stockton, CA 952
956-958	SCF Sacramento, CA 956
967-969	SCF Honolulu, HI 967
970-972	SCF Portland, OR 970
980, 981	SCF Seattle, WA 980
983, 984	SCF Tacoma, WA 983
986	SCF Portland, OR 970
990-992	SCF Spokane, WA 990

EXHIBIT 122.63O.—AREA DISTRIBUTION CENTER (ADC) LABELING LIST FOR OPTIONAL COMBINED ZIP+4 and Presorted First-Class Mail

ZIP Codes Authorized for ADC Tray Make-Up

3-digit ZIP Code prefix	Label for ADC tray
017-022	DIS Boston, MA 020
060, 061, 063-066	DIS Hartford, CT 060
070-075, 078, 088, 089	DIS Newark, NY 070
080-087	DIS So. Jersey, NJ 080
100-102, 104	DIS New York, NY 100
112-115, 117, 118	DIS JF Kennedy, NY 003
140-146	DIS Buffalo, NY 140
180, 181, 183, 189, 190, 191, 193, 194.	DIS Philadelphia, PA 190
206-212, 214, 219	DIS Baltimore, MD 210
220-225	DIS No. Virginia, VA 220
230-238	DIS Richmond, VA 230
270-277	DIS Greensboro, NC 270
290-292, 297	DIS Columbia, SC 290
327-329, 334	DIS Orlando, FL 327
330-333	DIS Miami, FL 330
430-436	DIS Columbia OH 430
430-443	DIS Cleveland, OH 440
450-455, 470	DIS Cincinnati, OH 450
480-483, 488, 489	DIS Detroit, MI 481
490, 491, 493-495	DIS Grand Rapids, MI 493
530-538	DIS Milwaukee, WI 530
620, 622, 625, 627, 630, 631, 633.	DIS St. Louis, MO 630
700, 701, 707, 708	DIS New Orleans, LA 700
780-782, 786-789	DIS San Antonio, TX 780
850, 852, 853, 855-857	DIS Phoenix, AZ 852
902-908, 910-918	DIS LAX-A, CA 900
920, 921, 923-928	DIS LAX-B, CA 901
936, 937, 950-953, 956-958	DIS San Francisco, CA 942
940, 941, 943-948	DIS San Francisco, CA 940
980, 981, 983, 984	DIS Seattle, WA 980

PART 365—COMBINED PRESORT MAILINGS

3. In 365, delete 365.35 and 365.36; renumber 365.37 and 365.38 as 365.35 and 365.36; revise 365.1, 365.2 and 365.32 and add new 365.4 and 365.5 to read as follows:

365.1 General. In order to maintain the level of presortation for Presort mailings that have been converted to use of ZIP+4 codes, mailers may combine ZIP+4 Presort First-Class Mail (bearing A ZIP+4 code) (see 368) and regular Persort First-Class Mail (bearing a five-digit ZIP Code) (see 367), under the conditions in 365 and 366. Only those pieces which bear a ZIP+4 code are eligible for ZIP+4 rates.

365.2 Conversion Transition Period. Until at least January 1, 1987, mailers who do not use the optional procedures in 366 are permitted to fully combine ZIP+4 Presort First-Class Mail and regular Presort First-Class Mail. Except as provided in 365.31, no minimum number of ZIP+4 addressed pieces is required for these mailings.

365.3 Requirements for Combined Presort Mailings

* * * * *

.32 All pieces which do not bear a ZIP+4 code must bear a five-digit ZIP Code. Pieces mailed at the ZIP+4 rates must meet all the ZIP+4 mailing requirements of 324. For mailings

presented under 365.2, those pieces which are mailed at rates other than ZIP+4 rates need not meet the requirements of 324.3 through 324.6.

* * * * *

365.4 Postage Payment

.41 General

Mailings under this section at the time of acceptance must be accompanied by documentation supporting mailing stetments which are required by 382.4. The type of documents required to support mailing statements are listed in 365.42 and 365.43 below. Documentation requirements differ when postage is affixed to each piece in the mailing and when the ZIP+4 rate pieces are physically separated from other pieces in the mailing.

.42 Correct Postage Affixed to Each Piece. For the Presorted position of the mailing, the mailer may affix the applicable ZIP+4 postage to each piece that bears a ZIP+4 code, and affix the applicable Presort First-Class postage rate to each piece that bears a 5-digit ZIP Code. For the residual portion, the mailer may affix the applicable ZIP+4 nonpresort rate to each piece that bears a ZIP+4 code and affix the applicable full First-Class rate to each piece that bears a 5-digit ZIP Code without submitting any additional documentation other than the mailing statement.

.43 ZIP+4 Rate Affixed to All Pieces or Postage Paid by Permit Imprint

.431 Conditions.

The mailer may use a permit imprint or affix the ZIP+4 rate to all pieces under the following conditions:

a. If the ZIP + 4 code pieces are physically separated from all 5-digit ZIP coded pieces, no additional documentation other than the mailing statement is required. However, the residual portion of the mailing (see 366.12) must be trayed separately from the Presorted portion, and each rate category in the residual portion must be divided into groups of 100 pieces for postage verification, or

b. If the ZIP + 4 coded pieces are not physically separated from all 5-digit ZIP coded pieces, a listing must be presented at the time of mailing showing by 5-digit and 3-digit ZIP Code separation the number of pieces which qualify for the Presort First-Class rate and the number of pieces which qualify for the Presort ZIP + 4 rate. A summary must also be provided showing the number of pieces which qualify for each rate category, the amount of postage due for each rate category and the total postage due for the mailing. The difference between the ZIP + 4 Presort postage affixed to all pieces in the mailing bearing a 5-digit ZIP Code and the Presort First-Class postage must be paid at the time of mailing. In addition, a print-out must be presented for the residual portion if the ZIP + 4 coded pieces are not physically separated from the other pieces and the mailer wishes to pay the ZIP + 4 (nonpresort) rate for the ZIP + 4 coded pieces. If the mailer is unable to physically separate the ZIP + 4 coded pieces or is unable to prepare a print-out for the residual portion, he may pay 4 cents per piece in addition to the amount affixed to each piece in the residual portion, or

c. If the mailer is unable to meet the requirements of 365.42, 365.431a or 365.431b, a summary listing is required for each mailing list showing the number of pieces bearing a ZIP + 4 code and the number bearing a 5-digit ZIP Code, provided the mailer has received written authorization in accordance with 365.434–365.436 from the General Manager, Rates and Classification Center, for the area where mailings will be submitted.

.432 Applications

The mailer's request must be submitted to the postmaster of the office of mailing, and it must include:

a. Mailer's name, address and telephone number.

b. Name of post office where mailings will be presented.

c. Frequency of mailing.

d. Estimated volume per mailing.

e. An explanation of the reason the mailer is unable to comply with 365.42, 365.431a and 365.431b.

f. An explanation of the procedures used to develop summary listings.

g. Sample copies of documents such as computer print-outs and records of postage meter readings that can be reviewed to substantiate the mailer's claim.

.433 Recommendation

Before recommending approval or disapproval, the postmaster or his designated representative will:

a. Make an onsite visit to review the mailer's method for determining the number of pieces in each mailing list that bear a ZIP + 4 code and the number that bear only a 5-digit ZIP Code.

b. Compare the documents listed in 365.431c with the mailing list or a portion of a mailing to determine whether the documents are reliable.

c. List the types of documents that were reviewed onsite and will attach sample documents to his recommendation.

.434 Approval

The mailer's application and the postmaster's recommendation and supporting documentation will in turn be forwarded to the management sectional center (MSC) manager of mail classification who will review the file, request additional documentation and/or make an onsite visit, if necessary, before recommending approval or disapproval. The file in turn will be forwarded to the General Manager, Rates and Classification Center, who will approve the application if he determines that the summary listing will accurately reflect the composition of the mailing. If necessary, the general manager may request further evidence of documentation. When the General Manager, Rates and Classification Center, is satisfied that the documentation will accurately show the number of ZIP + 4 coded pieces and 5-digit coded pieces, he will authorize the mailer to prepare a summary listing for each mailing. The authorization will be sent directly to the mailer, and copies will be sent to the MSC Manager, Mail Classification and the postmaster of the office of mailing, as applicable. The authorization will remain valid for a period of 90 days.

.435 Quarterly Inspections

The Postmaster or his designated representative will visit the mailer's premises on a quarterly basis to determine whether the mailer is following the approved procedures for determining percent of ZIP + 4 mail and will submit a report to the Rates and Classification Center through the MSC. If the mailer is following the approved procedures, the authorization will be renewed for a period of 90 days.

.436 Additional Applications

a. The mailer must submit another application in accordance with the requirements in 365.432 when his method for determining the ratio of ZIP + 4 coded pieces changes.

b. If the mailer will enter mailings in more than one MSC or region, he must submit his request along with supporting documentation and a copy of the authorization from the General Manager, Rates and Classification Center (in accordance with the requirements in 365.432) to the postmaster who will submit it through channels to the General Manager, Rates and Classification Center of the area where mailings will be presented. Upon receipt of the authorization, the mailer may mail under the provisions of 365. The postmaster or his designated representative will visit the mailer's

premises on a quarterly basis to determine whether the mailer is following the approved procedures for determining percent of ZIP + 4 mail and will submit a report to the Rates and Classification Center through the MSC.

365.5 Mailing Statements

The mailer must submit a mailing statement for each mailing. When pieces for a mailing list or mailing cycle as defined by the mailer are mailed over a period of more than one day, each day the mailer must indicate on each mailing statement submitted under this procedure the mailing cycle or mailing list to which the pieces, belong, and the final mailing statement for the mailing list of mailing cycle must accurately account for the full list or cycle. Under this procedure, a mailing statement may not be submitted for more than one mailing cycle or one mailing list.

4. Add a new 366 to read as follows:

365 Preparation Requirements for Optional Combined ZIP + 4 Presort and Presort First-Class Mailings (Destinating at Automated Sites)

366.1 Combined Presort Mailings

.11 Requirements

In all instances, a combined mailing prepared in accordance with the requirements of 366 must meet all of the following criteria:

a. Minimum Pieces. Contain at least 500 pieces which bear a correct ZIP + 4 code.

b. ZIP + 4 Code. At least 85 percent of the pieces in the mailing must bear a ZIP + 4 code.

c. Other Requirements. The mailing must meet the requirements of 324.3, 324.4, 324.5, 324.61, 365.33 and 365.34.

d. 3-Digit Separations. Only pieces which are part of a group of at least 50 pieces for a 3-digit ZIP Code prefix listed in Exhibit 122.63m may qualify for mailing at Presort rates under the provisions of 366. Mail for each 3-digit destination within a tray must be physically separated through the use of visible index tabs or separator cards.

e. Destination Requirement. Only pieces destined for 3-digit ZIP Code prefixes listed in Exhibit 122.63m may be part of the mailing.

f. Traying. Only 3-digit, SCF and ADC trays are permitted for pieces which qualify for the Presort rate. The list of 3-digit ZIP Code prefixes for which combined Presort mailings may be prepared are shown in Exhibits 122.63m, 122.63n and 122.63o.

.12 Residual Pieces. Less than 50 pieces for a 3-digit ZIP Code prefix are residual and do not qualify for the Presort rate. Residual pieces must be separately trayed from the Presorted portion of the mailing and must be prepared in accordance with the requirements in 367.52. Instead of including the nonqualifying pieces as part of an optional combined ZIP+4 Presort and Presort First-Class Mailing, the pieces may be presented as a separate mailing under the provisions of 365.

366.2 3-Digit Tray Preparation and Labeling

When there are 500 pieces for the same 3-digit destination (or at least ¾ of a tray) a 3-digit tray must be prepared. Only those authorized 3-digit ZIP Code prefixes in Exhibit 122.63m may be mailed under the provisions of 366. The trays must be labeled in the following manner:

Line 1: City, State, 3-Digit Destination
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
ORLANDO FL 329
FCM ZIP+4 PRESORT
FR Q MAILERS BALTO MD

Note: When a tray contains mail for only one 3-digit ZIP Code prefix, the description SCF must not be printed on the City, State, 3-Digit Destination line.

366.3 SCF Tray Preparation and Labeling

When, after all 3-digit trays are prepared, there are 50 or more pieces for more than one 3-digit ZIP Code prefix and 500 pieces (or at least ¾ of a full tray) for an SCF, an SCF tray must be prepared. Mail for each 3-digit destination within a tray must be physically separated by visible index tabs or separator cards. Only those authorized 3-digit ZIP Code prefixes in Exhibit 122.63m may be mailed under the provisions of 366. SCF trays must be labeled in accordance with the requirements in Exhibit 122.63n, in the following manner:

Line 1: SCF, State, SCF Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
SCF ORLANDO FL 327
FCM ZIP+4 PRESORT
FR Q MAILERS BALTO MD

366.4 ADC Tray Preparation and Labeling

Mail left over after preparing all 3-digit and SCF trays must be placed in the appropriate Area Distribution Center (ADC) tray. Mail for each 3-digit destination within a tray must be physically separated by visible index tabs or separator cards. Only those authorized 3-digit ZIP Code prefixes in Exhibit 122.63m may be mailed under the provisions of 366. ADC trays must be labeled in accordance with the requirements in Exhibit 122.63o, in the following manner:

Line 1: Area Distribution Center, Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
DIS ORLANDO FL 327
FCM ZIP+4 PRESORT
FR Q MAILERS BALTO MD

366.5 Postage Payment

Mailings under this section at the time of acceptance must be accompanied by documentation supporting mailing statements which are required by 382.4. The types of documents required to support mailing statements for mailings presented under the provisions of 366 are listed in 365.4. Required documentation depends on whether postage is affixed to each piece in the mailing and whether the ZIP+4 rate pieces are physically separated from other pieces in the mailing.

366.6 Mailing Statements

The mailer must submit a mailing statement for each mailing. When pieces for a mailing list or mailing cycle as defined by the mailer are mailed over a period of more than one day, each day the mailer must indicate on each mailing statement submitted under this procedure the mailing cycle or mailing list to which the pieces belong, and the final mailing statement for the mailing list or mailing cycle must accurately account for the full list or cycle. Under this procedure, a mailing statement may not be submitted for more than one mailing cycle or one mailing list.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-13486 Filed 6-13-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 464

[FRL-3030-8]

Metal Molding and Casting Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Correction and Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction of final rule and notice of availability.

SUMMARY: This notice corrects the effluent limitations guidelines and standards for the metal molding and casting point source category published in the **Federal Register** on Wednesday, October 30, 1985 [50 FR 45212]. This notice also announces the availability of the final technical Development Document through the National Technical Information Service (NTIS).

FOR FURTHER INFORMATION CONTACT: Donald F. Anderson at (202) 382–7189, Industrial Technology Division (WH–552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 30, 1985, EPA published final effluent limitations guidelines and standards for the metal molding and casting point source category, 50 FR 45212. The final regulations contained a number of typographical errors, which are identified and corrected in this notice.

Several errors also occurred in the preamble. Most of these were minor typographical errors that need no clarification. This notice identifies and clarifies a few substantive preamble errors. All corrections and clarifications made today are consistent with the Development Document and rulemaking record supporting these regulations.

The Agency also is announcing the availability for purchase of the supporting final technical Development Document through the National Technical Information Service (NTIS) at the following address: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22151, Order Desk Phone Number: (703) 487–4650, NTIS Accession Number: PB 86 161452/AS.

The title and EPA report number for this document is as follows: Development Document for Effluent Limitations Guidelines and Standards for the Metal Molding and Casting (Foundries) Point Source Category, U.S. EPA, Washington, DC, October 1985; EPA 440/1–85/070.

This document was available for review in prepublication form on December 14, 1985 in EPA's Public Information Reference Unit, Room 2404 (Rear-Library), 401 M Street SW., Washington, D.C. 20460.

III. Corrections

A. Corrections to the Regulations

PART 464—[CORRECTED]

The following corrections are made to FR Doc. 85–25252, the Metal Molding and Casting Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards published in the **Federal Register** on October 30, 1985 [50 FR 45212].

§ 464.33 [Corrected]

1. On page 45247, third column of text, the title of § 464.33 is corrected to read "Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable."

§ 464.12 [Corrected]

2. In 40 CFR 464.12(a) on page 45249, Casting Cleaning Operations, BPT Effluent Limitations, the maximum for monthly average concentration limitation for non-continuous dischargers for Copper (second table, second column of numerical limitations) which now reads "0.042", is corrected to read "0.42".

3. In 40 CFR 464.12(b) on page 45249, Casting Quench Operations, BPT Effluent Limitations, the annual average mass limitation for non-continuous dischargers for Oil and grease (second table, third column of numerical limitations) which now reads "0", is corrected to read "0.0605".

4. In 40 CFR 464.12(g) on page 45250, Melting Furnace Scrubber Operations, BPT Effluent Limitations, the maximum for any 1 day for non-continuous dischargers for Copper (second table, first column of numerical limitations) which now reads "0.47", is corrected to read, "0.77".

5. In 40 CFR 464.12(h) on page 45250, Mold Cooling Operations, BPT Effluent Limitations, the annual average mass limitation for non-continuous dischargers for TSS (second table, third column of numerical limitations) which now reads "3.96", is corrected to read "3.86".

§ 464.13 [Corrected]

6. In 40 CFR 464.13 introductory text on page 45250, in the ninth line of the third column of text, "lb/billion SOF of air scrubbed" is corrected to read "lb/billion SCF of air scrubbed".

7. In 40 CFR 464.13(a) on page 45250, the title of table 464.13(a), Casting Cleaning Operations, which now reads "BPT EFFLUENT LIMITATIONS," is corrected to read "BAT EFFLUENT LIMITATIONS".

8. In 40 CFR 464.13(a) on page 45250, Casting Cleaning Operations, BAT Effluent Limitations, the maximum for any 1 day mass limitation for continuous dischargers for Copper (first table, first column of numerical limitations) which now reads "0.771", is corrected to read "0.0771".

9. In 40 CFR 464.13(f) on page 45251, Investment Casting, BAT Effluent Limitations (second table), footnote 1 is corrected to read "kg/1,000 kkg (pounds per million pounds) of metal poured.".

§ 464.14 [Corrected]

10. In 40 CFR 464.14(c) on page 45252, Die Casting Operations, NSPS (first table), the description of units in the table of limitations is corrected to read "kg/1,000 kkg (pounds per million pounds) of metal poured.".

11. In 40 CFR 464.14(f) on page 45252, Investment Casting, NSPS, the maximum for any 1 day for continuous dischargers for Oil and grease (first table, first column of numerical standards) which now reads "300", is corrected to read "330".

12. In 40 CFR 464.14(g) on page 45252, Melting Furnace Scrubber Operations, NSPS (second table), footnote 1 is corrected to read "kg/62.3 million Sm^3 (pounds per billion SCF) of air scrubbed.".

§ 464.15 [Corrected]

13. In 40 CFR 464.15(d) on page 45253, Dust Collection Scrubber Operations, PSES, the maximum for monthly average mass standard for Lead (second column of numerical standards) which now reads "0.0117", is corrected to read "0.117".

§ 464.22 [Corrected]

14. In 40 CFR 464.22 on page 45255, "(a) Dust Collection Scrubber Operations" is corrected to read "(c) Dust Collection Scrubber Operations.".

15. In 40 CFR 464.22(f) on page 45255, Melting Furnace Scrubber Operations, BPT Effluent Limitations, the annual average mass limitation for non-continuous dischargers for Oil and grease (second table, third column of

numerical limitations) which now reads "11.7", is corrected to read "11.8".

16. In 40 CFR 464.22(g) on page 45255, (g) Mold Cooling Operations, BPT Effluent Limitations (second table), footnote 1 is corrected to read "kg/1,000 kkg (pounds per million pounds) of metal poured.".

§ 464.23 [Corrected]

17. In 40 CFR 464.23(f) on page 45256, Melting Furnace Scrubber Operations, BAT Effluent Limitations (second table), footnote 1 is corrected to read "kg/62.3 million Sm^3 (pounds per billion SCF) of air scrubbed.".

18. In 40 CFR 464.23(g) on page 45256, Mold Cooling Operations, BAT Effluent Limitations (second table), the description of units in the table of limitations, which reads "kg/1,000 kkg pounds per million pounds of metal poured", is deleted.

§ 464.24 [Corrected]

19. In 40 CFR 464.24(a) on page 45256, Casting Quench Operations, NSPS, the annual average mass standard for non-continuous dischargers for Copper (second table, third column of numerical standards) which now reads "0.068", is corrected to read "0.0068".

20. In 40 CFR 464.24(a) on page 45256, Casting Quench Operations, NSPS (second table), footnote 1 is corrected to read "kg/1,000 kkg (pounds per million pounds) of metal poured.".

21. In 40 CFR 464.24(b) on page 45257, Direct Chill Casting Operations, NSPS (second table), footnote 1 is corrected to read "kg/1,000 kkg (pounds per million pounds) of metal poured.".

22. In 40 CFR 464.24(f) on page 45257, Melting Furnace Scrubber Operations, NSPS (second table), footnote 1 is corrected to read "kg/62.3 Sm^3 (pounds per billion SCF) of air scrubbed.".

23. In 40 CFR 464.24(g) on page 45257, Mold Cooling Operations, NSPS (first table), the description of units in the table of limitations is corrected to read "kg/1,000 kkg (pounds per million pounds) of metal poured.".

§ 464.32 [Corrected]

24. In 40 CFR 464.24(a) on page 45260, Casting Cleaning Operations, BPT Effluent Limitations (second table), in footnote 2 there was an error in the numerical ratio. The footnote is corrected to read "These concentrations must be multiplied by the ratio (5.33/x) where x is the actual normalized process wastewater flow (in gallons per 1,000 pounds of metal poured) for a specific plant.".

25. In 40 CFR 464.32(c) on page 45260, Dust Collection Scrubber Operations, BPT Effluent Limitations (second table), in footnote 2 there was an error in the numerical ratio. The footnote is corrected to read "These concentrations must be multiplied by the ratio (0.090/x) where x is the actual normalized process wastewater flow (in gallons per 1,000 SCF of air scrubbed) for a specific plant.".

26. In 40 CFR 464.32(e) on page 45260, Investment Casting, BPT Effluent Limitations (second table), in footnote 2 there was an error in the numerical ratio. The footnote is corrected to read "These concentrations must be multiplied by the ratio of (1,320/x) where x is the actual normalized process wastewater flow (in gallons per 1,000 pounds of metal poured) for a specific plant."

§ 464.33 [Corrected]

27. In 40 CFR 464.33(a)(1) on page 45261, Casting Cleaning Operations, BAT Effluent Limitations (second table), in footnote 2 there was an error in the numerical ratio. The footnote is corrected to read "These concentrations must be multiplied by the ratio of (5.33/x) where x is the actual normalized process wastewater flow (in gallons per 1,000 pounds of metal poured) for a specific plant.".

28. In 40 CFR 464.33(a)(2) on page 45261, Casting Cleaning Operations, BAT Effluent Limitations, line 2 of the introductory of (a)(2), which now reads, "casting primarily steel to plants that are", is corrected to read "casting primarily steel and to plants that are."

29. In 40 CFR 464.33(a)(2) on page 45261, Casting Cleaning Operations, BAT Effluent Limitations (second table), in footnote 2 there was an error in the numerical ratio. The footnote is corrected to read "These concentrations must be multiplied by the ratio of (5.33/x) where x is the actual normalized process wastewater flow (in gallons per 1,000 pounds of metal poured) for a specific plant.".

30. In 40 CFR 464.33(i)(1) on page 45263, Wet Sand Reclamation Operations, BAT Effluent Limitations, the annual average mass limitation for non-continuous dischargers for Copper (second table, third column of numerical limitations) which now reads "0.85", is corrected to read "0.0485".

§ 464.34 [Corrected]

31. In 40 CFR 464.34(a)(1) on page 45263, Casting Cleaning Operations, NSPS (second table), in footnote 2 there was an error in the numerical ratio. The footnote is corrected to read "These concentrations must be multiplied by the ratio of (5.33/x) where x is the actual normalized process wastewater flow (in gallons per 1,000 pounds of metal poured) for a specific plant.".

32. In 40 CFR 464.34(a)(2) on page 45264, Casting Cleaning Operations, NSPS, the maximum for monthly average mass standard for continuous dischargers for Zinc (first table, second column of numerical standards) which now reads "0.0025", is corrected to read "0.025".

33. In 40 CFR 464.34(a)(2) on page 45264, Casting Cleaning Operations, NSPS (second table), in footnote 2 there was an error in the numerical ratio. The footnote is corrected to read "These concentrations must be multiplied by the ratio of (5.33/x) where x is the actual normalized process wastewater flow (in gallons per 1,000 pounds of metal poured) for a specific plant.".

34. In 40 CFR 464.34 on page 45264, third column "(3) Investment Casting." is corrected to read "(e) Investment Casting.".

35. In 40 CFR 464.34(g)(1) on page 45265, Mold Cooling Operations, NSPS, lines 1 and 2 of the third column of text on page 45265, which now read "malleable iron where greater that 3,557 tons of metal are poured per year.", are corrected to read "malleable iron where greater than 3,557 tons of metal are poured per year.".

36. In 40 CFR 464.34(g)(1) on page 45265, Mold Cooling Operations, NSPS (first table), the description of units in the table of limitations is corrected to read "kg/1,000 kkg (pounds per million pounds) of metal poured.".

37. In 40 CFR 464.34(g)(1) on page 45265, Mold Cooling Operations, NSPS (second table), in footnote 2 there was an error in the numerical ratio. The footnote is corrected to read "These concentrations must be multiplied by the ratio of (17.7/x) where x is the actual normalized process wastewater flow (in gallons per 1,000 pounds of metal poured) for a specific plant.".

38. In 40 CFR 464.34(g)(2) on page 45265, Mold Cooling Operations, NSPS, lines 4 and 5 of the introductory text of (g)(2), which now read "where equal to less that 3,557 tons of metal are poured per year.", are corrected to read "where equal to or less than 3,557 tons of metal are poured per year.".

39. In 40 CFR 464.34(g)(2) on page 45265, Mold Cooling Operations, NSPS (first table), the description of units in the table of limitations is corrected to read "kg/1,000 kkg (pounds per million pounds) of metal poured.".

40. In 40 CFR 464.34(g)(2) on page 45265, Mold Cooling Operations, NSPS (second table), in footnote 2 there was an error in the numerical ratio. The footnote is corrected to read "These

concentrations must be multiplied by the ratio of (17.7/x) where x is the actual normalized process wastewater flow (in gallons per 1,000 pounds of metal poured) for a specific plant.".

41. In 40 CFR 464.34(h)(2) on page 45266, Slag Quench Operations, NSPS (second table), footnote 1 is corrected to read "kg/1,000 kkg (pounds per million pounds) of metal poured.".

42. In 40 CFR 464.34(i)(1) on page 45266, Wet Sand Reclamation Operations, NSPS, the annual average mass standard for non-continuous dischargers for Oil and grease (second table, third column of numerical standards) which now reads, "3.71", is corrected to read "3.73".

§ 464.35 [Corrected]

43. In 464.35(g)(1) on page 45267, Mold Cooling Operations, PSES, the description of units in the table of limitations is corrected to read "kg/1,000 kkg (pounds per million pounds) of metal poured.".

44. In 464.35(g)(2) on page 45268, Mold Cooling Operations, PSES, the description of units in the table of limitations is corrected to read "kg/1,000 kkg (pounds per million pounds) of metal poured.".

§ 464.41 [Corrected]

45. In 40 CFR 464.41(a)(1) in the second column of text on page 45270, the heading which now reads "Casting Quench (§ 464.45(a) and § 464.46(b)):", is corrected to read "Casting Quench (§ 464.45(a) and § 464.46(a)):".

§ 464.42 [Corrected]

46. In 40 CFR 464.42(c) on page 45271, Melting Furnace Scrubber Operations, BPT Effluent Limitations, the maximum for any 1 day concentration limitation for non-continuous dischargers for Zinc (second table, first column of numerical limitations) which now reads "1.44", is corrected to read "1.14".

47. In 40 CFR 464.42(d) on page 45271, Mold Cooling Operations, BPT Effluent Limitations (first table), the description of units in the table of limitations is corrected to read "kg/1,000 kkg (pounds per million pounds) of metal poured.".

48. In 40 CFR 464.42(d) on page 45271, Mold Cooling Operations, BPT Effluent Limitations, the maximum for any 1 day concentration limitation for non-continuous dischargers for Zinc (second table, first column of numerical limitations) which now reads "1.44", is corrected to read "1.14".

§ 464.43 [Corrected]

49. In 40 CFR 464.43(a) on page 45271, Casting Quench Operations, BAT Effluent Limitations (second table), in footnote 2 there was an error in the numerical ratio. The footnote is corrected to read "These concentrations must be multiplied by the ratio of (5.34/x) where x is the actual normalized process wastewater flow (in gallons per 1,000 pounds of metal poured) for a specific plant.".

50. In 40 CFR 464.43(d) on page 45272, Mold Cooling Operations, BAT Effluent Limitations, the maximum for monthly average concentration limitation for non-continuous dischargers for Copper (second table, second column of numerical limitations) which now reads "0.042", is corrected to read "0.42".

§ 464.44 [Corrected]

51. In 40 CFR 464.44(a) on page 45272, Casting Quench Operations, NSPS, the maximum for monthly average mass standard for continuous dischargers for Lead (first table, second column of numerical standards) which now reads 0.0166", is corrected to read "0.0116".

52. In 40 CFR 464.44(a) on page 45272, Casting Quench Operations, NSPS (second table), in footnote 2 there was an error in the numerical ratio. The footnote is corrected to read "These concentrations must be multiplied by the ratio of (5.34/x) where x is the actual normalized process wastewater flow (in gallons per 1,000 pounds of metal poured) for a specific plant.".

53. In 40 CFR 464.44(d) on page 45272, Mold Cooling Operations, NSPS, the annual average mass standard for non-continuous dischargers for Zinc (second table, third column of numerical standards) which now reads "0.71", is corrected to read "0.071".

§ 464.46 [Corrected]

54. In 40 CFR 464.46(a) on page 45273, Casting Quench Operations, PSNS, the maximum for monthly average mass standard for Lead (first table, second column of numerical standards) which now reads ".0116", is corrected to read "0.0116".

B. Clarifications of the Preamble

1. On page 45216, in the first column, the heading for Subpart B, "Aluminum Casting Subcategory" should have read "Copper Casting Subcategory".

2. On page 45217, in the third column, eighth line, "applied flow rate of 10.7 gallons per 1000 standard cubic feet" should have read "applied flow rate of 10.5 gallons per 1000 standard cubic feet".

3. On page 45220, first column, in the sixth line under the subheading Option 3: Recycle, Lime and Settle, Filtration: "considered by EPA to be among the best available technologies (BPT) for further treatment" should have read, "considered by EPA to be among the best available technologies (BAT) for further treatment".

4. On page 45226, first column, twelfth line, "These costs were found to be necessary for plants in the magnesium subcategory" should have read "These costs were found to be unnecessary for the plants in the magnesium subcategory".

Dated: May 30, 1986.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 86-13110 Filed 6-13-86; 8:45 am]

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40 CFR Part 60

[AD-FRL-3008-4]

Standards of Performance for New Stationary Sources; Monitoring Requirements; Appendix B, Alternative Procedures to Performance Specification 2 for SO_2 and NO_x Continuous Emission Monitoring Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Amendments to 40 CFR Part 60, § 60.13(c) and Appendix B were proposed in the **Federal Register** on March 6, 1985 (50 FR 9057). This action promulgates amendments to the monitoring requirements in 40 CFR Part 60 to allow the use of a cylinder gas or calibration cell procedure for determining the relative accuracy (RA) of a continous emission monitoring system (CEMS) when the emission rate is less than 50 percent of the applicable standard. The intended effect of these amendments is to add flexibility to the requirements of the Performance Specification (PS) 2 and to lower the expense of CEMS certification without affecting the quality of CEMS data relative to the allowable emission limits.

EFFECTIVE DATE: June 16, 1986.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A-84-46, containing materials

considered by the Agency in the development of the amendments is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Westlin or Mr. Roger T. Shigehara, Emission Standards and Engineering Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The Amendments

The alternative procedure for determining the RA and a CEMS uses cylinder gases or calibration cells of known concentration or CEMS response. The alternative applies only to a CEMS used at a source whose pollutant emission rate is less than 50 percent of the applicable emission rate. Under such conditions, the source owner or operator can petition the Agency to waive the relative accuracy test (RAT) procedure and to allow the use of the alternative RA procedure. The amendments describe the criteria for the RAT waiver, the alternative RA procedure, the acceptance criteria and the criteria that would lead to rescission of the waiver. These amendments are in § 60.13(c) and Appendix B, PS 2 of 40 CFR Part 60.

II. Public Participation

The proposed amendments to the monitoring requirements in 40 CFR Part 60 were published in the **Federal Register** on March 6, 1985 (50 FR 9057). Public comments were solicited at the time of the proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed procedures, a public hearing was scheduled for April 22, 1985, beginning at 9:00 a.m. The hearing was not held because no one requested to speak. The public comment period was from March 6, 1985, to May 20, 1985.

Four comment letters concerning the issues relative to the proposed amendments were received. The comments have been carefully considered, and where determined to be appropriate by the Agency, changes have been made in the proposed amendments.

III. Comments and Changes to the Proposed Amendments

Comments on the proposed amendments to 40 CFR Part 60 were received from two manufacturing facilities, one utility, and one State air pollution control agency. Because of the small number of commenters, the comments are addressed directly to the preamble. No separate summary of comments and responses has been produced. Most comment letters contained multiple comments. The comments have been divided into categories cited below.

1. Criteria for allowing the waiver.

a. One commenter proposed to expand the criteria for petitioning for a waiver beyond that which allows only sources with emissions less than 50 percent of the emission standard to apply; e.g., the cylinder gas or calibration cell alternative procedure should be allowed for sources where serious interferences with the reference method (RM) occur.

Discussion with the commenter revealed that the emission testing problem of concern was the application of Method 6 for SO_2 measurement in stack gases with free lime. The Agency has applied this RM to this type of source successfully and discussed with the commenter the technical approach that should be applied to this type of source. The Agency believes it would be inappropriate to waive the RAT requirements because of method application problems that can be resolved by correct application of the method.

b. The same commenter proposed that a set, absolute value should be selected instead of relating the trigger emission level to the emission standard. This would prevent the possibility of a source with a relatively high emission limit being allowed to petition for a waiver of the RAT while another source with a relatively low emission limit could not, even though the first source produces a higher actual emission than the second.

The example cited by the commenter could occur only if the two sources were in different source categories and subject to different new source performance standards (NSPS). This being the case, there is no inequity in applying the proposed alternative procedure as the two sources are not equivalent in either process operation or control capabilities. It is more appropriate to define the level at which the alternative procedure is available in relation to the applicable emission limit than to an absolute emission level. Concern for CEMS data accuracy is more critical at emission levels approaching the compliance limit than at another emission level unrelated to the applicable compliance limit.

c. This same commenter further proposed that the alternative RA procedure be allowed when a CEMS passes all the PS parameters except the RAT.

The purpose of the alternative procedure is to relieve some of the burden of RA testing in those situations where emissions are sufficiently below the emission limit so that the absolute level of CEMS accuracy is not critical to compliance or excess emissions determinations. To waive the RA testing requirements without regard to emission levels is inappropriate and would cast doubt on the CEMS data for determining compliance of the levels of process operation and emission controls.

2. Criteria for Rescinding Waiver.

a. One commenter questioned the use of the term "averaging period" which is used in determining the length of time higher emissions are allowed to occur before the RAT waiver is rescinded. The commenter asked that the term be defined clearly.

The averaging period is defined by the applicable regulation. Each NSPS includes a definition of averaging time specific for that source category. Today's published amendments include an example of specific sections in 40 CFR Part 60 that specify averaging time in order to clarify this term.

b. The same commenter noted that the automatic rescission of the waiver after seven averaging periods of higher emissions was too restrictive. There are several causes of higher emissions that are readily correctable and once the problems are corrected, the emissions could be expected to decrease. The commenter proposed to revise this proposed requirement to require notification of the occurrence and allow the source and the Agency to determine whether rescission of the waiver is appropriate.

The Agency agrees with this proposal and has added wording to § 60.13(c)(2) to this effect.

3. Applicability of Alternative Procedure.

a. A regulatory agency commented that the RA testing of a CEMS should not be waived regardless of the level of emissions if the CEMS data are to be used by the agency for any decision-making. Examples of such cases include prevention of significant deterioration, permitting bubble enforcement, special

permit conditions, and emission inventory.

The RAT waiver applies to sources subject to NSPS when the CEMS data are used to determine the level of acceptable operation and maintenance relative to the NSPS emission standard. The procedure for granting the waiver includes review by the applicable agency. If the agency determines that the waiver is inappropriate because the CEMS data are to be used for purposes in addition to those in the NSPS, the agency can opt not to grant the waiver. If the applicable emission limit is more stringent than the NSPS limit, the agency may establish an accuracy requirement commensurate with the applicable standard.

b. A utility commenter noted that the present PS requirements are not unduly burdensome. The commenter further stated that a CEMS operator should do something to ensure acceptable performance and justify payment for the system. The commenter suggested that less stringent RA and calibration drift requirements could be allowed for sources with low emissions if more flexibility is desired.

The source owner or operator determines whether to petition for the RA waiver. It is the CEMS operator's option not to petition if it is felt that conducting the RAT is critical to acceptance of the CEMS. The amendments to add the alternative accuracy determination provide a less burdensome procedure for CEMS operators who operate their facilities at emission levels well below the emission limit and intend to continue such operation.

Further, PS 2 already provides for less stringent RA limits for CEMS's applied to sources with emissions that are low relative to the emission limit. This provision requires the completion of the RAT. The alternative of using a cylinder gas or calibration cell RA procedure does not require the RM testing.

c. One commenter proposed that some of the auditing requirements in the proposed Appendix F, Procedure 1—Quality Assurance Requirements for Gaseous Continuous Emission Monitoring Systems Used for Compliance Determination (49 FR 9676, March 14, 1984), be waived in lieu of waiving the RAT in the PS's.

The intention of the Agency in publishing these amendments to § 60.13 and PS 2 is to affect only CEMS's that meet the criteria and are used for operation and maintenance monitoring. The CEMS's used for compliance monitoring require more rigorous quality assurance measures in order to assure accurate determination of long-term compliance.

d. One commenter contended that performance testing of all CEMS's should be conducted in the same manner regardless of emission levels. It is improper to accept CEMS data that are of limited accuracy, particularly if these data are used in regulatory actions.

The amendments include criteria and procedures to limit the collection and reporting of CEMS data when the emissions approach the regulated limit. The amendments provide that the CEMS operator alert the regulatory agency when emissions, as indicated by the CEMS, begin to increase. The Agency is required to review the situation and determine whether a RAT is necessary to assure valid CEMS data are reported. These provisions should minimize the number of actions taken by an Agency using data from a CEMS that has not undergone RA testing.

e. Another commenter suggested that installation of the CEMS should be waived for cases where the source's emissions are below 50 percent of the standard. Instead, the regulatory agency could establish process operating parameters that could be monitored to indicate the level of emissions. If indications of increasing emissions occur, a CEMS could be installed at that time.

It is not within the scope of these amendments to change the requirements to install a CEMS in complying with NSPS. Section 60.13(i) provides the means for a source to apply to the Agency for any alternative procedure from monitoring emissions or control capabilities. This determination is made on a case-by-case basis.

A practical problem arises with the commenter's suggestion to waive CEMS installation until an increase in emissions is indicated. Purchase and installation of a CEMS can require up to a year to complete. It would be unacceptable to allow a year's lapse in CEMS data collection, especially if there are indications that emissions are approaching the level of the emission standard.

f. The same commenter proposed that part of the burden of CEMS certification could be eased without sacrificing accuracy by using the results of the RA testing to fulfill the performance test requirements in § 60.8.

Combining the emission testing required for CEMS evaluation with the performance testing of the source is allowed and encouraged as an efficient use of source and Agency resources. Test results collected to satisfy the CEMS RAT requirements may also be used to demonstrate compliance as specified in § 60.8, provided the tests were conducted as specified in the applicable regulation. However, the Agency does not agree that the three-run performance test required in § 60.8 is equivalent to the nine-run RAT required in PS 2 in assessing CEMS accuracy. The PS's requirement for nine test runs is necessary to satisfy a need for a statistically significant evaluation of the CEMS RA.

g. Additional comments raised during internal Agency reviews concerned the practicability of applying the alternative procedure. Would there be sufficient information prior to the performance test to indicate the level of emissions relative to the emission standard and, thus, warrant a waiver of CEMS RA testing?

There are a number of conceivable scenarios that would make use of this revision practical. For example, one such scenario is a new source expected to operate with emissions below 50 percent of the emission standard. The plant operator submits to the Agency a detailed description of the CEMS to be installed and of the alternative RA procedures as described in § 60.13(c)(1). The plant operator then receives tentative approval and installs the CEMS upon completion of construction of the affected facility and the control system. While the control system supplier conducts tests to verify that conditions of the guarantee are met, the plant operator gathers additional emission information with the CEMS. If the emission levels are below 50 percent of the applicable limit, this plant operator submits the results of the guarantee tests and the CEMS data to the Agency with the request for the RAT waiver along with the notification of the dates of the performance tests as required in the General Provisions.

The Agency reviews the data and the request prior to the performance test. One possible decision the Agency can make is to grant the source the waiver (provided the data indicate sufficiently low emission levels) contingent upon review of the results of the performance tests and of the alternative RA procedure.

4. Alternative Procedure.

a. One commenter cited problems encountered in applying a calibration gas accuracy test and a gas cell accuracy test to CEMS's. The commenter noted that such a test can produce data indicating satisfactory CEMS operation while leaks in sampling probes and lines are undetected. The commenter indicated that the

alternative RA approach is unsatisfactory for use as an alternative to the RAT.

The problems presented by the commenter are related more to the technical aspects of the procedure as applied to an individual CEMS rather than the validity of the approach. The amendments stress the need to prepare a complete written procedure for conducting the alternative accuracy assessment and to allow the Agency to review and approve it before application. Section 60.13(c)(2) has been revised from the proposal to include a statement concerning what technical information must be included with the petition to waive the RAT. Such information includes the location and procedure for introducing the alternative RA material, the concentration levels of the alternative RA materials, and the other equipment checks conducted during the alternative accuracy assessment. An example of part of an acceptable procedure is insertion of calibration gas at the sampling probe which would allow detection of sample system leaks.

b. Two commenters said that three, instead of two measurement points should be required for the alternative RA assessment. Data from a three-point check would allow a determination of the linearity of the CEMS output.

The purpose of the cylinder gas or gas cell alternative procedure is to establish the accuracy of the CEMS response at concentrations in the range expected during normal operation of the source. The values specified in the alternative procedure reflect that purpose. The linearity of the CEMS response is important in the calibration of the instrument, but instrument linearity determination is not essential in conducting an RA determination. The Agency believes that the two-point procedure is sufficient for the purpose of providing an indication of the RA of the CEMS response.

c. One commenter stated that the 15 percent allowable error for the alternative RA is too lenient.

The Agency has conducted on-site, cylinder gas RA checks of CEMS's over extended periods. The results of these audits indicate that a less than 15 percent limit for the audit result would be too restrictive; that is, the lower limit would result in RA failures for CEMS's that perform satisfactorily during RAT determinations. The Agency believes that the 15 percent limit is sufficient indication of CEMS accuracy. (See EPA report: "Assessment of the Adequacy of the Proposed Appendix F Quality Assurance Procedures for Maintaining CEMS Data Accuracy: Status Report 3," available from Mr. Darryl Von Lehmden, EPA, Mail Drop 77, Research Triangle Park, North Carolina 27711.)

d. One commenter proposed that gas cells should be certified in a laboratory environment and periodic checks of cell integrity conducted rather than allowing use of the CEMS to assign cell values.

The amendments to PS 2 list both the laboratory cell certification procedure and the on-site cell certification procedure as potentially acceptable in assigning cell values. The amendments note that any cell certification procedure is subject to approval by the regulatory agency. The amendments add that the on-site cell certification procedures must include a RM accuracy check of the CEMS used to assign the calibration cell values. This approach provides a comparison of cell response value to the RM under realistic operating conditions. The Agency believes this is a valid, although cumbersome, approach to cell response certification for this application.

e. The same commenter noted that the directions in § 10.1.1 requiring the CEMS operator to inspect and verify the operation of the CEMS components before conducting the alternative RA test should be more specific. The commenter felt that leaving these requirements to the discretion of the operators or CEMS manufacturers would result in widely varying levels of detail in the checks.

Many of these inspection procedures are site-specific making it extremely difficult for the Agency to develop more than general guidelines for this purpose. It is more appropriate that CEMS operators and CEMS manufacturers develop and implement the inspection procedures for the conditions of the specific source. The Agency has prepared guidelines for CEMS PS testing and inspection procedures as identified in Citation 4 of PS 2.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises in domestic or foreign markets.

This regulation is considered a technical change and was not sent to the Office of Management and Budget for review.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will have no economic impact on small entities because this is not a new requirement but an alternative procedure.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernment relations, Reporting and recordkeeping requirements, Incorporation by reference.

Dated June 3, 1986.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

Section 60.13(c) and Appendix B, Performance Specification 2 of 40 CFR Part 60 are amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.13 is amended by adding a sentence to the end of paragraph (c) and by adding paragraphs (c)(1) and (c)(2) as follows:

§ 60.13 Monitoring requirements.

(c) * * * An alternative to the relative accuracy test specified in Performance Specification 2 of Appendix B may be requested as follows:

(1) An alternative to the reference method tests for determining relative accuracy is available for sources with emission rates demonstrated to be less than 50 percent of the applicable standard. A source owner or operator may petition the Administrator to waive

the relative accuracy test in section 7 of Performance Specification 2 and substitute the procedures in section 10 if the results of a performance test conducted according to the requirements in § 60.8 of this subpart or other tests performed following the criteria in § 60.8 demonstrate that the emission rate of the pollutant of interest in the units of the applicable standard is less than 50 percent of the applicable standard. For sources subject to standards expressed as control efficiency levels, a source owner or operator may petition the Administrator to waive the relative accuracy test and substitute the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures does not apply if the continuous emission monitoring system is used to determine compliance continuously with the applicable standard. The petition to waive the relative accuracy test shall include a detailed description of the procedures to be applied. Included shall be location and procedure for conducting the alternative, the concentration or response levels of the alternative RA materials, and the other equipment checks included in the alternative procedure. The Administrator will review the petition for completeness and applicability. The determination to grant a waiver will depend on the intended use of the CEMS data (e.g., data collection purposes other than NSPS) and may require specifications more stringent than in Performance Specification 2 (e.g., the applicable emission limit is more stringent than NSPS).

(2) The waiver of a CEMS relative accuracy test will be reviewed and may be rescinded at such time following successful completion of the alternative RA procedure that the CEMS data indicate the source emissions approaching the level of the applicable standard. The criterion for reviewing the waiver is the collection of CEMS data showing that emissions have exceeded 70 percent of the applicable standard for seven, consecutive, averaging periods as specified by the applicable regulation(s). For sources subject to standards expressed as control efficiency levels, the criterion for reviewing the waiver is the collection of CEMS data showing that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for seven, consecutive, averaging periods as specified by the applicable regulation(s) (e.g., § 60.45(g)(2) and (3), § 60.73(e), and § 60.84(e)). It is the responsibility of the source operation to maintain records and determine the level of emissions relative to the criterion of this waiver of relative accuracy testing. If this criterion is exceeded, the owner or operator must notify the Administrator within 10 days of such occurance and include a description of the nature and cause of the increasing emissions. The Administrator will review the notification and may rescind the waiver and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2.

* * * * *

Appendix B—[Amended]

3. Section 9 of Performance Specification 2 of Appendix B is revised to read as follows:

Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_x Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

9. Reporting

At a minimum (check with the appropriate regional office, or State, or local agency for additional requirements, if any) summarize in tabular form the results of the CD tests and the relative accuracy tests or alternative RA procedure as appropriate. Include all data sheets, calculations, charts (records of CEMS responses), cylinder gas concentration certifications, and calibration cell response certifications (if applicable), necessary to substantiate that the performance of the CEMS met the performance specifications.

* * * * *

4. Performance specification 2 is further amended by redesignating section 10 as section 11 and adding new sections 11.2, 11.3, and 11.4 and by adding a new section 10 to read as follows:

10. Alternative Procedures

10.1 Alternative to Relative Accuracy Procedure in Section 7. Paragraphs 60.13(c) (1) and (2) contain criteria for which the reference method relative accuracy may be waived and the following procedure substituted.

10.1.1 Conduct a complete CEMS status check following the manufacturer's written instructions. The check should include operation of the light source, signal receiver, timing mechanism functions, data acquisition and data reduction functions, data recorders, mechanically operated functions (mirror movements, zero pipe operation, calibration gas valve operations, etc.), sample filters, sample line heaters, moisture traps, and other related functions of the CEMS, as applicable. All parts of the CEMS shall be functioning properly before proceeding to the alternative RA procedure.

10.1.2 Challenge each monitor (both pollutant and diluent, if applicable) with cylinder gases of known concentrations or calibration cells that produce known responses at two measurement points within the following ranges:

MEASUREMENT RANGE

Measurement point	Pollutant monitor	Diluent monitor for	
		CO_2	O_2
1	20–30 percent of span value.	5–8 percent by volume.	4–6 percent by volume
2	50–60 percent of span value.	10–14 percent by volume.	8–12 percent by volume

Use a separate cylinder gas or calibration cell for measurement points 1 and 2. Challenge the CEMS and record the responses three times at each measurement point. Do not dilute gas from a cylinder when challenging the CEMS. Use the average of the three responses in determining relative accuracy.

Operate each monitor in its normal sampling mode as nearly as possible. When using cylinder gases, pass the cylinder gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling and as much of the sampling probe as practical. When using calibration cells, the CEMS components used in the normal sampling mode should not be by-passed during the RA determination. These include light sources, lenses, detectors, and reference cells. The CEMS should be challenged at each measurement point for a sufficient period of time to assure adsorption-desorption reactions on the CEMS surfaces have stabilized.

Use cylinder gases that have been certified by comparison to National Bureau of Standards (NBS) gaseous standard reference material (SRM) or NBS/EPA-approved gas manufacturer's certified reference material (CRM) (See Citation 2 in the Bibliography) following EPA traceability protocol Number 1 (See Citation 3 in the Bibliography). As an alternative to protocol Number 1 gases, CRM's may be used directly as alternative RA cylinder gases. A list of gas manufacturers that have prepared approved CRM's is available from EPA

at the address shown in Citation 2. Procedures for preparation of CRM are described in Citation 2.

Use calibration cells certified by the manufacturer to produce a known response in the CEMS. The cell certification procedure shall include determination of CEMS response produced by the calibration cell in direct comparison with measurement of gases of known concentration. This can be accomplished using SRM or CRM gases in a laboratory source simulator or through extended tests using reference methods at the CEMS location in the exhaust stack. These procedures are discussed in Citation 4 in the Bibliography. The calibration cell certification procedure is subject to approval of the Administrator.

10.1.3 The differences between the known concentrations of the cylinder gases and the concentrations indicated by the CEMS are used to assess the accuracy of the CEMS.

The calculations and limits of acceptable relative accuracy (RA) are as follows:

(a) For pollutant CEMS:

$$RA = \left| \frac{d}{AC} \times 100 \right| \leq 15 \text{ percent}$$

where:

d = Difference between response and the known concentration/response.

AC = The known concentration/response of the cylinder gas or calibration cell.

(b) For diluent CEMS:

RA = $|d| \leq 0.7$ percent O_2 or CO_2, as applicable.

Note: Waiver of the relative accuracy test in favor of the alternative RA procedure does not preclude the requirements to complete the calibration drift (CD) tests nor any other requirements specified in the applicable regulation(s) for reporting CEMS data and performing CEMS drift checks or audits.

11. Bibliography

11.1 * * *

11.2. "A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards Standard Reference Materials." Joint publication by NBS and EPA. EPA–600/7–81–010. Available from U.S. Environmental Protection Agency, Quality Assurance Division (MD–77), Research Triangle Park, North Carolina 27711.

11.3. "Traceability Protocol for Establishing True Concentrations of Gases Used for Calibration and Audits of Continuous Source Emission Monitors. (Protocol Number 1)." June 1978. Protocol Number 1 is included in the *Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III, Stationary Source Specific Methods.* EPA–600/4–77–027b. August 1977. Volume III is available from the U.S. EPA, Office of Research and Development Publications, 26 West St. Clair Street, Cincinnati, Ohio 45268.

11.4 "Gaseous Continuous Emission Monitoring Systems—Performance Specification Guidelines for SO_2, NO_x, CO_2, O_2, and TRS." EPA–450/3–82–026. Available from U.S. Environmental Protection Agency, Emission Standards and Engineering Division (MD–19), Research Triangle Park, North Carolina 27711.

[FR Doc. 86–13467 Filed 6–13–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 64

[Docket No. FEMA 6717]

Suspension of Community Eligibility; Connecticut et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

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

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the third column, as of that date, flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable floodplain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 USC 605(b), the Deputy Administrator, Federal Insurance Administrator, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster

Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64.

Flood insurance—floodplains.

PART 64—[AMENDED]

The authority citation for Part 64 continues to read as follows:

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

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

[Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension]

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date [1]
Region I				
Connecticut: Avon, town of, Hartford County.	090021B	Oct. 6, 1972, Emerg.; May 16, 1977, Reg.; June 17, 1986, Susp.	Jan. 23, 1974, May 16, 1977 and June 17, 1986.	June 17, 1986.
Maine:				
Howland, town of, Penobscot County	230391A	May 14, 1975 Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Aug. 13, 1976, and June 17, 1983	Do.
Boothbay Harbor, town of, Lincoln County.	230213B	Jan. 28, 1976, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Feb. 14, 1975, Aug. 16, 1977 and June 17, 1986.	Do.
Massachusetts:				
Yarmouth, town of, Barnstable County	250015C	May 26, 1972, Emerg.; May 2, 1977, Reg.; June 17, 1986, Susp.	Oct. 18, 1974, May 2, 1977, Oct. 1, 1983 and June 17, 1986.	Do.
Lincoln, town of, Middlesex County	250199C	Dec. 24, 1975, Emerg.; June 1, 1978, Reg.; June 17, 1986, Susp.	Dec. 13, 1984, Oct. 15, 1976, June 1, 1978 and June 17, 1986.	Do.
New Hampshire:				
Seabrook, town of, Rockingham County.	330143B	Mar. 30, 1978, Emerg.; June 17, 1986 Reg.; June 17, 1986, Susp.	Aug. 2, 1974, Nov. 26, 1976 and June 17, 1986.	Do.
Rye, town of, Rockingham County	330141B	Sept. 8, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	June 28, 1974, Sept. 3, 1976 and June 17, 1986.	Do.
Rhode Island: Charlestwon, town of, Washington County.	445395C	Oct. 30, 1970, Emerg.; July 13, 1972, Reg.; June 17, 1986, Susp.	July 13, 1972, July 1, 1974, Aug. 20, 1976, Oct. 1, 1983 and June 17, 1986.	Do.
Vermont: Bennington, town of, Bennington County.	500013C	Aug. 28, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Sept. 13, 1974, Feb. 18, 1977, Nov. 1, 1977 and June 17, 1986.	Do.
Region III				
Pennsylvania:				
Meyersdale, borough of, Somerset County.	422044B	Mar. 21, 1977, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Apr. 15, 1974, Sept. 12, 1980 and June 17, 1986.	Do.
Bentleyville, borough of, Washington County.	420846B	Oct. 15, 1974, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Feb. 1, 1974, June 4, 1976, and June 17, 1986.	Do.
Waynesburg, borough of, Greene County.	420480B	Apr. 30, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	June 28, 1974, July 16, 1976, and June 17, 1986.	Do.
Freeport, borough of, Armstrong County.	420095B	Oct. 25, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	May 31, 1974, Oct. 8, 1976 and June 17, 1986.	Do.
Southampton, township of, Franklin County.	421657	June 17, 1985, Emerg.; May 15, 1986, Reg.; June 17, 1986, Susp.	May 31, 1974, Oct. 8, 1976, May 15, 1986	Do.
Region V				
Minnesota:				
Big Stone County, unincorporated areas.	270652B	July 2, 1974 Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	June 5, 1981 and June 17, 1986	Do.
Browns Valley, city of, Traverse County.	270480B	Apr. 30, 1974, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	May 10, 1974, June 4, 1976 and June 17, 1986.	Do.
Chippewa County, unincorporated areas.	270066B	Apr. 24, 1974,Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Apr. 20, 1979 and June 17, 1986	Do.
Region VI				
Texas: Kendall County, unincorporated areas.	480417B	Oct. 18, 1976, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Dec. 27, 1974, May 24, 1977 and June 17, 1986.	Do.
Region IX				
California:				
Santa Cruz, city of, Santa Cruz County.	060355C	July 2, 1975, Emerg.; Feb. 15, 1985, Reg.; June 17, 1986 Susp.	Mar. 8, 1974, Feb. 1985, Apr. 23, 1976 and June 17, 1986.	Do.
Vista, city of, San Diego County	060297C	July 25, 1975, Emerg.; Aug. 15, 1983, Reg.; June 17, 1986, Susp.	June 14, 1974, Apr. 1, 1977, Aug. 15, 1983 and June 17, 1986.	Do.
Eureka, city of, Humboldt County	060062C	June 9, 1975, Emerg.; June 1, 1982, Reg.; June 17, 1986, Susp.	May 24, 1974, Nov. 14, 1975, June 1, 1982 and June 17, 1986.	Do.
Escondido, city of, San Diego County	060290C	Oct. 22, 1971, Emerg.; Sept. 15, 1983, Reg.; June 17, 1986, Susp.	Apr. 5, 1978, Sept. 15, 1983 and June 17, 1986.	Do.
Region II—Minimal Conversions				
New York: Massena, town of, St. Lawrence County.	361182B	June 13, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Oct. 25, 1974, July 30, 1976 and June 17, 1986.	Do.
Region III				
Pennsylvania: Southampton, township of, Franklin County.	421657B	June 17, 1975, Emerg.; May 15, 1986, Reg.; June 17, 1986, Susp.	May 31, 1974, Oct. 8, 1976 and May 15, 1986.	Do.
Region IV				
Florida: Jay, town of, Santa Rosa County	120339A	Jan. 13, 1976, Emerg.; May 15, 1986, Reg.; June 17, 1986, Susp.	Oct. 10, 1975 and May 15, 1986	Do.
Alabama: Paint Rock, town of, Jackson County.	010214A	July 30, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Dec. 10, 1976 and June 17, 1986	Do.
Kentucky:				
Albany, city of, Clinton County	210059B	July 17, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	May 10, 1974, Feb. 27, 1976 and June 17, 1986.	Do.

[Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension]

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date [1]
Bonnieville, town of, Hart County	210108B	Oct. 9, 1974, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	June 28, 1974, Feb. 20, 1976 and June 17, 1986.	Do.
Brandenburg, City of, Meade County	210170B	Apr. 15, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	May 17, 1974, Oct. 31, 1975 and June 17, 1986.	Do.
Livingston, city of, Rockcastle County	210202B	Aug. 20, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Aug. 2, 1974, Feb. 20, 1976 and June 17, 1986.	Do.
Wheelwright, city of, Floyd County	210074B	Oct. 15, 1974, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	May 17, 1974, Mar. 5, 1976 and June 17, 1986.	Do.
South Carolina:				
Fountain Inn, town of, Greenville, Laurens Counties.	450209B	June 2, 1977, Emerg.; June 17, 1976, Reg.; June 17, 1986, Susp.	July 23, 1976, June 3, 1977 and June 17, 1986.	Do.
Iva, town of, Anderson County	450017B	Aug. 6, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	May 31, 1974, Mar. 26, 1976 and June 17, 1986.	Do.
Walhalla, town of, Oconee County	450159B	May 2, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	June 28, 1974, June 4, 1976 and June 17, 1986.	Do.
Tennessee:				
Estill Springs, town of, Franklin County	470272B	July 17, 1975 Emerg.; May 15, 1986, Reg.; June 17, 1986, Susp.	Feb. 1, 1974, Oct. 22, 1976 and Apr. 15, 1986.	Do.
Dandridge, town of, Jefferson County	470299A	Jan. 8, 1979, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	June 11, 1976 and June 17, 1986	Do.
Mason, city of, Tipton County	470191A	Dec. 8, 1980, Emerg.; May 15, 1986, Reg.; June 17, 1986, Susp.	Oct. 1, 1976 and May 15, 1986	Do.
Region V				
Illinois: Greenfield, city of, Greene County	170252B	July 5, 1979, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Feb. 22, 1974, July 16, 1976 and June 17, 1986.	Do.
Indiana: Cloverdale, town of, Putnam County.	180215B	May 9, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	June 7, 1974, Aug. 6, 1976 and June 17, 1986.	Do.
Michigan: Saranac, village of, Ionia County	260421B	Sept. 3, 1976, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	July 11, 1975, Mar. 11, 1977 and June 17, 1986.	Do.
Minnesota: Elgin, city of, Wabasha County	270484C	July 7, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	May 17, 1974, June 9, 1976 and Feb. 16, 1979.	Do.
Ohio: Liberty Center, village of, Henry County.	360619B	Oct. 6, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Oct. 18, 1974, May 21, 1976 and June 17, 1986.	Do.
Wisconsin:				
Bagley, village of, Grant County	550145B	July 25, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Aug. 30, 1974, May 21, 1976 and June 17, 1986.	Do.
Embarrass, village of, Waupaca County.	550495B	May 2, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Dec. 7, 1973, May 21, 1976 and June 17, 1986.	Do.
Union Grove, village of, Racine County.	550586	Mar. 5, 1979, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Mar. 15, 1979 and June 17, 1986	Do.
Region VII				
Iowa:				
Anita, city of, Cass County	190048B	Apr. 11, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	May 3, 1974, Oct. 31, 1975 and June 17, 1986.	Do.
Carroll County, unincorporated areas	190039B	Apr. 24, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	June 17, 1977 and June 17, 1986	Do.
Nebraska: Elgin, village of, Antelope County.	310002B	Apr. 18, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Mar. 22, 1974, Dec. 12, 1975 and June 17, 1986.	Do.
Region VIII				
Montana: Dodson, town of, Phillips County	300053B	June 6, 1977, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.	Dec. 27, 1974 and June 17, 1986	Do.

[1] Certain Federal assistance no longer available in special flood hazard areas.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 86-13447 Filed 6-13-86; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-316; RM-4987]

Radio Broadcasting Services; Crossville, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 273A to Crossville, Tennessee, as that community's second FM service, at the request of WCSV, Inc. With this action, this proceeding is terminated.

With this action, this proceeding is terminated.

DATES: Effective July 14, 1986; The window period for filing applications will open on July 15, 1986, and close on August 13, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-316, adopted May 7, 1986, and released June 6, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154, 303.

2. Section 73.202(b) is amended by adding the following:

§ 73.202 Table of allotments.

* * * * *

(b) * * *

Tennessee	Channel No.
* * * * *	
Crossville	273A
* * * * *	

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-13498 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-253; RM-4980]

Radio Broadcasting Services; Sturtevant, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 284A to Sturtevant, Wisconsin, as that community's first FM channel at the request of Sentry Broadcasting, Inc. A site restriction of 5.8 kilometers (3.6 miles) north of the city is required. Comments were filed by the petitioners and Wiscomm Ltd. d/b/a Lakes Area Media. With this action, this proceeding is terminated.

DATES: Effective July 14, 1986; The window period for filing applications will open on July 15, 1986, and close on August 30, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-253 adopted May 27, 1986, and released June 6, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[Amended]

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154, 303.

2. Section 73.202(b) is amended by adding the following:

§ 73.202 Table of allotments.

* * * * *

(b) * * *

Wisconsin	Channel No.
* * * * *	
Sturtevant	284A
* * * * *	

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-13501 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 84-1296]

Cable Television; Reconsideration of the Implementation of the Cable Communications Policy Act of 1984

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action dismisses three petitions for partial reconsideration of the Commission's *Report and Order* in MM Docket No. 84-1296. In that *Report and Order*, the Commission adopted rules to implement various provisions of the Cable Communications Policy Act of 1984. Petitioners raise issues regarding cable franchise fees and the definition of a cable system. Reconsideration of the Commission's decision with respect to these issues is denied as petitioners fail to demonstrate any error or omission in the *Report and Order*. This action also revises the definition of basic cable service in the Commission's rules. The new definition eliminates reference to the must carry rules but preserves the Commission's initial policy decision on this subject by including the same signals that were formerly afforded must carry status. The definition of basic cable service was revised in response to the July 19, 1985, U.S. Court of Appeals ruling in the *Quincy* case that declared the Commission's "must carry" rules constitutionally invalid.

EFFECTIVE DATE: July 14, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion And Order in MM Docket No. 84-1296, adopted: May 30, 1986, and released June 5, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street Northwest, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of The Memorandum Opinion and Order

1. On April 11, 1985, the Commission adopted a *Report and Order* in MM Docket No. 84-1296 (50 FR 18637; May 2, 1985), that amended its rules to implement certain provisions of the Cable Communications Policy Act of 1984 (Cable Act). Before the Commission are three Petitions for Partial Reconsideration of the *Report and Order*. These petitions seek reconsideration of the Commission's policy decisions in two areas: 1) franchise fees, and 2) the definition of "cable system." Also before the Commission are comments filed in response to its *Order Reopening the Period for Filing Comments* in MM Docket No. 84-1296 (50 FR 38016; Sept. 19, 1985). This *Order* was issued to provide interested parties an opportunity to comment on the impact of the U.S. Court of Appeals decision in *Quincy Cable TV, Inc. v. FCC* on the definition of "basic cable service" adopted in the *Report and Order*.

2. By this *Memorandum Opinion and Order*, we are denying the Petitions for Partial Reconsideration of the *Report and Order*. We also are adopting a revised definition of "basic cable service" that eliminates the reference to the "must carry" rules.

3. Miami Cablevision petitioned the Commission to reinstate the franchise fee provisions of our rules, asserting that by not doing so the Commission abdicated its statutory authority and contravened congressional intent. After reviewing the *Petition for Partial Reconsideration*, the Commission concludes that franchise fee standards should not be reinstated in our rules. The Commission notes that the provisions of Section 622 of the Cable Act supersede its franchise fee rules and that Congress intended for franchise fee issues to be more appropriately resolved through the judicial process. In this regard, the Commission also refuses to reinstate petitions regarding franchise fee disputes that were pending prior to December 29, 1984. The Commission believes it is wise to allow courts that decide the "tax or fee" status of state and local levies to decide the status of those levies regardless of whether they arose before or after the effective date of the Cable Act.

4. The National Association of Broadcasters (NAB) and the Association of Maximum Service Telecasters (MST) request that the Commission redefine "cable system" so as not to affect the applicability of the then existing must carry rules. Since these petitions were filed, however, the U.S. Court of Appeals decision in *Quincy* ruled the must carry rules constitutionally invalid. In light of this decision, the Commission issued a combined *Notice of Inquiry and Notice of Proposed Rule Making* to request comments and proposals concerning mandatory signal carriage rules for cable systems in light of the *Quincy* decision. In view of these developments, the Commission finds that the issues raised by NAB and MST cannot be resolved here. Accordingly, the Commission is denying their petitions.

5. On September 10, 1985, the Commission issued an *Order* reopening the proceeding to provide parties opportunity to comment on the impact of the *Quincy* decision on the basic cable service definition. After reviewing the comments, the Commission determined that the reference to the must carry rules in the definition creates only a minor technical problem. In this respect, the Commission concludes that the invalidation of the must carry rules by the *Quincy* decision does not otherwise affect its original policy determination with respect to the definition of basic cable service. Accordingly, the Commission is revising the definition to eliminate the reference to the must carry rules and to include the same signals that were formerly afforded must carry status.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is certified that the final rule does not have a significant economic impact on a substantial number of small entities because no substantive changes have been made to the signal carriage rules.

7. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified forms, information collection and/or recordkeeping, labeling, disclosure or record retention requirements; and will not increase or decrease burden hours on the public.

8. Accordingly, It is ordered that the petitions for Partial Reconsideration of the Commission's *Report and Order* in MM Docket No. 84–1296 filed by Miami Cablevision, the Association of Maximum Service Telecasters and the National Association of Broadcasters are denied. In addition, it is ordered that Part 76 of the Commission's Rules and Regulations is amended as set forth at the end of this document, effective July 14, 1986. It is further ordered that this proceeding is terminated.

9. Authority for this action is provided in sections 2, 4(i), and 303 of the Communications Act of 1934 as amended.

List of Subjects in 47 CFR Part 76

Definitions, Carriage of television broadcast signals.

William J. Tricarico,

Secretary.

PART 76—[AMENDED]

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 76.5 is amended by revising paragraph (ii) to read as follows:

§ 76.5 Definitions.

* * * * *

(ii) *Basic cable service.* For the purposes of regulating the rates for the provision of basic cable service in circumstances in which a cable system is not subject to effective competition, basic cable service is the tier of service regularly provided to all subscribers that includes the public, educational and governmental channels, if required by a franchising authority under Title VI of the Communications Act, and the retransmission of any broadcast television signals in the following categories:

(1) For communities located outside all major and smaller television markets (as defined in this section):

(i) Television broadcast stations within whose Grade B contours the community of the community unit is located, in whole or in part;

(ii) Television translator stations with 100 watts or higher power serving the community of the community unit and for community units that commence operations or expand channel capacity after March 30, 1972, noncommercial educational translator stations with 5 watts or higher power serving the community of the community unit;

(iii) Noncommercial educational television broadcast stations within whose specified zone the community of the community unit is located, in whole or in part;

(iv) Commercial television broadcast stations that are significantly viewed in the community of the community unit. See § 76.54.

(2) For communities in smaller television markets (as defined in this section):

(i) Television broadcast stations within whose specified zone the community of the community unit is located, in whole or in part;

(ii) Noncommercial educational television broadcast stations within whose Grade B contours the community of the community unit is located, in whole or in part;

(iii) Commercial television broadcast stations licensed to communities in other smaller television markets, within whose Grade B contours the community of the community unit is located, in whole or in part;

(iv) Television broadcast stations licensed to other communities which are generally considered to be part of the same smaller television market (Example: Burlington, Vt.-Plattsburgh, N.Y., television market);

(v) Television translator stations with 100 watts or higher power serving the community of the community unit and, for community units that commence operations or expand channel capacity after March 30, 1972, noncommercial educational translator stations with 5 watts or higher power serving the community of the community unit;

(vi) Commercial television broadcast stations that are significantly viewed in the community unit. See § 76.54.

(3) For communities in major television markets (as defined in this section) and in communities located both wholly or partially within both major and smaller television markets:

(i) Television broadcast stations within whose specified zone the community of the community unit is located, in whole or in part;

(ii) Noncommercial educational television broadcast stations within whose Grade B contours the community of the community unit is located, in whole or in part;

(iii) Television translator stations with 100 watts or higher power serving the community of the community unit and, for those community units that commence operations or expand channel capacity after March 30, 1972, noncommercial educational translator stations with 5 watts or higher power serving the community of the community unit;

(iv) Television broadcast stations licensed to other designated communities of the same major television market (Example: Cincinnati, Ohio-Newport, Ky., television market);

(v) Commercial television broadcast stations that are significantly viewed in the community of the community unit. See § 76.54.

(4) In the absence of at least three signals in one of the above categories,

any unaltered broadcast television signals.

3. 47 CFR 76.33 is amended by revising paragraph (a)(2) and adding paragraph (e) to read as follows:

§ 76.33 Standards for rate regulation

(a) * * *

(2) Only cable systems that are not subject to effective competition may be rate regulated. A cable system will be determined to have effective competition whenever at least three unduplicated signals serve the cable community. Signals shall be counted if they place a Grade B contour (as defined in § 73.683 of our rules) over any portion of the cable community, are significantly viewed within the cable community (as defined by § 76.54 of our rules) or are translator stations licensed to serve the cable community, provided that the translators are not used to retransmit stations already providing Grade B contour or significantly viewed signals within the cable community. The Commission may grant exceptions to this standard where the franchising authority demonstrates with engineering studies in accordance with § 73.686 of the Commission's rules and other showings that such signals are not in fact available within the community.

* * * * *

(e) Any party may petition the Commission for relief of the provisions in this section in accordance with the provisions and procedures set forth in § 76.7 for petitions for special relief.

[FR Doc. 86-13135 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 60590-6090]

Groundfish of the Gulf of Alaska

Correction

In FR Doc. 86-11902 beginning on page 19203 in the issue of Wednesday, May 28, 1986, make the following corrections:

1. On page 19206, in the first column, sixth line, "code" should read "cod".

2. On the same page and column in Table II, in the second entry under TALFF "0" should read "10".

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 51, No. 115
Monday, June 16, 1986

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 HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Suspensions, Terminations, and Advance Notice of Unfavorable Determination

Correction

In FR Doc. 86-10129 beginning on page 17057 in the issue of Thursday, May 8, 1986, make the following corrections:

1. On page 17061, in the first column, the entry for § 416.1368 should read "Termination because of your death.";

§ 416.1300 [Corrected]

2. On page 17061, in the second column, in § 416.1300(a), third line, "(SST)" should read "(SSI)";

§ 416.1305 [Corrected]

3. On the same page, same column, in § 416.1305, the eighth line should read "payable to an eligible individual or eligible couple. The";

§ 416.1315 [Corrected]

4. On page 17062, in the first column, in § 416.1315(b)(1), "not" should read "now";

§ 416.1332 [Corrected]

5. On page 17063, in the first column, in § 416.1332(a)(1), eighth line, "monor" should read "minor", and in the ninth line, the paragraph designation "(1)" should read "(i)";

6. On page 17063, in the second column, in § 416.1332(c), third line from the bottom, "provide" should read "prove";

§ 416.1336 [Corrected]

7. On page 17063, in the third column, in § 416.1336, the paragraph designation "(d)" should read "(b)";

§ 416.1342 [Corrected]

8. On page 17064, in the first column, in § 416.1342(b), in both the fourth and fifth lines, "fails" should read "fail";

§ 1316.1360 [Corrected]

9. On page 17065, in the second column, in § 416.1360(a), fifteenth line, "If" should read "It"; and

§ 416.1374 [Corrected]

10. On page 17066, in the first column, in § 416.1374(a), ninth line, "determind" should read "determined".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

Refilling of Prescriptions for Controlled Substances in Schedules III and IV

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rule making.

SUMMARY: Title 21 CFR 1306 presently requires the prescribing practitioner to issue a new prescription for additional quantities of Schedule III or IV controlled substances beyond the amount originally prescribed. This proposed rule making would allow additional refills of an original prescription authorized by the prescribing practitioner, as long as the number of refills, including those authorized on the original prescription, do not exceed the five refill limitation nor extend beyond six-months from the date of issue of the original prescription.

This revision will reduce the paperwork required of dispensing pharmacists since they will not be required to prepare a new prescription for each additional refill authorized by the prescribing practitioner. Under this proposal pharmacists would be permitted to record the refill authorization on the reverse of the original prescription. This revision reduces the number of records to which a pharmacist must refer when dispensing a controlled substance to an individual patient.

DATE: Written comments and objections must be received within 60 days from the date this announcement is published.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Diversion Operations Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C. 20537, (202) 633-1216.

SUPPLEMENTARY INFORMATION: Title 21, CFR 1306.22(a) presently requires a new and separate prescription from the prescribing practitioner for additional quantities of controlled substances in Schedule III or IV beyond those authorized on the original prescription.

This announcement contains a proposed revision to this section to allow additional refill authorizations to be recorded on the reverse of the original prescription without the issuance of a new and separate prescription, provided certain conditions are met. In addition, the wording to Title 21, CFR 1306.22(a) has been revised for clarification, however, no substantive changes have been made as a result of this clarification.

List of Subjects in 21 CFR Part 1306

Drug traffic control, prescription requirements.

PART 1306—[AMENDED]

1. The authority citation for Part 1306 continues to read as follows:

Authority: 21 USC 821, 829, and 871(b).

2. Section 1306.22 is amended by revising paragraph (a) as follows:

§ 1306.22 Refilling of prescription.

(a) No prescription for a controlled substance listed in Schedule III or IV shall be filled or refilled more than six months after the date on which such prescription was issued and no such prescription authorized to be refilled may be refilled more than five times. Each refill of a prescription shall be entered on the back of the prescription or on another appropriate document. If entered on another document, such as a medication record, the document must be uniformly maintained and readily

retrievable. The following information must be retrievable by the prescription number consisting of the name and address form of the controlled substance, the date filled or refilled, the quantity dispensed, initials of the dispensing pharmacist for each refill, and the total number of refills for that prescription. If the pharmacist merely initials and dates the back of the prescription it shall be deemed that the full face amount of the prescription has been dispensed. The prescribing practitioner may authorize additional refills of Schedule III or IV controlled substances on the original prescription through an oral refill authorization transmitted to the pharmacist provided the following conditions are met:

(1) The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six-months from the date of issue of the original prescription.

(2) The pharmacist obtaining the oral authorization records on the reverse of the original prescription the date, quantity of refill, number of additional refills authorized, and initials the prescription showing who received the authorization from the prescribing practitioner who issued the original prescription.

(3) The quantity of each additional refill authorized is equal to or less than the quantity authorized for the initial filling of the original prescription.

(4) The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five refill, six-month limitation.

* * * * *

The Deputy Assistant Administrator hereby certifies that this proposal will have no significant impact upon small businesses whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* It will in fact reduce records required by a dispensing pharmacy.

Pursaunt to section 3(c)(3) and 3(e)(2)(B) of the Executive Order 12291, this proposed action has been submitted for review by the Office of Management and Budget, and approval of that Office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

Dated: May 27, 1986

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 86-13440 Filed 6-13-86; 8:45 am]

BILLING CODE 4410-09-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 86-212; FCC 86-274]

Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: FCC proposes changes in its method for calculating pole attachment rates and in its rules governing pole attachment complaints. This action is taken in response to the court decisions in *Alabama Power Co. v. FCC*, 773 F.2d 362 (1985), and *Texas Power and Light Co. v. FCC*, No. 84-4818 (5th Cir. Mar. 17, 1986). FCC intends to develop policies and rules which will facilitate resolution of pole attachment complaints.

DATES: Comments must be received on or before July 28, 1986, and Reply Comments must be received on or before August 12, 1986.

ADDRESS: Secretary's Office, Room 222, Federal Communications Commission, Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: Bert Weintraub or Suzan Friedman, Common Carrier Bureau, Formal Complaints and Investigations Branch, Washington, DC 20554, (202) 632-4887.

SUPPLEMENTARY INFORMATION:

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.

This is a summary of the Commission's notice of proposed rulemaking, CC Docket No. 86-212, adopted May 29, 1986, released June 6, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. The Notice of Proposed Rulemaking proposes changes to the Commission's rules and policies governing the attachment of cable television hardware to poles owned or controlled by telephone or electric utilities. In a recent decision, the Court of Appeals for the District of Columbia Circuit determined that the rate established by the Commission's methodology does not result in the maximum just and reasonable rate allowed under section 224 of the Communications Act and, therefore, the methodology is faulty. *Alabama Power, supra.*

2. Two elements of the Commission's formula for determining the maximum just and reasonable pole attachment rate are the cost of a bare pole and the carrying charges attributable to the pole. In *Alabama Power* the court raised questions about the Commission's methodology in calculating the cost of a bare pole and the administrative and tax expense components of the carrying charges. The cost of a bare pole is found by reducing the utility's pole line account investment by its investment in items which do not reflect the cost of owning and maintaining poles and dividing the result by the number of poles owned by the utility. Generally the Commission reduces the pole line account by 15 percent. However, in the *Alabama Power* case the utility submitted specific figures for its investment in guys and anchors, which the Bureau excluded because the cable company had supplied its own guys and anchors. The court found that the utility's investment in guys and anchors should have been included, but questioned whether there should be an offset or credit to the maximum pole attachment rate when the cable company furnishes additional guys and anchors. Therefore, the Notice solicits comments on whether, and if so, how, an offset should be allowed against the pole attachment rate when the cable company provides its own guys and anchors. It also solicits comments on whether other payments cable companies are sometimes required to make, such as application or inspection fees, should also be used as a credit against the rate. The Notice also seeks comments on which items should be excluded from the pole line investment to eliminate the investment in crossarms and other items which do not reflect the cost of owning and maintaining poles and whether our current 15-percent adjustment adequately reflects such investment.

3. The court also took issue with the Commission's method for calculating the administrative and tax expense components of the carrying charges. According to the court, an

administrative component whose numerator included only pole-related accounts, but whose denominator represented the utility's total plant, results in an artifically low percentage of carrying charges being included in the pole attachment rate. The court suggested that the Commission could divide total administrative expenses by total plant investment if it determined that the percentage of administrative expenses relating to pole investment was roughly the same as the percentage of administrative expenses relating to the overall plant investment. The Commission invites comments on whether the percentages are the same, and, if not, how to adjust the ratio of total administrative expenses to total plant investment to arrive at an appropriate figure for the administrative expenses associated with pole plant. One possibility is to distribute administrative expenses over the other operation, maintenance, and depreciation expense categories, thus eliminating a separate category for administrative expenses.

4. The court questioned the Commission's use of actual taxes paid instead of normalized taxes in calculating the tax component of the carrying charges. The Commission prefers to use a normalized tax approach if a simple method for deriving the amount is available in publicly available documents. Therefore, the Commission solicits proposals on a simple and expeditious method to obtain the tax component from publicly available data, including specific FERC or FCC account, page, and line number, using the normalized tax approach.

5. The range of just and reasonable pole attachment rates set out by Congress lies between the incremental costs of the utility (the minimum rate) and cable's share of the utility's fully allocated costs (the maximum rate). Because our methodology focused exclusively on the maximum rate, the Commmission has traditionally made no effort to establish the minimum statutory rate. However, the court intimated that a less than maximum rate determined by the Commission's formula may not be sustainable on appeal if the lower end of the zone of reasonableness is not defined. The Commission proposes to continue to define the maximum statutory rate and does not propose to establish the minimum rate in routine cases. Since by definition fully allocated costs exceed incremental costs, there is a presumption that the pole attachment rate determined by the formula falls above the utility's incremental costs. If the utility wishes to rebut this presumption, it will have the burden of proving the minimum statutory rate.

6. The Notice also proposes certain clarifications or simplifications of our procedural rules, as indicated in the attached appendix.

7. This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

8. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities because the proposed changes will not increase the burden on small cable operators who wish to file complaints nor on small utilities which must respond to the complaints.

Ordering Clauses

9. Accordingly, it is ordered, pursuant to Sections 1, 4(i), 224, and 403 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 224, and 403, and Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, that there is issued a notice of proposed rulemaking.

10. It is further ordered, pursuant to § 1.415 of the Commission's Rules, 47 CFR 1.415, that all interested persons may file comments on the matters discussed in this Notice and the proposed rule changes contained in the attached Appendix D by July 28, 1986, and reply comments by August 12, 1986. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken with respect to the proposals contained herein. 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 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.

11. It is further ordered that pursuant to §§ 1.51 and 1.419 of the Rules, 47 CFR 1.51 & 1.419, an original and five copies of all comments, replies, pleadings, briefs, or other documents shall be filed with the Commission. Copies of all filings will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M Street, NW., Washington, D.C. 20554.

12. It is further ordered that the Chief, Common Carrier Bureau, is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and more efficient proceeding.

13. It is further ordered that the Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 1—PRACTICE AND PROCEDURE

Part 1, Subpart J of Chapter I of Title 47 of the code of Federal Regulations is proposed to be amended as follows:

Subpart J—Pole Attachment Complaint Procedures

1. The authority citation for Part 1 continues to read:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Sections 1.1402 (d) and (e) are revised to read as follows:

§ 1.1402 Definitions.

* * * * *

(d) The term "complaint" means a filing by a cable television system operator, a cable television system association, a utility, or an association of utilities alleging that a rate, term, or condition for a pole attachment is not just and reasonable.

(e) The term "complaint" means a cable television system operator, a cable television system association, a utility, or an association of utilities who files a complaint.

* * * * *

3. Section 1.1404 is amended by revising paragraphs (d)(1), (d)(2), (g)(2), (g)(4), (g)(5), and (g)(10) to read as follows:

§ 1.1404 Complaint.

* * * * *

(d) * * *

(1) A statement that the utility uses or controls poles, ducts, or conduits used or designated, in whole or in part, for wire communication; and

(2) A statement that the cable television operator currently has attachments on the poles.

* * * * *

(g) * * *

(2) The investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

* * * * *

(4) The depreciation reserve from the investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

(5) The total number of poles: (i) owned; and (ii) controlled or used by the utility (If any of these poles are jointly owned, the complaint shall specify the number of such jointly owned poles and the percentage of each joint pole owned by the subject utility.);

* * * * *

(10) The rate of return authorized for the utililty for intrastate service (With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which establishes this authorized rate of return if the rate of return is at issue in the proceeding and shall note that section which specifically establishes this authorized rate.);

* * * * *

4. Section 1.1404(h) is amended by the addition of the following two sentences at the end of the paragraph:

* * * * *

"(h) * * * A utility should supply a cable television system operator the information required in paragraph (g) of this section, along with the supporting pages from its FERC Form 1, FCC Form M, or other report to a regulatory body within 30 days of the request by the cable operator. (The cable operator, in turn, shall submit these pages with its complaint). If the utility did not supply these pages to the cable operator in response to the information request, it shall supply this information in its response to the complaint."

* * * * *

5. Section 1.1404(i) is amended by the addition of the following sentence at the end of the paragraph:

* * * * *

"(i) * * * If no such steps were taken, the complaint shall state the reason(s) for such omission."

6. Section 1.1409(b) is amended by the addition of the following sentence at the end of the paragraph:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(b) * * * If, however, a utility argues that the proposed rate is lower than its incremental cost, the utility has the burden of establishing that such rate is below the statutory minimum just and reasonable rate.

* * * * *

[FR Doc. 86-13505 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 2

[Gen. Docket No. 85-172]

Further Sharing of the UHF Television Band by Private Land Mobile Radio Services: Extension of Comment Period

ACTION: Proposed rule; extension of time.

SUMMARY: The Federal Communications Commission has extended time to file comments on the Notice of Proposed Rulemaking in this proceeding. This extension is necessary due to the fact that two studies have recently been placed in the docket file for comment.

DATES: Comments are now due July 11, 1986. Reply comments are now due July 28, 1986.

ADDRESS: Federal Communications Commission, 1919 "M" Street, NW. Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, 1919 "M" Street, N.W. Washington, DC. 20554 (202) 653-8116.

SUPPLEMENTARY INFORMATION: The Proposed Rule in this proceeding was published on June 20, 1985, 50 FR 25587.

[General Docket No. 85-172]

UHF Television Band by Private Land Mobile Radio Services; Order Extending Time for Comments

Adopted: June 5, 1985.

Released: June 6, 1986.

By the Office of Engineering and Technology.

1. On April 7, 1986, the Chief Engineer extended the time for filing comments in the above captioned proceeding to June 6, 1986. The time for filing reply comments was extended to June 23, 1986. This action was taken to reflect action by the Commission that extended the time for completion of the Land Mobile Radio/UHF Television Technical Advisory Committee Report. The report was completed on May 7, 1986, but inadvertently not placed in the public file in this proceeding. This has now been done and in order to assure that all interested parties have the opportunity to comment on the report the dates for filing comments and reply comments will be extended to July 11, 1986, and July 28, 1986, respectively.

2. Additionally, the staff has placed in the Docket a study intended to assess audience impact to certain UHF television stations in the affected markets mentioned in the Notice of Proposed Rule Making. Those wishing to comment on the study are invited to do so during the same periods noted above.

3. This action is taken pursuant to authority found in sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 302 and 303, and pursuant to § 0.31 and 0.241 of the Commission's Rules.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 86-13497 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-181, RM-4755]

Radio Broadcasting Services; Port Isabel, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses the petition filed by Jaime Martinez to allot Channel 272A to Port Isabel, Texas for lack of a showing of continuing interest. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-181, adopted May 30, 1986, and released June 6, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-13499 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-208, RM-5115, 5197, 5212, 5894]

Radio Broadcasting Services; Windcrest and Fentress, TX, et al.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on petitions by National Enterprises, Inc., Fentess FM Project, Donald L. Freed and Central Texas Broadcasting, Inc., proposing the allotment of FM Channel 251A to Windcrest, Texas, Channel 251A to Fentress, Texas, Channel 251A to New Braunfels, Texas or the substitution of Channel 251C1 for Channel 252A at Austin, Texas, respectively. The allotment to either Windcrest or Fentress could provide a first local FM service; the allotment to New Braunfels could provide a second local FM channel; the substitution at Austin could provide that community with its fourth wide area coverage FM station. Site restrictions are required: Windcrest—4.7 kilometers (2.9 miles) north of the community; Fentress—1.6 kilometers (1 mile) south of the city; and Austin—4.5 kilometers (2.8 miles) southwest of that community. The proposals also require concurrence by the Mexican government.

DATES: Comments must be filed on or before August 1, 1986, and reply comments on or before August 18, 1986.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Sam Morris, Jr., Vice President, P.O. Box 34478, San Antonio, TX 78265 (Petitioner for Windcrest, TX); Don Werlinger, Partner, Fentress FM Project, 602 Stueve Lane, Lockhart, TX 78644 (Petitioner for Fentress, TX); Howard J. Braun, Esquire, Adam A. Anderson, Esquire, Fly, Shuebruk, Gaguine, Boros and Braun, 1211 Connecticut Avenue NW., Washington, DC 20036 (Counsel to petitioner for Austin, TX); Donald L. Freed, P.O. Box 2682, Victoria, Texas 77902 (Petitioner for New Braunfels, TX); and John J. Tibiletti, Route 9, Box 143, Victoria, Texas 77902 (Consultant to Freed).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-208, adopted May 22, 1986, and released June 10, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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 allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 86-13510 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-217, RM-5237]

Radio Broadcasting Services; Lowell, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Marsha M. Walker and Kenneth G. Eklund, Seeking the allotment of Channel 270C2 to Lowell, Arkansas, as that community's first local FM service.

DATES: Comments must be filed on or before July 29, 1986, and reply comments on or before August 13, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: 1607 Cambridge Street, Springdale, Arkansas 72764.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-217, adopted May 30, 1986, and released June 6, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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 allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-13500 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-218, RM-4936, 5014, 5211]

Radio Broadcasting Services; Newport, Kingsport and Colonial Heights, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on petitions filed by WNPC, Incorporated, J.T. Parker Broadcasting Corp., and Murray Communications, which proposes the allotment of Channel 225A to Newport, Kingsport or

Colonial Heights, Tennessee, respectively. The proposal could provide either Newport or Colonial Heights with its first FM service or Kingsport with a third FM service.

DATES: Comments must be filed on or before August 1, 1986, and reply comments on or before August 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC. 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Wayne Harris, WNPC, Inc., P.O. Box 189, Newport, TN 37821; J.T. Parker, Jr., President, Radio 1090 AM, P.O. Box 1369, Kingsport, TN 37662; and Timothy K. Brady, Attorney at Law, P.O. Box 10566, Knoxville, TN 37939 (Counsel for Murray Communications)

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–218, adopted May 27, 1986, and released June 10, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington DC. 20037

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1. 1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–13507 Filed 6–13–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–219, RM–5252]

Radio Broadcasting Services; Bella Vista, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by JEM Broadcasting Company proposing the substitution of Channel 293C2 for 293A at Bella Vista, Arkansas. Although Channel 293A was allotted to Bella Vista in MM Docket No. 84–231, petitioner provided an engineering study to reveal the channel can be upgraded to C2 status to provide a first wide coverage FM service to that community.

DATES: Comments must be filed on or before August 1, 1986, and reply comments on or before August 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC. 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: JEM Broadcasting Company, 216 N. Main, Bentonville, Arkansas 72712.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–219, adopted May 27, 1986, and released June 10, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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 allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–13511 Filed 6–13–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–220, RM–5243]

Radio Broadcasting Services; Whitehouse, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Hine Broadcasting Company, proposing the substitution of Channel 297C2 for Channel 257A at Whitehouse, Texas, and modification of the license of Station KEYP(FM), Whitehouse, Texas, to specify operation on Channel 297C2, as that community's first wide coverage area FM service.

DATES: Comments must be filed on or before July 29, 1986, and reply comments on or before August 13, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Thomas J. Keller, Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, 1660 L Street NW., Suite 1000, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–220, adopted May 30, 1986, and released June 6, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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 allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-13503 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-221, RM-5296]

Radio Broadcasting Services; Grover City, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by R & L Broadcasters, proposing the substitution of FM Channel 297B1 for Channel 296A at Grover City, California, and modification of the license of Station KLOI(FM) accordingly, to provide that community with its first wide coverage area FM service.

DATES: Comments must be filed on or before July 29, 1986, and reply comments on or before August 13, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Vincent J. Curtis, Jr., Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036-2679.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-221, adopted May 27, 1986, and released June 6, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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 allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-13502 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-222, RM-5278]

Television Broadcasting Services; Phoenix, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Edward Walson seeking the assignment of UHF television Channel 61 to Phoenix, Arizona, as that community's eighth commercial television broadcast service.

DATES: Comments must be filed on or before July 31, 1986, and reply comments on or before August 15, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John E. Firoini, III, Esq., Pepper & Corazzini, 1776 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-222, May 27, 1986, and released June 9, 1986. The full text of this Commission decision is available for inspection and copying during normal buisness hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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 consideraton or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regardng proper filing procedures for coments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-13520 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

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46 CFR Part 73

[MM Docket No. 86-223, RM-5083]

Radio Broadcasting Services; Crosby, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by William L. Connor proposing the allotment of FM Channel 269A to Crosby, Minnesota. This allotment could provide for a first FM service for the community.

DATES: Comments must be filed on or before July 31, 1986, and reply comments on or before August 15, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Doug C. McDonell, 2830 Waubesa Avenue, Madison, Wisconsin 53711 (engineering consultant to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-223, adopted May 27, 1986, and released June 9, 1986. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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 allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau

[FR Doc. 86–13518 Filed 6–13–86; 8:45 am]

BILLING CODE 6712-01-M

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46 CFR Part 73

[MM Docket No. 86–224, RM–5256]

Radio Broadcasting Services; Green Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Crystal Sets, Inc., proposing the allotment of Channel 246A to Green Valley, Arizona, as that community's second local FM service.

DATES: Comments must be filed on or before July 31, 1986, and reply comments on or before August 15, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Barry A. Friedman, Esq., Wilner and Scheiner, 1200 New Hampshire Ave. NW., Suite 300, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–224, adopted May 27, 1986, and released June 9, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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 allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–13519 Filed 6–13–86; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Chapter X

[Ex Parte No. 394 (Sub-No. 3)

Cost Ratio for Recyclables, Compliance Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 10731(e) of the Act, as interpreted in recent court decisions, requires railroads to maintain recyclables rates at or below the statutory rate ceiling in the aggregate, and it precludes railroads from taking rate increases on recyclables movements already subject to rates above the statutory rate ceiling. The Commission seeks comments on the most appropriate procedures by which "above-the-cap" rate increases can be policed. The Commission also seeks comments on whether new procedures and a new data base are necessary to monitor continued aggregate compliance.

DATE: Comments are due August 15, 1986. Replies are due September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, (202) 275–7693, Office of Proceedings.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (Washington, DC, metropolitan area), or toll-free (800) 424–5403.

This decision will not significantly affect the quality of the human environment or conservation of energy resources. Further, we believe that it will not have a significant adverse impact on a substantial number of small entities. We request comments on both matters.

Authority: 49 U.S.C. 10321, 10731, and 5 U.S.C. 553.

Decided: June 6, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86–13475 Filed 6–13–86; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 51, No. 115
Monday, June 16, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Department of Agriculture Programs and Activities Covered Under Executive Order 12372

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: The purpose of this Notice is to inform State and local governments and other interested persons of programs and activities included within the scope of Executive Order 12372, "Intergovernmental Review of Federal Programs." A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR Part 3015, Subpart V, at 48 FR 29100, published June 24, 1983.

EFFECTIVE DATE: June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Zimmerman, Supervisory Program Analyst, Office of Finance and Management, USDA, Room 118–W, Administration Building, Washington, DC 20250 (telephone 202–382–1553).

SUPPLEMENTARY INFORMATION: The program listed below by the Catalog of Federal Domestic Assistance Number is included within the scope of Executive Order 12372.

10.433 Housing Preservation Grants

States interested in adding this program to their list of programs to be reviewed under Executive Order 12372, should have their Single Point of Contact forward their request to: Office of Finance and Management, Financial Management Division, USDA, Room 118–W, 14th and Independence Avenue, SW., Administration Building, Washington, DC 20250; Attention Ms. Lyn Zimmerman.

Dated: June 6, 1986.

John J. Franke, Jr.,

Assistant Secretary, Administration.

[FR Doc. 86–13537 Filed 6–13–86; 8:45 am]

BILLING CODE 3410–07–M

COMMISSION ON CIVIL RIGHTS

Massachusetts Advisory Committee; 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 Massachusetts Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m., on July 2, 1986, at the U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, Massachusetts. The purpose of the meeting is to discuss a project proposal on housing discrimination in the Boston area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Philip Perlmutter or Jacob Schlitt, Director of the New England Regional Office at (617)223–4671, (TDD 617/223–0344). 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, DC, June 10, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86–13439 Filed 6–13–86; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–503]

Antidumping Duty Order; 64K Dynamic Random Access Memory Components (64K DRAMs) From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning 64K Dynamic Random Access Memory components (64K DRAMs) from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commisson (the ITC) have determined that 64K DRAMs from Japan are being sold at less that fair value and that sales of 64K DRAMs from Japan are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of 64K DRAMs from Japan made on or after December 11, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping order in the **Federal Register**.

EFFECTIVE DATE: June 16, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Karen Sackett, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–3965 or 377–5050, respectively.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are all 64K Dynamic Random Access Memory components of the N-channel metal oxide simiconductor type (64K DRAMs) from Japan. This merchandise is currently provided for in item 687.7441 of the *Tariff Schedules of the United States Annotated.*

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19.U.S.C. 1673b), on December 11, 1985, the Department published its preliminary determination that there was reason to believe or suspect that 64K DRAMs from Japan were being sold at less than fair value (50 FR 50649). On April 29, 1986, the Department published its final determination that these imports were being sold at less than fair value (51 FR. 15943).

On June 6, 1986, in accordance with section 735 (d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administration authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)) antidumping duties equal to the amount by which the foreign market value of the merchandise subject to the order exceeds the United States price for all entries of such merchandise from Japan. These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after December 11, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register.**

On and after the date of publication of this notice, United States Customs Officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighed-average antidumping duty margins as noted below:

Manufacturers/Producers/ Exporters:	*Weighted-average percent*
NEC Corporation	22.76
Hitachi Ltd.	11.87
Oki Electric Industry Co. Ltd.	35.34
Mitsubishi Electric Corporation	13.43
All other manufacturers/producer/exportes	20.75

This determination constitutes an antidumping duty order with respect to 64K DRAMs from Japan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 12, 1986.

[FR Doc. 86-13626 Filed 6-13-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-506]

Antidumping Duty Order: Oil Country Tubular Goods (OCTG) From Canada

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning Oil Country Tubular Goods (OCTG) from Canada, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that OCTG from Canada are being sold at less than fair value and that sale of OCTG from Canada are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of OCTG from Canada made on or after January 7, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register,** will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping order in the **Federal Register.**

EFFECTIVE DATE: June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Charles Wilson, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1766 or 377-5288, respectively.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are all "oil country tubular goods" which are hollow steel products of circular cross section intended for use in the drilling for oil or gas. These products include oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) under item numbers 610.3216, 610.3219, 610.3233, 610,3234, 610,3242, 610,3243, 610,3249, 610,3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4225, 610.4230, 610.4235, 610.4240, 610.4310, 610.4320, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. This investigation includes OCTG that are in both finished and unfinished condition.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on January 7, 1986, the Department published its preliminary determination that there was reason to believe or suspect that OCTG from Canada were being sold at less than fair value (51 FR 660). On April 22, 1986, the Department published its final determination that these imports were being sold at less than fair value (51 FR 15029).

On June 2, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise subject to the order exceeds the United States price for all entries of such merchandise from Canada with the exception of those from Welded Tube of Canada. No sales at less than fair value were found for Welded Tube of Canada and that company is excluded from this order. These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after January 7, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register.**

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average (percent)
Algoma	14.26
Ipsco	40.86
SONCO	3.35
Welded Tube (excluded)	0
All other manufacturers/producers/exporters	19.35

This determination constitutes an antidumping duty order with respect to OCTG from Canada, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-13455 Filed 6-13-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-505]

Countervailing Duty Order; Oil Country Tubular Goods From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning oil country tubular goods (OCTG) from Canada, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that OCTG from Canada is receiving benefits which constitute subsidies within the meaning of the countervailing duty law, and that imports of OCTG from Canada are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries of OCTG, except for OCTG from nine companies specifically excluded from this order, which are entered or withdrawn from warehouse on or after December 30, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, and before May 1, 1986, the date we instructed the United States Customs Service to discontinue the suspension of liquidation, will be liable for the possible assessment of countervailing duties. Further, a cash deposit of estimated countervailing duties must be made on all entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this countervailing duty order in the **Federal Register**.

EFFECTIVE DATE: June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Richard Moreland, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone: (202) 377-1248 or 377-2768, respectively.

SUPPLEMENTARY INFORMATION:

The products covered by this investigation are "oil country tubular goods," which are hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casings, tubing and drill pipe or carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4225, 610.4230, 610.4235, 510.4240, 610.4310, 610.4320, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244. This investigation includes OCTG that are in both finished and unfinished condition.

In accordance with section 703 of the Act (19 U.S.C. 1671b), on December 30, 1985, the Department published its preliminary determination that there was reason to believe or suspect that imports of OCTG from Canada received benefits which constitute subsidies within the meaning of the countervailing duty law (50 Fed. Reg. 53172). In accordance with section 705 of the Act (19 U.S.C. 1671d), on April 22, 1986, the Department published its final determination that these imports are being subsidized (51 FR 15037).

There are eleven known producers and/or exporters of OCTG to the United States from Canada. These are Siegfried Kreiser Pipe and Tube; IPSCO, Inc.; Stelco Inc.; Sonco Steel Tube (a division of Ferrum, Inc.); Algoma Steel Corp. Ltd.; Welded Tube of Canada, Ltd.; Prudential Steel, Ltd.; Frank Pipe Co.; Christianson Pipe, Ltd.; Dominion Steel Export Co., Ltd.; and Matthew Tube & Pipe Supply Inc. We received timely requests for exclusion from these companies. We sent them copies of the detailed questionnaire. We verified that eight respondents received no benefits. In addition, Algoma Steel Corporation received benefits which we determine are *de minimis*. Therefore, these nine companies are excluded from the countervailing duty order. IPSCO received countervailable benefits above the *de minimis* rate of 0.50 percent. Siegfried Kreiser Pipe and Tube did not respond to our questionnaire and withdrew its request for exclusion.

On June 2, 1986, in accordance with section 705(d) of the Act [19 U.S.C. 1671d(d)], the ITC notified the Department of its determination that imports of OCTG from Canada are materially injuring a United States industry.

Therefore, in accordance with section 706 of the act (19 U.S.C. 1671e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 706(a)(1) and 751 of the Act [19 U.S.C. 1671e(a)(1) and 1675], countervailing duties equal to the amount of the net subsidy for all entries of OCTG from Canada. These countervailing duties will be assessed on all unliquidated entries of OCTG from Canada entered, or withdrawn from warehouse, for consumption on or after December 30, 1985, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determination" in the **Federal Register** (December 30, 1985), and before May 1, 1986, the date we instructed the United States Customs Service to discontinue the suspension of liquidation. We instructed Customs to discontinue the suspension of liquidation on May 1, 1986, because under Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement of Tariffs and Trade (the Subsidies Code), provisional measures cannot be imposed for more than four months. Thus, we could not impose a suspension of liquidation on the subject merchandise for more than four months without final determinations of subsidization and injury.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit equal to 0.72 percent *ad valorem* for OCTG from Canada except for OCTG from manufacturers or exporters excluded from this determination. These are Stelco Inc.; Sonco Steel Tube (a division of Ferrum, Inc.); Algoma Steel Corp. Ltd.; Welded Tube of Canada, Ltd.; Prudential Steel, Ltd.; Frank Pipe Co.; Christianson Pipe, Ltd.; Dominion Steel

Export Co., Ltd.; and Matthew Tube & Pipe Supply Inc.

This determination constitutes a countervailing duty order with respect to OCTG from Canada pursuant to section 706 of the Act (19 U.S.C. 1671e) and 355.36 of the Commerce Regulations (19 CFR 355.36). We have deleted from the Commerce Regulations Annex III to 19 CFR Part 355 which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)(1)], the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Mr. Richard Moreland at (202) 377-2768.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 355.36 of the Commerce Regulations (19 CFR 355.36).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 9, 1986.

[FR Doc. 86-13550 Filed 6-13-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-601]

Preliminary Affirmative Countervailing Duty Determination; Steel Wire From New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in New Zealand of steel wire. The estimated net bounty or grant is 6.92 percent *ad valorem* for all manufacturers, producers or exporters in New Zealand of steel wire.

We are directing the U.S. Customs Service to suspend liquidation of all entries of steel wire from New Zealand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in the amount equal to the estimated net bounty or grant.

If this investigation proceeds normally, we will make our final determination on or before August 25, 1986.

EFFECTIVE DATE: June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Mark Linscott, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-2438 or 377-1174.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon the questionnaire responses, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in New Zealand of steel wire. For purposes of this preliminary determination, the following programs are found to confer bounties or grants:

- Export Performance Taxation Incentive (EPTI)
- Export Market Development Taxation Incentive (EMDTI)
- Sales Tax Refunds
- Exports Suspensory Loan Scheme

We preliminarily determine the estimated new bounty or grant to be 6.92 percent *ad valorem* for all manufacturers, producers, or exporters in New Zealand of steel wire.

Case History

On March 17, 1986, we received a petition in proper form from the Davis Walker Corporation, filed on behalf of the U.S. industry producing steel wire. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in New Zealand of steel wire, directly or indirectly, receive benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 7, 1986, we initiated such an investigation (51 FR 13050). We stated that we expected to issue a preliminary determination on or before June 10, 1986.

Since New Zealand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) of the Act, apply to this investigation. Because the product is dutiable, petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this merchandise materially injure, or threaten material injury to, a U.S. industry.

On April 16, 1986, we presented a questionnaire to the Government of New Zealand, in Washington, D.C., concerning the petitioner's allegations. On May 16, 1986, we received a response to our questionnaire from the Government of New Zealand, and on May 23, 1986, we received a response to our questionnarie from New Zealand Wire Industries Limited.

Scope of Investigation

For purposes of this investigation, the term "steel wire" covers round, carbon steel wire coated with zinc, 0.60 inch or more in diameter. Steel wire is currently classifiable under items 609.4165 and 609.4365 of the *Tariff Schedules of the United States.*

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is July 1, 1984, through June 30, 1985, which corresponds to the company's last complete fiscal year.

Based upon our analysis of the petition and the responses to our questionnaire submitted by the Government of New Zealand and New Zealand Wire Industries Limited, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in New Zealand of steel wire under the following programs:

A. *Export Performance Taxation Incentive (EPTI).* Petitioner alleges that the New Zealand steel wire industry receives EPTI tax credits on exports of qualifying goods:

According to the response of the Government of New Zealand, exporters are entitled to receive a tax credit based on the f.o.b. value of qualifying goods exported, under Section 156A of the Income Tax Act of 1976, as amended. Credits are available as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the remainder is paid to the taxpayer in cash.

The rate of the tax credit is dependent upon the government predetermined value-added category into which the product falls. The amount of the tax credit is calculated by multiplying the rate corresponding to the value-added category into which the product falls by the f.o.b. value of export sales. Galvanized wire falls into value-added Category B, for which the corresponding rate is 10.5 percent. According to the response, the rates specified under this program will be reduced in the tax years ending March 31, 1986, and March 31, 1987. On the tax return filed during the review period, New Zealand Wire Industries Limited claimed a 10.5 percent EPTI tax credit for exports of steel wire.

Because eligibility for this program is limited to exporters, we preliminarily determine that it provides a bounty or grant to producers and exporters of steel wire within the meaning of the countervailing duty law.

Under our tax methodology, we calculate the benefit from this program by dividing the amount of the EPTI tax credits claimed by New Zealand Wire Industries Limited for its exports of steel wire to the United States on the tax return filed during the review period by the value of the company's total export sales of steel wire to the United States during the review period. On this basis, we calculate an estimated net bounty or grant of 5.43 percent *ad valorem.*

B. Export Market Development Taxation Incentive (EMDTI). Petitioner alleges that the New Zealand steel wire industry receives EMDTI tax credits under section 156F of the New Zealand Income Tax of 1976, as amended, for qualify as a tax credit amounting to 67.5 percent of the total expenditure. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating the taxable income. The normal corporate tax rate in New Zealand is 45 percent.

In its response, New Zealand Wire Industries Limited reported that it claimed EMDTI tax credits on the tax return filed during the review period. Because eligibility for this program is limited to exporters, we preliminarily determine that it confers a bounty or grant within the meaning of the countervailing duty law. Because exporters may claim a tax credit of 67.5 percent but may not deduct the expenditures in calculating taxable income, the net benefit to the exporters under this program is 22.5 percent of the qualifying expenditures. Therefore, to calculate the benefit, we divided 22.5 percent of the qualifying expenditures which were claimed by New Zealand Wire Industries Limited on the tax return filed during the review period for marketing efforts directed at the United States by the total f.o.b. value of export sales of steel wire to the United States during the review period. On this basis, we calculate an estimated net bounty or grant of 0.55 percent *ad valorem.*

C. Sales Tax Exemptions or Refunds. Petitioner alleges that the New Zealand steel wire industy receives sales tax exemptions or refunds on machinery and equipment used in the production of goods for export.

Under Item 136 IV of the Sales Tax Exemption Order of 1979, machinery used in the production of goods for export may be exempt from the ten percent sales tax. In its response, New Zealand Wire Industries Limited indicates that it received sales tax refunds for equipment purchased during the review period.

Because the sales tax exemptions or refunds are available only on machinery and equipment used principally in export production, we preliminarily determine that this program provides a bounty or grant to producers and exporters of steel wire within the meaning of the countervailing duty law.

To calculate the benefit, we divided the total refunds received during the review period for purchases of equipment by the total export sales during the review period. On this basis, we calculate an estimated net bounty or grant of 0.76 percent *ad valorem.*

D. Export Suspensory Loan Scheme. Petitioner alleges that the New Zealand steel wire industy received loans or grants for the purchase of equipment used in the manufacture of export goods under the Export Suspensory Loan Scheme.

According to the government response, exporters may receive loans from the Department of Trade and Industry for the purchase of equipment used to expand production of exportable goods. If an exporter meets its predetermined export sales targets, its loans are converted to grants.

The responses show that New Zealand Wire Industries Limited received loans in 1979 and 1980, both of which were converted to grants during the company's fiscal year ending June 31, 1984.

Because information provided in the government's response indicates that the suspensory loans under this program are made available only for purchasing equipment used in producing export goods, we preliminarily determine that this program provides a bounty or grant to producers and exporters of steel wire within the meaning of the countervailing duty law.

To calculate the benefit, we allocated the grants received during the company's fiscal year ending in 1984 over 15 years, the average useful life of equipment used in the steel industry. For this allocation, we used as the discount rate the weighted-average interest rate charged in 1985 to the company on term bank loans outstanding in 1984. We attempted to calculate a discount rate based on the company's cost of fixed interest rate long-term loans taken out in the 1984 fiscal year. Because the company did not have any fixed-rate loans, we sought the interest rates on variable rate long-term loans taken out in 1984. Again, no variable rate long-term loans were taken out in 1984. Therefore, we used as the discount rate the variable interest rates in effect during the review period for loans that were outstanding in 1984. The benefit allocated to the review period was divided by total export sales during the review period to arrive at an estimated net bounty or grant of 0.18 percent *ad valorem.*

II. Programs Preliminarily Determined Not To Be Used

In accordance with our practice of accepting a response to an allegation which denies the receipt of benefits under a program, we preliminarily determine, subject to verification, that manufacturers, producers, or exporters in New Zealand of steel wire did not use the following programs, which were listed in our notice of initiation.

A. Export Marketing Assistance. Petitioner alleges that the New Zealand steel wire industry receives various types of export marketing assistance from the New Zealand Export-Import

Corporation, the Department of Trade and Industry, the Building Research Association, the Department of Scientific and Industrial Research, and the Testing Laboratory Registration Council. According to the responses, New Zealand Wire Industries Limited received no export marketing assistance from any of the aforementioned organizations.

B. Export Programme Grants Scheme (EPGS)/Export Programme Suspensory Loan Scheme (EPSLS). Petitioner alleges that, under the Export Programme Grants Scheme (EPGS), the New Zealand steel wire industry is eligible to receive 64 percent of its approved overseas market development costs in advance. Although the EPGS was superseded by the Export Programme Suspensory Loan Scheme (EPSLS) in June 1982, petitioner alleges that grants under the EPGS could continue until June 1985.

According to the responses, New Zealand Wire Industries Limited had no loans outstanding under this program during the review period. Additionally, the responses show that the last grant New Zealand Wire Industries Limited received for promoting the sale of steel wire to the United States was in February, 1983. Since grants for marketing assistance would be expensed in the year of receipt and because no loans were outstanding during the review period, we preliminarily determine that this program was not used.

C. Preferential Treatment to Exporters in Granting Import Licenses. Petitioner alleges that import licensing concessions under the Export Production Assistance Scheme are provided to companies which import materials for incorporation in goods to be exported. Such concessions may include additional availability of import licenses on components incorporated into goods to be exported for the purpose of increasing New Zealand's access to foreign markets. These concessions are not available to manufacturers producing for domestic consumption. According to the responses, New Zealand Wire Industries Limited received no import licensing concessions during the review board.

D. Research and Development Incentives. Petitioner alleges that the New Zealand steel wire industry receives research and development incentives under the Applied Technology Program administered by the Development Finance Corporation and under the predecessor Industrial Research and Development Grants Advisory Committee of the Department of Trade and Industry. According to the responses, no assistance has been provided under this program to New Zealand Wire Industries Limited.

E. Regional Development Investment Incentives. Petitioner alleges that New Zealand steel wire producers receive a variety of regional development incentives administered by the Department of Trade and Industry based on their location in regions classified as either priority or low growth. Petitioner also alleges that the steel wire industry receives concessions on electricity, water rights, and rail freight for any facilities located on the South Island.

According to the government response and supported by the company response, New Zealand Wire Industries Limited received no regional development incentives from the Department of Trade and Industry or any other government organization.

F. Special Industrial Development Allowances. Petitioner alleges that the New Zealand steel wire industry receives tax benefits from the Industrial Development Plan Investment Allowance (IDPIA) under section 121 or the High Priority Investment Allowance under section 121A of the New Zealand Income Tax Act of 1976, as amended. According to the government response no industrial development plan has been approved for the steel wire industry and, therefore, no producer or exporter of steel wire has qualified for this program. New Zealand Wire Industries Limited indicates in its response that it has not received benefits under this program.

G. Export and Development Financing from the Development Finance Corporation. Petitioner alleges that the New Zealand steel wire industry receives export credits and development financing on terms inconsistent with commercial considerations from the Development Finance Corporation.

According to the responses, New Zealand Wire Industries Limited has not received any export credits from the Development Finance Corporation. Furthermore, New Zealand Wire Industries Limited's financial statements submitted in its response indicate that it had no development financing loans outstanding during the review period.

III. Programs for Which Additional Information is Needed

A. Foreign Standards from the Standards Association of New Zealand. Petitioner alleges that the New Zealand steel wire industry purchases foreign standards from the Standards Association of New Zealand at preferential rates. Both the government and company responses indicate that New Zealand Wire Industries Limited purchased foreign standards during the review period. No information was provided on prices charged for foreign standards nor on prices charged by the government for the sale of domestic standards. Additional information is also needed on whether those standards purchased by New Zealand Wire Industries Limited were U.S. standards.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of steel wire from New Zealand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each entry of this merchandise in the amount of the estimated net bounty or grant. The estimated net bounty or grant is 6.92 percent *ad valorem* for all manufacturers, producers, or exporters in New Zealand of steel wire. This suspension will remain in effect until further notice

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination.

Public Comment

In accordance with § 355.35 of the Commerce Regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on July 30, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least ten copies of the confidential version and seven copies of the nonconfidential version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by July 23, 1986. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is

held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 167b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 10, 1986.

[FR Doc. 86-13552 Filed 6-13-86; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on June 26, 1986 at 10:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part 1982 and listed in 5 U.S.C. 552b(c)(1) and (9)).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: June 11, 1986.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-13547 Filed 6-13-86; 8:45 am]

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on June 26, 1986 at 1:30 p.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, D.C. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials on problems and conditions in the textile and apparel industry.)

General Session: 1:30 p.m. Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

Executive Session: 2:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part 1982 and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: June 11, 1986.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-13548 Filed 6-13-86; 8:45 am]

BILLING CODE 3510-DR-M

Short Supply Reviews on Certain Steel Products; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of requests for short supply determinations under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain reinforcing bars, certain stainless steel flat-rolled products, and carbon steel special sections.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3099, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

We have received short supply requests for the following products:

1. Certain deformed reinforcing bars, grade 60, bar numbers 3 through 6, that are bendable and rebendable.

2. Stainless steel flat-rolled products, in coils, 0.1875 inch and over in thickness and over 71 inches in width.

3. Hot-rolled annealed and pickled stainless steel flat-rolled products, in coils, 0.1875 to 0.5 inch in thickness and 60 to 78¾ inches in width.

4. Carbon steel special sections under three inches in cross sectional dimension for use in window frames.

Any party interested in commenting on these requests should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying the particular request.

Commerce will maintain these requests and all comments in public files. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission, which can be placed in the public file. The public files will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 10, 1986.

[FR Doc. 86-13544 Filed 6-13-86; 8:45 am]

BILLING CODE 3510-DS-M

Rush-Presbyterian-St. Luke's Medical Center et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural

Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86–125. Applicant: Rush-Presbyterian-St. Luke's Medical Center, Chicago, IL 60612. Instrument: Electron Microscope, Model JEM–1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 51 FR 8691. Instrument ordered: October 15, 1985.

Docket Number: 86–127. Applicant: UMDNJ-Rutgers Medical School, Piscataway, NJ 08854. Instrument: Electron Microscope, Model JEM–100CX with X-Ray Analyzer. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 51 FR 8691. Instrument ordered: November 15, 1985.

Docket Number: 86–133. Applicant: The University of the District of Columbia, Washington, DC 20008. Instrument: Electron Microscope, Model JEM–100CX–SEG with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 51 FR 9500. Instrument ordered: December 3, 1985.

Docket Number: 86–136. Applicant: Research Foundation of State of New York, Syracuse, NY 13210. Instrument: Electron Microscope, Model JEM–100SX. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 51 FR 9500. Application received by Commissioner of Customs: February 18, 1986.

Docket Number: 86–138. Applicant: Veterans Administration, Hines, IL 60141. Instrument: Electron Microscope, Model JEM–100CXII with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 51 FR 9500. Instrument ordered: September 26, 1985.

Docket Number: 86–139. Applicant: Rutgers—The State University of New Jersey, New Brunswick, NJ 08903. Instrument: Electron Microscope, Model EM 10CA. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 51 FR 9500. Application received by Commissioner of Customs: February 19, 1986.

Docket Number: 86–144. Applicant: Rensselaer Polytechnic Institute, Troy, NY 12180–3590. Instrument: Electron Microscope, Model JEM–100CXII with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 51 FR 10647. Instrument ordered: September 13, 1985.

Docket Number: 86–145. Applicant: University of Pennsylvania, Philadelphia, PA 19104. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss Inc., West Germany. Intended use: See notice at 51 FR 10647. Application received by Commissioner of Customs: February 27, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–13453 Filed 6–13–86; 8:45 am]

BILLING CODE 3510-DS-M

The University of Chicago; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket number: 86–149. Applicant: The University of Chicago, Chicago, IL 60637. Instrument: Electron Microprobe, Model CAMEBAX SX–50. Manufacturer: Cameca, France. Intended use: See notice at 51 FR 12906.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of image analysis combining x-ray, electron and cathodoluminescence signals. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–13454 Filed 6–13–86; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Wild Well Control, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Wild Well Control, Inc., having a place of business at 22730 Gosling Road, Spring, TX 77389, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Method and Apparatus for Suppression of Well Blowout Fires," U.S. Patent Application Serial No. 6–773,285. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86–13488 Filed 6–13–86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Singapore

June 12, 1986.

The Chairman of the Committee for the Implementation of Textile

Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 16, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Governments of the United States and the Republic of Singapore exchanged notes dated May 31 and June 5, 1986 establishing a new Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement beginning on January 1, 1986 and extending through December 30, 1990. The new agreement includes individual limits for cotton, wool and man-made fiber textiles and textile products in Categories 331, 334, 335, 337, 338/339, 340, 341, 342, 347/348, 435, 604, 631, 634, 635, 638, 639, 640, 641, 645/646, 647, 648 and 659–I (infants' sets in TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, 384.9365) designated as Group I, and for Group II, which includes Categories 300/301, 310/318, 311–317, 319–330, 332, 336, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 359–369, 400–434, 436–444, 445/446, 447, 448, 459–469, 600–603, 605–630, 632, 637, 642–644, 649–652, 659–S (swimwear in TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400, and 384.9353) and parts of Category 659 (all TSUSA numbers in the category except, infants' sets and swimwear) produced or manufactured in Singapore and exported to the United States during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

The agreement also includes individual levels for categories of cotton, wool amd man-made fiber textiles and textile products in Group II, which are not subject to specific limits, such as Categories 300/301, 310/318, 333/633, 336, 351/651, 352/652, 353/354/653/654, 359, 434, 442, 445/446, 636, parts of Category 659 (all TSUSA numbers in the category except infants' sets and swimwear), 669 and 670, and which may be adjusted during the agreement year upon agreement between the two governments. Under the terms of the new agreement a special conversion factor of 13.5 square yards equivalent per dozen will be used for Category 353/652.

In the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to prohibit entry for consumption and withdrawal from warehouse for consumption in the United States in excess of the designated restraint limits.

A description of the textile categories in terms of TSUSA numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 12, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive of March 7, 1986, which directed you to prohibit entry of certain cotton, wool and man-made fiber textiles and textile products from Singapore.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Textile Agreement of May 31 and June 5, 1986, between the Governments of the United States and the Republic of Singapore, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 16, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore, and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, in excess of the indicated restraint limits:

Category	12-mo. limit [1]
Categories 300-301, 310/318, 311-317, 319-330, 332, 336, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 359-369, 400-434, 436-444, 445/446, 447, 448, 459-469, 600-603, 605-630, 632, 637, 642-644, 649-652, 659-S, 659-O [2], and 665-670, as a group.	45,000,000 square yards equivalent.
300/301	434,783 pounds.
310/318	2,000,000 square yards.
331	300,000 dozen pairs.
333/633	41,500 dozen.
334	50,000 dozen.
335	155,000 dozen.
336	70,000 dozen.
337	58,000 dozen.
338/339	738,729 dozen of which not more than 419,856 dozen shall be in Cat. 338 and not more than 491,882 dozen shall be Cat. 339.
340	517,000 dozen.
341	130,000 dozen.
342	80,000 dozen.
347/348	720,000 dozen of which not more than 450,000 dozen shall be in Cat. 347 and not more than 350,000 dozen shall be Cat. 348.
351/651	38,462 dozen.
352/652 [3]	148,148 dozen.
353/354/653/654	48,426 dozen.
359	434,783 pounds.
434	6,000 dozen.
435	6,000 dozen.
442	10,000 dozen.
445/446	20,000 dozen.
604	1,420,000 pounds.
631	300,000 dozen pairs.
634	159,000 dozen.
635	235,000 dozen.
636	140,000 dozen.
638	425,000 dozen.
639	3,050,000 dozen.
640	110,000 dozen.
641	180,000 dozen.
645/646	110,000 dozen.
647	250,000 dozen.
648	1,500,000 dozen.
659-I [4]	300,000 pounds.
659-S [5]	320,000 pounds.
659-O [6]	320,000 pounds.
669	256,410 pounds.
670	1,000,000 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

[2] All TSUSA numbers in the category except infants' sets and swimwear, TSUSA numbers 384.2105, 284.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, 384.9365, 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400, and 384.9353.

[3] In Category 352/652 the factor for converting to square yards equivalent is 13.5.

[4] In Category 659, only TSUSA numbers 384.2105, 284.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, 384.9365.

[5] In Category 659, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400, and 384.9353.

[6] In Category 659, all TSUSA numbers except those listed in Footnotes 4 and 5.

In carrying out this directive entries of wool and man-made fiber textile products in Categories 442, 447, 448, 459, 633/645/635, 643/644, 646, 647/648 and 659, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1985 and extended through December 31, 1985, shall, to the extent of any unfilled balances, be charged to the restraint limits established for such goods during that

period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

All import charges already made against any of the foregoing categories, whether for charge to the category or group limits, against the previous 1986 levels of restraint for Singapore, shall be retained, as applicable. Missing charges for part categories 659–S, and 659–O and the group limit will be supplied at a later date.

The limits set forth above are subject to the adjustment in the future according to the provisions of the bilateral agreement of May 31 and June 5, 1986 between the Governments of the United States and the Republic of Singapore which provide, in part, that: (1) Specific limits may be increased by not more than seven percent, during an agreement year, provided that an equal quantity in square yards equivalent is deducted from another specific limit; (2) specific limits may be exceeded for carryover and carryforward up to 11 percent of the applicable category limit except that no carryover will be available in the first year of the agreement and no carryforward in the final agreement year; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–13572 Filed 6–13–86; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Request for Samples of Patented, Non-Commercial Cigarettes for Ignition Propensity Testing

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety invites inventors of cigarettes, which are not produced commercially but which are claimed to have reduced propensity to ignite upholstered furniture and mattresses, to submit samples of such cigarettes for ignition propensity testing. A description of the testing program and how inventors may participate follows.

DATE: Inventors who desire to participate in this testing program should submit samples of cigarette inventions and the information specified in this notice not later than September 30, 1986.

ADDRESS: Samples and information concerning cigarette inventions should be sent to: Dr. Richard G. Gann, Center for Fire Research, National Bureau of Standards, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Mrs. Tawanna Segears, Office of Program Management, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98–567, 98 Stat. 2925, October 30, 1984) created the Technical Study Group on Cigarette and Little Cigar Fire Safety (TSG) to investigate the technical and commercial feasibility of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses. The TSG has developed an ignition propensity test and has tested some commercial cigarettes. The TSG also has decided to test the ignition propensity of some cigarettes which are not commercially available but which are claimed by their inventors to have less propensity than commercially available cigarettes to ignite upholstered furniture and mattresses. A limited cigarette ignition propensity testing program will be conducted by the Center for Fire Research at the National Bureau of Standards (NBS) at no charge by NBS to inventors whose inventions are selected for testing. Testing will be blind to the extent possble. Cigarette inventions which are patented or for which a patent has been filed will be candidates for testing. *Cigarette inventions for which a patent has not been issued or for which a patent application has not been filed as of the date of this Federal Register Notice, will not be tested.*

If an inventor desires to have his or her cigarette invention considered for testing on this program, the inventor must:

1. Select the single embodiment of his or her patent(s) believed to be most effective for consideration.

2. Submit documents which show that a patent has been issued or that the application for a patent has been filed.

3. Supply information as to the specific nature of the particular modification or additive employed in the cigarette invention *in quantitative terms.*

4. Provide evidence of significantly reduced propensity of the cigarette invention to ignite substrates found in mattresses and upholstered furniture.

5. Provide free of charge 300 invention cigarettes and 300 control cigarettes that are identical to the invention cigarettes except for the feature that comprises the effective ignition repression. The patented cigarettes and the control cigarettes should be clearly differentiated *on their packages.* The cigarettes should be packed so as to safeguard against damage during transport and should identify a person to contact if the shipment has been damaged.

6. Supply uniformity data (mean value plus standard deviation) for both the patented and control cigarettes with regard to the following properties:

cigarette mass
cigarette length and diameter
mass burning rate (in air)
magnitude of modification (e.g., concentration of additive)

Additionally, the TSG requests inventors submitting cigarettes for testing to provide information showing the absence of any obvious toxicity problems associated with the invention, and an analysis of the tar, nicotine, and carbon monoxide content of the smoke produced by the cigarette invention. However, the failure to provide this information will not preclude consideration of the cigarette invention for testing.

Samples of the cigarette invention, control cigarettes, and the information described above must be received by Dr. Richard G. Gann, Center for Fire Research, National Bureau of Standards, Gaithersburg, Maryland 20899, not later than September 30, 1986. *Materials received after September 30, 1986, will not be accepted.*

Inventors who submit their cigarettes for consideration as candidates for testing are advised that there will be absolutely no payment or reimbursement for the samples of cigarettes provided for testing. These samples will not be returned. Further, submission of test sample cigarettes which meet the criteria above does not necessarily mean that the sample cigarettes will be selected for testing. Selection of cigarette inventions for

testing will be made by the TSG, whose decision will be final. While the TSG desires to test all cigarette inventions meeting the criteria set forth above, lack of funds, time constraints and other factors may limit the amount of testing which can be done.

The results of this testing program will be included in the TSG's final report to Congress. The TSG will not report results of testing individual cigarette inventions to patent holders. The TSG intends to report results of this testing program in a format which will not disclose results obtained from any individual cigarette invention. Selection of any cigarette invention for testing in this program does not constitute any form of endorsement or approval of the invention by the government of the United States.

Dated: June 3, 1986.

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 86-13483 Filed 6-13-86; 8:45 am]

BILLING CODE 6355-01-M

[CPSC Docket 86-C0003]

Electro-Plastics, Inc.; Provisional Acceptance of a Settlement Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: Under requirements of 16 C.F.R. Part 1118.20(e) the Commission must publish in the Federal Register consent agreements which it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally-accepted Settlement Agreement with Electro-Plastics, Inc., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement by filing a written request with the Office of the Secretary by July 1, 1986.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: William Moore, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

Dated: June 11, 1986.

Sheldon D. Butts,

Deputy Secretary.

SUPPLEMENTARY INFORMATION:

[CPSA Docket No. 86-C0003]

In the matter of Electro-Plastics, Inc., a Corporation; Settlement Agreement and Order

1. This Settlement Agreement and Order is made by and between Electro-Plastics, Inc., a corporation, (hereinafter "Electro-Plastics") and the staff of the Consumer Product Safety Commission (hereinafter, "staff") to resolve the staff allegations described herein.

2. The provisions of the Agreement and Order shall apply to Electro-Plastics, Inc., and to each of its successors and assigns.

I. The Parties

3. Electro-Plastics, Inc., is a corporation organized and existing under the laws of the state of Delaware with its principal corporate offices located at Navy and Neptune Streets, Building 305, Port Newark, New Jersey 07114.

4. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory Commission of the United States of America (hereinafter, "Commission") created pursuant to section 4 of the Consumer Product Safety Act (CPSA) as amended [15 U.S.C. 2053].

II. Statement of Facts

5. In 1983, Electro-Plastics imported for sale in the United States and did sell in the United States 10,800 novelty items, a toy known as a Trick Squirt Camera, Electro-Plastics Catalogue number 1955 (hereinafter, "Squirt Camera").

6. On June 7, 1983, a four year old girl asphyxiated when she aspirated the "shutter button," portion of the Squirt Camera.

7. Electro-Plastics knew on or about July 1, 1983, that the Squirt Camera had been implicated in the death of the four year old on June 7, 1983.

8. In July, August, and September, 1983, Electro-Plastics undertook to remove from its inventory, and from the inventory of its distributors, all Squirt Cameras due to the potential hazard they posed.

9. On, or about, October 14, 1983, Electro-Plastics exported the 5,700 Squirt Cameras it had recovered from inventory and from its distributors back to the foreign manufacturer.

10. Electro-Plastics never reported any of the information it had received about the June 7, 1983, death or about the potential hazard posed by the Squirt Camera to the Consumer Product Safety Commission.

III. Allegations of the Staff

11. The staff alleges that the Squirt Camera imported by Electro-Plastics in 1983, contained a defect(s) which permitted the "shutter button" to be removed and aspirated and that the defect(s) could create a substantial risk of injury to the public.

12. The staff further alleges that Electro-Plastics possessed sufficient information by September 1983 to reasonably support the conclusion that the Squirt Camera contained a defect which could create a substantial product hazard but failed to report that information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

IV. Agreement of the Parties

13. Electro-Plastics and the staff agree that the Commission has jurisdiction in this matter over Electro-Plastics and the Squirt Camera.

14. Electro-Plastics Inc., agrees to pay the Commission a civil penalty in the amount of $10,000 within 30 days of final acceptance of this Settlement Agreement by the Commission and service of the Commission's Order on Electro-Plastics. This payment is made in settlement of allegations by the staff that Electro-Plastics violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to those Squirt Cameras described in paragraph 5 of this Settlement Agreement, supra. Electro-Plastics makes no admission of any fault or liability and expressly denies any fault or liability.

15. Upon final acceptance of this Settlement Agreement by the Commission, Electro-Plastics knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission whether a violation has occurred, and (4) to a statement of findings of fact and conclusions of law.

16. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued and the Agreement and Order will be made available to the public.

17. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

18. The requirements of the Order attached hereto are in addition to and not to the exclusion of other remedies under the Consumer Product Safety Act.

19. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Electro-Plastics to appropriate legal action.

20. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Electro-Plastics, Inc.

Dated: May 30, 1986.

By:

Irving Glick,

President, Electro-Plastics, Inc.

Dated: June 9, 1986.

Consented to by:

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Order

Upon consideration of the Consent Agreement of the parties, it is hereby

Ordered that Electro-Plastics, Inc., shall pay, within 30 days of final acceptance of this Consent Agreement and service of this Order, a civil penalty in the sum of $10,000.00 to the Consumer Product Safety Commission.

Provisionally accepted on 10th day of June 1986.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86-13484 Filed 6-13-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP86-541-000]

Cascade Natural Gas Corp., Complainant vs. Northwest Pipeline Corp., Respondent; Complaint and Petition for Investigation

June 11, 1986.

Take notice that on June 2, 1986, Cascade Natural Gas Corporation (Cascade), Post Office Box 24464, Seattle, Washington 98124, filed a complaint and a petition in Docket No. CP86-541-000 pursuant to Rules 206 and 207 of the Commission's Rules of Practice Procedure (18 CFR 385.206 and 385.207) alleging that Northwest Pipeline Corporation's (Northwest's) transportation policy is unduly discriminatory and preferential and requesting that the Commission institute an investigation of Northwest's transportation policy.[1]

Cascade asserts that as of November 15, 1985, Cascade had pending before Northwest requests for interruptible transportation service on behalf of certain of Cascade's end-users. Cascade states that, notwithstanding Northwest's stated willingness to file certificate applications for authorization for such service, Nothwest has not done so. Cascade states that, subsequently, Northwest informed Cascade that Northwest's new transportation policy is to refuse to file any Natural Gas Act (NGA) section 7(c) certificate applications for transportation service for any of Northwest's local distribution company customers or their end-users.

Cascade alleges that Northwest's new transportation policy is unduly discriminatory against Cascade and, possibly, against other similarly situated customers under NGA section 4(b), 15 U.S.C. 717c(b). In addition, Cascade alleges that Northwest's implementation of its new transportation policy is unduly discriminatory fashion in determining which requests for transportation Northwest would honor and which it would not.

Cascade notes that Northwest is the only pipeline available to transport gas to Cascade, regardless of whether the gas is purchased from Northwest or from some alternative source of supply. Cascade alleges that Northwest's new transportation policy may be anti-competitive or otherwise run afoul of the Federal anti-trust laws. Cascade alleges that, by effectively denying Northwest's customers and their end-users access to its system for transportation services, Northwest is using its monompoly position as the sole transporter of gas also to give it a monopoly with respect to the sale of gas in Northwest's markets. Cascade also alleges that Northwest's new transportation policy can give Northwest an unfair competitive advantage for industrial loads by by-passing local distribution custormers selling directly to the end-users.

Cascade requests that the Commission (a) issue an order requiring Northwest to terminate its allegedly unlawfully discriminatory transportation policy, (b) institute an investigation of that transportation policy, and (c) grant such other and further relief as may be appropriate.

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, Northwest is to respond by July 3, 1986.

Any person desiring to be heard or to make any protest with reference to said petition and complaint should on or before July 3, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13336 Filed 6-13-86; 8:45 am]

BILLING CODE 6717-01-M

[1] Specifically, Cascade protests Northwest's applications in Docket Nos. CP86-440-000, CP86-381-000, CP86-345-000, CP86-315-000, CP86-280-000, CP86-245-000, CP85-706-000, CP85-625-000, CP85-349-000, CP84-498-000. It also moves to intervene out-of-time in those dockets in which it has not been granted intervenor status. Those dockets are Docket Nos. CP86-440-000, CP86-381-000, CP86-315-000, CP86-280-000, CP86-245-000, CP86-706-000, CP85-349-000, and CP84-498-000.

[Docket No. RP86-118-000]

Consolidated Gas Transmission Corp.; Section 284.7(a) Filing

June 9, 1986.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on May 30, 1986, filed Ninth Revised Sheet No. 31 to its FERC Gas Tariff, Original Volume No. 1 in order to comply with § 284.7(a) of the Commission's Regulations. The revisions, shown on the revised tariff sheet, provide for transportation rates to become effective on July 1, 1986. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until June 4, 1986.

Consolidated states that copies of the filing were served upon the parties to the proceeding, Consolidated's jurisdictional customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 16, 1986. 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. 86-13469 Filed 6-13-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-121-000]

Eastern Shore Natural Gas Co.; Propsed Changes in FERC Gas Tariff

June 9, 1986.

Take notice that Eastern Shore Natural Gas Company (ESNG) on June 4, 1986 filed the following revised tariff sheets for inclusion in its FERC Gas Tariff, Original Volume No. 1.

Thirty-Second Revised Sheet No. 6
Thirty-Second Revised Sheet No. 12
Substitute Thirty-Second Revised Sheet No. 6
Substitute Thirty-Second Revised Sheet No. 12.

The purpose of this filing is to comply with § 284.7 of the Commission's Regulations. The revisions provide for interruptible transportation rates to become effective July 1, 1986.

ESNG states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 16, 1986. 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 Commision and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13470 Filed 6-13-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-165-000]

Phillips Petroleum Co.; Petition for Waiver of Parts 154 and 157 of the Commission's Regulations

June 10, 1986.

Take notice that on January 15, 1986, Phillips Petroleum Company (Phillips), of 336 HS&L Building, Bartlesville, Oklahoma 74004, filed a petition Pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, petitioning the Commission to waive the filing requirements of Parts 154 and 157 of the Commission's Regulations in order to allow the continuation of sales of natural gas for resale in interstate commerce from Phillips to Phillips 66 Natural Gas Company (P66NGC).

Effective January 1, 1986, Phillips sold, transferred and assigned to P66NGC it natural gas processing facilities and related gathering systems which were previously managed by Phillips, Gas and Gas Liquids Group. Phillips also assigned to P66NGC gas purchase contracts between Phillips as buyer and various producers as seller, as well as various residue gas sales contracts in which Phillips was the seller.

Where Phillips produced gas is handled in P66NGC-owned gathering systems, Phillips states that new purchase contracts between Phillips as seller and P66NGC as buyer will replace previous intracompany transfers between Phillips' Exploration and Production and Gas and Gas Liquids Group. There are numerous sources of production where sales are being made from Phillips to P66NGC. The sales between Phillips and P66NGC will be under written contracts or ratifications of other joint-interest owners' contracts. Phillips indicates that it will sell 100% owned production under percent-of-proceeds contracts which they are not required to file with the Commission. Where leases are jointly owned, Phillips will ratify the joint-interest owners' contracts. In most instances, the joint-interest owners' contracts will be percent-of-proceeds contracts which do not need to be filed or Phillips' sales can be covered under the joint-interest owners' certificates and rate schedules. In those situations where Phillips would be required to file for its own certificates and rate schedules, Phillips requests waiver of the Commission's regulations.

Specifically, Phillips petitions the, Commission to waive Parts 154 and 157 of the Commission's Regulations under the Natural Gas Act as to the situations described below:

(1) Phillips will ratify certain joint-interest owners' contracts where the joint-interest owner is not the operator of the producing property. In this instance, the regulations do not permit Phillips the opportunity to forego the certificate application and rate schedule process. Section 154.91(c) of the Commission's Regulations permits signatory co-owners the opportunity to file for certificates and etablishment of rate schedules or an exemption from such filing requirements if the operators of the property makes filings on behalf of the co-owner. However, no such exemption is provided for operators who ratify the non-operating co-owners' contracts. Therefore, Phillips requests that the Commission waive its regulations in order to permit Phillips' sales under the ratified non-operators' agreements to be covered by the co-owners' certificates and rate schedules in these instances.

(2) There may also be instances where ratified co-owner's contract, whether the operator or a non-operator, is covered by a small producer certificate. Although Phillips has and will continue to restrict the rate it collects under such contracts to the rates for large producers, the Commission's Regulations prohibit coverage of Phillips' sales to P66NGC under the small producer's blanket certificate if the collective ownership of large producers in the property exceeds twenty percent (20%). The Commission regularly waives its small producer regulations in order to allow small producers to cover under their certificates certain sales of gas produced from reserves developed by large producers. Pillips requests a waiver of the Commission's Regulations at § 157.40(b)(2) so as to permit Phillips' sales to be covered by the joint-interest owner's small producer certificate in these instances.

In the alternative and pursuant to §§ 157.23 and 157.28 of the Commission's Regulations, Phillips petitions the Commission for the grant of a temporary and permanent certificate of public convenience and necessity, to be effective January 1, 1986, for Phillips' sales of jurisdicitonal natural gas to P66NGC in the event this petition for waiver is denied.

Any person desiring to be heard or to make any protest with reference to said application should, on or before June 24, 1986, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-13471 Filed 6-13-86; 8:45 am]
BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Developmental State Programs for Institutional Conservation

AGENCY: U.S. Department of Energy.

ACTION: Notice of Solicitation Number DE-PSO1-86CE64606, Developmental State Programs for Institutional Conservation.

SUMMARY: The United States Department of Energy, Institutional Conservation Programs (ICP), is entering into a competitive grant program to provide start-up support for developmental State programs targeting the energy efficiency needs of public and private non-profit institutions served by ICP. It is the Department's goal to award seven to twelve grants in fiscal year 1986. Funds in the amount of $2,000,000 are currently available for award under this solicitation.

The purpose of this solicitation is to generate more non-federal resources in addressing institutional energy efficiency needs. To supplement the limited federal resources available, it is critical that the state-coordinated programs initiated by this solicitation be designed to involve, on a continuing basis, other public and private sector resources to the maximum extent possible.

Eligibility: The energy offices currently administering the ICP grant program which includes the fifty states, the District of Columbia, Puerto Rico, Guam, American Samoa, The Commonwealth of the Northern Mariana Islands and The Virgin Islands. (42 U.S.C. 6371d.)

Solicitations will be issued in June of 1986. Written requests for a single copy of the solicitation should be sent to: U.S. Department of Energy, Office of Procurement Operations, Attn: Document Control Specialist, MA-451.1, 1000 Independence Avenue SW., Washington, DC 20585.

Point of contact: Wanda L. Simpson, telephone number (202) 252-1077.

Dated: June 9, 1986.

Edward T. Lovett,
Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 86-13527 Filed 6-13-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-3032-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 383-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Application and Summary Report for an Emergency Exemption for Pesticides (EPA ICR #0596). (This is an extension of a currently approved ICR; there are no changes.)

Abstract: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) permits the Agency to temporarily authorize State and Federal agencies to ship and use unregistered pesticide products, under emergency situations. Information supplied by the applicant is reviewed to see if an emergency situation exists and if the use will present an undue hazard to health and the environment. A summary report must be provided within a year after the emergency exemption is granted.

Respondents: State and Federal agencies seeking use of unregistered pesticide products.

Title: Collection of Emergency Economic and Regulatory Support Data (EPA ICR #1170). (This is an extension of a currently approved ICR; there are no changes.)

Abstract: This Information Collection Request provides a mechanism to obtain, in a short time frame, information on the regulatory impacts of potential Office of Toxic Substances (OTS) policies or actions. Information will be requested primarily by telephone; OTS estimates that an average of twenty-five companies may be contacted in any given instance.

Respondents: Certain companies.

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street SW., Washington, DC 20460.

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, DC 20503.

Dated: June 10, 1986.

Daniel J. Fiorino,
Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86-13458 Filed 6-13-86; 8:45 am]
BILLING CODE 6560-50-M

[Docket No. ECAO-HA-84-3; ORD-FRL-3031-6]

Draft Health Assessment Document for Phosgene

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Meeting.

SUMMARY: This notice announces a workshop to be held by EPA's Environmental Criteria and Assessment Office at the Environmental Research Center, Research Triangle Park, North Carolina, to facilitate preparation of an external review draft of a Health Assessment Document for Phosgene.

DATES: The workshop will be held on June 23 and 24, 1986, from 8:30 a.m. to 5:00 p.m. Members of the public are invited to attend as observers.

FOR FURTHER INFORMATION CONTACT: Ms. Darcy Campbell, Project Manager for Phosgene, U.S. Environmental Protection Agency, Environmental Criteria for Assessment Office, MD-52, Research Triangle Park, NC 27711, (919) 541-4477 [(FTS/629-4477)].

SUPPLEMENTARY INFORMATION: In March 1985, EPA's Office of Air Quality Planning and Standards (OAQPS) requested that the Environmental Criteria and Assessment Office (ECAO), Office of Health and Environmental Assessment (OHEA), prepare a health assessment document for phosgene. The document will be used by EPA in the decision-making process to possibly regulate phosgene under the Clean Air Act as amended, 42 U.S.C., 7401 et seq.

ECOA is now assembling a panel of scientifically and technically qualified

persons to review a draft of the Health Assessment Document for Phosgene at the workshop. Copies of the workshop draft will be made available to the public at the meeting, and observers will have an opportunity to make brief oral statements. The draft document subsequently will be revised and released as an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of the first external review draft. The public comment period will be announced in a subsequent **Federal Register** notice.

Dated: June 9, 1986.

Donald J. Ehreth,

Acting Assistance Administrator for Research and Development.

[FR Doc. 86-13460 Filed 6-13-86; 8:45 am]

BILING CODE 6560-50-M

[OPTS-51627; FRL-3032-1]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a permanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-six PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-1105, 86-1106, 86-1107, 86-1108 and 86-1109, August 26, 1986.

P 86-1110, 86-1111, 86-1112, 86-1113 and 86-1114, August 30, 1986.

P 86-1115, 86-1116, 86-1117, 86-1118, 86-1119, 86-1120 and 86-1121, August 31, 1986.

P 86-1122, 86-1123, 86-1124, 86-1125 and 86-1126, September 1, 1986.

P 86-1127, 86-1128, 86-1129 and 86-1130, September 2, 1986.

Written comments by:

P 86-1105, 86-1106, 86-1107, 86-1108 and 86-1109, July 27, 1986.

P 86-1110, 86-1111, 86-1112, 86-1113 and 86-1114, July 31, 1986.

P 86-1115, 86-1116, 86-1117, 86-1118, 86-1119, 86-1120 and 86-1121, August 1, 1986.

P 86-1122, 86-1123, 86-1124, 86-1125 and 86-1126, August 2, 1986.

P 86-1127, 86-1128, 86-1129 and 86-1130, August 3, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51627]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-1105

Manufacturer. Lonza Inc.

Chemical. (G) Allyl alcohol ester of acetoacetic acid.

Use/Production. (S) For use an an automotive coating. Prod. range: 20-100 tons.

Toxicity Data. No data submitted.

Exposure. Manufacture: inhalation, a total of 3 workers, up to 2 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Trace to less than 1 kg/batch released to air. Disposal by publicly owned treatment works (POTW).

P 86-1106

Importer. Lonza Inc.

Chemical. (S) Acetic acid, cyano-, butyl ester.

Use/Import. (S) For use as adhesive. Import range: 2-10 tons.

Toxicity Data. No data submitted.

Exposure. Manufacture: inhalation, a total of 3 workers, up to 2 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. Trace to less than 1 kg/batch released to air. Disposal by own water treatment works.

P 86-1107

Importer. Confidential.

Chemical. (G) Substituted naphthalene.

Use/Import. (S) Pigment intermediate. Import range: 7,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-1108

Manufacturer. Confidential.

Chemical. (G) Modified acrylate terpolymer.

Use/Production. (G) Thickener for aqueous mixtures, nondispersive use. Prod. Range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by POTW.

P 86-1109

Manufacturer. Confidential.

Chemical. (G) Modified acrylate terpolymer.

Use/Production. (S) Thickening agent for aqueous systems. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by POTW.

P 86-1110

Importer. Confidential.

Chemical. (G) Cycloalkylbutyrolactone.

Use/Import. (G) Ingredient for use in consumer products; highly dispersive use. Import range: 100-1,000 kg/yr.

Toxicity Data. Acute oral: 457 mg/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Moderate; Ames test: Non-mutagenic; Repeated insult patch test: Not a primary skin irritant.

Exposure. Use: dermal and inhalation, a total of 6 workers, up to 2 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Disposal by private water treatment plant.

P 86-1111

Importer. Confidential.

Chemical. (G) Dialkylpyranol.

Use/Import. (G) Ingredient for use in consumer products; highly dispersive use. Import range: 100-1,000 kg/yr.

Toxicity Data. Acute oral: 5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer; Repeated insult patch test: Not a primary skin irritant; Photoallergy test: Negative.

Exposure. Use: dermal and inhalation, a total of 6 workers, up to 2 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Disposal by private water treatment plant.

P 86–1112

Manufacturer. Confidential.

Chemical. (G) Mixed glycol and oligoesters of aromatic and aliphatic dicarboxylic acids.

Use/Production. (S) Component for polyurethane foam insulating material. Prod. range: 300,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 18 workers, up to 4 hrs/da, up to 45 da/yr.

Environmental Release/Disposal. 5 to 30 kg/batch to control technology. Disposal by incineration.

P 86–1113

Manufacturer. Confidential.

Chemical. (G) Fatty acid modified polyester acrylate.

Use/Production. (G) Industrial coating having an open use. Prod. range: 150,000–500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 44 workers, up to 8 hrs/da, up to 155 da/yr.

Environmental Release/Disposal. 3 to 116 kg/batch released to land. Disposal by incineration, landfill, commercial disposer and discharged to a sanitary sewer.

P 86–1114

Importer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Polyester polymer.

Use/Import. (G) Open, non-dispersive. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 2 workers.

Environmental Release/Disposal. Disposal by incineration and approved landfill.

P 86–1115

Importer. Shell Oil Company.

Chemical. (G) Alkyl aryl sulfonic acid.

Use/Import. (S) Industrial chemical intermediate. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–1116

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) For use as an oligomer. Prod. range: 1,000–3,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 4 da/yr.

Environmental Release/Disposal. Release to land.

P 86–1117

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Coating polymer having a non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 52 workers, up to 8 hrs/da, up to 260 da/yr.

Environmental Release/Disposal. 5 to 182 kg/batch released to land. Disposal by incineration and approved landfill.

P 86–1118

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified ethylene acrylate polymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. No release expected. Disposal by incineration.

P 86–1119

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified ethylene.

Use/Production. (G) Adhesive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. No release expected. Disposal by incineration.

P 86–1120

Manufacturer. The Dow Chemical Company.

Chemical. (G) Acrylate polymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. No release expected. Disposal by incineration.

P 86–1121

Manufacturer. Confidential.

Chemical. (S) Poly(oxy-1,4-butanediyl), alpha-(4-nitrobenzoyl)-omega-(4-nitrobenzoyl)oxy)-.

Use/Production. (S) Site-limited and industrial intermediate. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: dermal and inhalation, a total of 10 workers, up to 6 hrs/da, up to 140 da/yr.

Environmental Release/Disposal. 1.0 kg/batch released to air. Disposal by incineration.

P 86–1122

Manufacturer. Confidential.

Chemical. (G) Maleic acid half-ester functionalized with alkenyl ether groups.

Use/Production. (S) Site-limited and industrial Chemical intermediate. Prod. range: 11,500–92,600 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 43 workers up to 8 hrs/da, up to 52 da/yr.

Environmental Release/Disposal. Trace to 106 kg/batch released to land. Disposal by incineration and approved landfill.

P 86–1123

Manufacturer. Confidential.

Chemical. (G) Acrylate methacrylate styrene polymer.

Use/Production. (G) Polymer used in a industrial coating having an open use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 32 workers, up to 8 hrs/da, up to 114 da/yr.

Environmental Release/Disposal. 7 to 92 kg/batch released to land. Disposal by incineration and approved landfill.

P 86–1124

Manufacturer. Confidential.

Chemical. (G) Maleic diester functionalized with alkenylether groups.

Use/Production. (G) Coating polymer with industrial application having an open use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 38 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 6 to 90 kg/batch released to land. Disposal by incineration and approved landfill.

P 86–1125

Manufacturer. Owens-Corning Fiberglas Corporation.

Chemical. (G) Reactive polyester.

Use/Production. (G) Sized ingredient. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by on-site treatment plant.

P 86–1126

Importer. Confidential.

Chemical. (G) Fluorinated amine oxide.

Use/Import. (G) Surfactant in chemical specialities for a highly dispersive use. Import range: Confidential.

Toxicity Data. Acute oral: > 5 ml/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–1127

Manufacturer. Confidential.

Chemical. (G) Substituted sulfoalkyl pyridinium salt.

Use/Production. (G) Contained use in an article. Prod. range: 3,000–16,000 kg/yr.

Toxicity Data. Acute oral: 1,250 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Slight; Repeated skin test: Irritant.

Exposure. Manufacture and processing: dermal, a total of 59 workers, up to 4.0 hrs/da, up to 30 da/yr.

Environmental Release/Disposal. Negligible release to air. Disposal by 30 kg/batch biological treatment system, with 9 kg/batch incinerated.

P 86–1128

Manufacturer. Confidential.

Chemical. (G) Polyurethane prepolymer.

Use/Production. (G) For use as a sealant resin. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–1129

Manufacturer. Confidential.

Chemical. (G) Modified styrene diene olefin copolymer.

Use/Production. (G) Specialty polymer—open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Trace to 5 kg/batch released to air and land.

P 86–1130

Manufacturer. Confidential.

Chemical. (G) Modified styrene diene copolymer.

Use/Production. (G) Specialty polymer—open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Trace to 5 kg/batch released to air and land.

Dated: June 9, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86–13463 Filed 6–13–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59769; FRL–3031–8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such PMNs and provides a summary of each.

DATES: Close of Review Period: Y 86–163, 86–164, 86–165 and 86–166—June 22, 1986. Y 86–167—June 23, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extrancted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m and 4:00 p.m. Monday through Friday, excluding legal holidays.

Y 86–163

Manufacturer. Monsanto Company.

Chemical. (G) Copolymer of polyamide with modified acrylic elastomer.

Use/Production. (G) Polymeric modifier. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal.

Environmental Release/Disposal. Release to land. Disposal by sanitary landfill.

Y 86–164

Manufacturer. Monsanto Company.

Chemical. (G) Copolymer of polyamide with modified acrylic elastomer.

Use/Production. (G) Polymeric modifier. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal.

Environmental Release/Disposal. Release to land. Disposal by sanitary landfill.

Y 86–165

Manufacturer. Monsanto Company.

Chemical. (G) Copolymer of polyamide with modified acrylic elastomer.

Use/Production. (G) Polymeric modifier. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal.

Environmental Release/Disposal. Release to land. Disposal by sanitary landfill.

Y 86–166

Manufacturer. Confidential.

Chemical. (G) Acrylic solution.

Use/Production. (S) Industrial protective resin used on exteriors of closures (lids of jars, etc.). Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 14 hrs/da, up to 24 da/yr.

Environmental Release/Disposal. No release.

Y 86–167

Importer. Dynamit Nobel Chemicals.

Chemical. (G) Linear saturated polyester resin containing hydroxyl groups.

Use/Import. (S) Industrial laminating adhesive mainly for the furniture and automobile industries. Import range: 180,000–450,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: June 9, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86–13465 Filed 6–13–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59223; FRL–3031–9]

Certain Chemicals Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemption, provides a summary, and requests comments on the appropriateness of granting each exemption.

DATE: Written comments by: July 1, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS–59223]" and the specific TME number should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 Street SW. Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86–48

Close of Review Period. July 16, 1986.

Manufacturer. Confidential.

Chemical. (G) Substituted benzenesulfonamide.

Use Production. (G) A component of a vehicle used in printing ink. Prod. range: 370 kg.

Toxicity Data. No data submitted.

Exposure. Minimal exposure.

Environmental Release/Disposal. Disposal by publicly owned treatment works (POTW).

T 86–49

Close of Review Period. July 16, 1986.

Manufacturer. Confidential.

Chemical. (G) Substituted benzenesulfonyl chloride.

Use Production. (G) Site-limited intermediate. Prod. range: 460 kg.

Toxicity Data. No data submitted.

Exposure. Minimal exposure.

Environmental Release/Disposal. Disposal by POTW.

Dated: June 9, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86–13466 Filed 6–13–86; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FEDERAL COMMUNICATIONS COMMISSION

Memorandum of Understanding; Employment and Nondiscrimination

AGENCIES: Equal Employment Opportunity Commission and Federal Communications Commission.

ACTION: Memorandum of understanding.

SUMMARY: The Equal Employment Opportunity Commission and the Federal Communications Commission have revised their Memorandum of Understanding that has been in effect since September 1978. Pursuant to the Cable Communication Policy Act of 1984, Pub. L. 98–549, 98 Stat. 2779, the two agencies have incorporated cable operators into the procedures of the Memorandum of Understanding and have added age discrimination to its list of prohibitions. The revised Memorandum of Understanding also includes a new provision that enhances coordination and cooperation between the Federal Communications Commission and the Equal Employment Opportunity Commission.

EFFECTIVE DATE: February 20, 1986.

FOR FURTHER INFORMATION CONTACT: Stuart Frisch, Assistant Legal Counsel, Coordination Division, Coordination and Guidance Services, Office of the Legal Counsel, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, DC 20507, (202) 634–7581; or Roderick Porter, Deputy Chief, Mass Media Bureau, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, (202) 632–6460.

SUPPLEMENTARY INFORMATION: In July 1978, the Federal Communications Commission (FCC) and the Equal Employment Opportunity Commission (EEOC) entered into a formal Memorandum of Understanding (MOU) regarding the exchange of information and the disposition of discrimination complaints involving broadcast licensees.[1] The 1978 MOU establishes a procedure for the orderly exchange of information between the FCC and the EEOC and a process for the investigation and resolution of complaints of employment discrimination against broadcast licensees. The FCC is designated by the EEOC as its agent for receiving charges of employment discrimination, and the date of filing with the FCC is deemed to be the date of filing with the EEOC. Charges received by the FCC that are within both its jurisdiction and that of the EEOC are transmitted to the appropriate EEOC Area Office or District Office for processing, investigation and possible remedial relief for the charging party. The EEOC notifies the FCC of all reasonable cause determinations and letters of violation involving broadcasters, and it provides quarterly reports to the FCC regarding the status of outstanding charges. The EEOC also refers to the FCC complaints against broadcast stations that are not within its statutory jurisdiction but are within the FCC's jurisdiction.

On March 20, 1985, the FCC published a Notice of Proposed Rule Making (Notice), 50 FR 11191, to implement the equal employment opportunity (EEO) requirements of the Cable Communications Policy Act of 1984. The Notice included a proposal to amend the MOU between the FCC and the EEOC, to incorporate cable operators into its procedures and to add a prohibition against age discrimination. The EEOC has agreed to the FCC's proposed revisions, with certain modifications.

The EEOC and the FCC have also agreed to amend Section V of the MOU, to enhance coordination and cooperation between the agencies on EEO matters. Under the new provisions of Section V, the FCC will confer with the EEOC, to the extent legally permitted, prior to FCC action on non-restricted EEO rule making proceedings. Nothing in the MOU affects the FCC's independence in making its own policy determinations. The FCC and the EEOC believe that these changes will permit a more orderly exchange of information

[1] Memorandum of Understanding between the Federal Communications Commission and the Equal Employment Opportunity Commission, 70 FCC 2d 2320 (1978).

between the two agencies and a more effective federal policy in the area.[2]

Accordingly, the Memorandum of Understanding between the Equal Employment Opportunity Commission and the Federal Communications Commission, as set forth in the attached Appendix, is effective upon publication in the **Federal Register.**

Dated: June 5, 1986.

Federal Communication Commission.

William J. Tricarico,

Secretary.

Dated: June 4, 1986.

Equal Employment Opportunity Commission.

Cynthia C. Matthews,

Executive Officer.

Memorandum of Understanding Between the FCC and EEOC

The EEOC under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e (hereafter Title VII) and the Age Discrimination in Employment Act, 29 U.S.C. Sec. 621 (ADEA), has jurisdiction to identify and eliminate discriminatory employment policies and practices at employment units, including broadcasting stations and cable systems. The FCC, under the Communications Act of 1934, as amended, 47 U.S.C. 151 et seq., and the Cable Communications Policy Act of 1984, Pub. L. 98–549 has jurisdiction to regulate interstate and foreign commerce by wire and radio in the public interest and has found its regulatory jurisdiction also to include authority to identify and eliminate discriminatory employment policies and practices at broadcasting stations and cable systems. It has adopted rules and procedures designed to assure equal employment opportunities to all persons without regard to their race, color, religion, national origin, age or sex.

Both the EEOC and FCC share a common goal—the elimination of discriminatory employment policies and practices at broadcasting stations, including both commercial and noncommercial educational (public) broadcasting stations, and at cable systems. In pursuit of this common goal, and to promote efficiency and eliminate potential conflict and duplication, the EEOC and FCC hereby agree as follows:

I. Exchange of Information

Both the EEOC and FCC shall make available for inspection and copying to appropriate officials from the other agency any information relating to a broadcast employer's or cable system's employment policies and practices which may assist each agency in carrying out its responsibilities. Such information shall include, but not necessarily be limited to, affirmative action programs, employment reports (FCC Form 395 and 395A), complaints, investigative files, conciliation or compliance agreements, and compliance review reports and files.

[2] For further information on the revisions to section V of the MOU, *see* 50 FR 40836, 40854 (October 7, 1985).

Additionally, the EEOC will send to the FCC quarterly reports to keep the FCC informed of all charges against broadcasters and cable system operators. With respect to all information obtained from the EEOC, the FCC agrees to observe the confidentiality provisions of sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964, as amended and of EEOC's procedural regulations under the Age Discrimination in Employment Act.

II. Discrimination Charges/Complaints

The EEOC has responsibility to investigate charges of discrimination filed with it under Title VII, and it has authority to investigate charges or complaints under the ADEA. The EEOC hereby designates the FCC as an agent of the EEOC for the sole purpose of receipt of such charges. For the purpose of determining the timeliness of charges under Title VII of the Civil Rights Act of 1964, as amended, and under the ADEA, the date the matter was received by the FCC shall be deemed to be the date it was received by the EEOC. (See III(b) below.)

III. Processing Discrimination Charges/Complaints

If an individual files a charge with either the EEOC or FCC alleging discrimination in employment by a broadcaster or cable system operator the EEOC and FCC shall proceed as follows:

(a) If the EEOC receives the charge but the broadcast employer or cable system operator does not fall within the jurisdiction of the EEOC pursuant to Title VII or the ADEA and also not within the jurisdiction of a State or local agency to which the EEOC defers such charges pursuant to section 706 of the Civil Rights Act of 1964, or pursuant to section 14(b) of the ADEA, the EEOC will forward the charge to the FCC, which will process the complaint in accordance with its own rules, policies, and procedures. Upon request the EEOC shall provide technical advice and guidance to the FCC in its investigation of such complaints. The EEOC shall also notify the charging party that it has forwarded the complaint to the FCC. The EEOC shall furnish to the appropriate office of the FCC a list of State and local agencies to which EEOC defers Title VII and ADEA charges, and their jurisdictional limits.

(b) If the FCC receives a complaint which falls both within its own jurisdiction and within the jurisdiction of the EEOC or a State or local agency to which the EEOC defers such charges, the FCC shall, in addition to any separate action it may take to investigate such complaint within the context of the public interest finding it must make on any broadcast or cable microwave application: (i) Date stamp the complaint and refer it to the appropriate EEOC office or the appropriate section 706 agency, (ii) notify the complainant that it has done so; and (iii) notify the broadcaster or cable operator that the complaint has been referred to the EEOC, indicating that the FCC has asked the EEOC to inform it of the results of the case processing. However, if the person filing the complaint requests anonymity, the FCC will do none of the above, but will instead refer the individual to the nearest EEOC office. In such case, the date of receipt of a charge or complaint by the EEOC shall control for purposes of determining timeliness.

(c) If the EEOC receives a discrimination charge against a broadcaster or cable system operator which is within the jurisdiction of both the EEOC and the FCC, the EEOC will process the charge in accord with its normal procedures. The EEOC shall make a reasonable effort to investigate the charge prior to the broadcast station's license expiration date as established in § 73.1020 of the FCC's rules and regulations, or the renewal date of the cable system as set by the franchising authority.

IV. Action on Discrimination Charges/Complaints

The EEOC will notify the FCC by letter of all reasonable cause determinations and letters of violation on discrimination charges or complaints involving a broadcaster or cable system operator and upon specific request will provide the FCC with any additional information regarding the determination. However, nothing herein is intended to require or force licensees or operators to enter into conciliation agreements or to affect the legal rights of the complainants. Likewise, nothing herein is intended to discourage a licensee or operator from entering into a conciliation agreement if it so desires or to affect the legal rights of the EEOC.

When the EEOC makes a determination on a discrimination charge or complaint involving a broadcaster or cable system operator, and there is a failure of conciliation, the EEOC will so notify the FCC. Thereafter, consistent with its usual practice of compiling a full and complete record prior to reaching any determination on an issue, the FCC will send the licensee or operator a letter inviting the licensee's or operator's comments on specific areas of FCC concern. Based upon a review of the broadcaster's or cable operator's response and any other information on file relating to its employment policies and practices, the FCC, within its statutory discretion, shall determine what administrative action may be appropriate. Other than a regular grant of a pending application for broadcasters such action may include:

(a) Grant of a renewal for a short-term period;

(b) Grant of a renewal subject to certain conditions (with appropriate monitoring);

(c) Grant of a renewal for a short term period subject to certain conditions (with appropriate monitoring);

(d) Imposition of a monetary forfeiture (see 47 U.S.C. 503(b)); or

(e) Designation of the license or application for hearing pursuant to either section 312 or 309 of the Communications Act, 47 U.S.C. 321,309.

For cable system operators, such action may include:

(a) Imposition of a monetary forfeiture (See Cable Communications Policy Act of 1984 Sec. 634(f)(2), Pub. L. 98–549, Sec. 1 et seq.); or

(b) Suspending Cable Television Relay Service (microwave) licenses.

Upon disposition of the case, the FCC shall notify the EEOC. Furthermore, should the EEOC or the complainant elect to pursue the matter in the Federal courts, the FCC retains discretion to defer consideration of the case until a determination is reached by the courts. Likewise, in given circumstances the FCC retains its discretion to proceed with appropriate administrative actions prior to a final court determination.

V. Coordination Liaison and Monitoring.

(a) Recognizing the need for coordinated Federal policy and EEOC's responsibilities under this agreement, the FCC agrees to confer with EEOC on FCC Equal Employment non-restricted rule making proceedings prior to FCC action except to the extent barred by law.

(b) To provide for more effective exchange of complete information so that both agencies will be utilized to the maximum effectiveness in the public interest, each agency will designate a liaison officer to serve as the primary source of contact. These liaison officers will be responsible for currently informing each other of proposed proceedings and of internal developments in areas of joint concern to the extent that such information is not privileged. Additionally, the parties shall conduct reviews of the implementation of this agreement to assure proper effectuation. In this regard, liaison meetings between appropriate senior officials of both agencies to exhange views on matters of common interest and responsibilities shall be held from time to time as determined by such liasion officers to be necessary.

Designated liaison officers:

(1) Equal Employment Opportunity Commission—Director, Office of Program Operations or his designee;

(2) Federal Communications Commission—The General Counsel or his designee.

VI. Amendment and Termination

This agreement, when signed by both parties, covers an indefinite period of time and may be modified by or expanded with the mutual consent of both parties or terminated by either party upon thirty (30) days advance written notice.

Approved and Accepted for the Equal Employment Opportunity Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

Dated: November 19, 1985.

Approved and Accepted for the Federal Communications Commission.

Mark S. Fowler,

Chairman, Federal Communications Commission.

Dated: February 20, 1986.

[FR Doc. 86-13487 Filed 6-13-86; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 86-161]

Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines

AGENCY: Federal Communications Commission.

ACTION: Summary of Public Notice; Clarification of noncommercial underwriting guidelines.

SUMMARY: Citing apparent uncertainty and significant controversy concerning various aspects of Commission policy and statutory requirements relating to commercial underwriting on noncommercial broadcasting stations, the Commission issued a Notice clarifying Commission guidelines. The Notice addresses five areas: (1) Announcements promoting the sale of goods and services of for-profit entities for which consideration is received by the station; (2) enhanced underwriting; (3) the offering of program related materials; (4) the practice of "host-selling" during children's programs; and (5) the airing of foreign language programs by public broadcasters.

The Commission reminds noncommercial broadcasters that the Communications Act and the Commission's Rules specifically proscribe the broadcast of commercial messages on behalf of profit making entities in return for consideration paid to the station. It warns that information brought to the Commission's attention regarding such practices will be scrutinized and licensees found to have engaged in them will be sanctioned.

The Commission says its recent overview of underwriting activities indicates that some public broadcasters may be airing underwriter and donor acknowledgments which exceed the Commission's guidelines. The guidelines allow public broadcasters to expand or "enhance" the scope of their donor and underwriter announcements to include (1) logograms or slogans which identify and do not promote; (2) location information; (3) value neutral descriptions of a product line or service; and (4) brand or trade names and product or service listings. The Commission, listing specific examples of permissible and nonpermissible underwriting announcements, says it will continue to rely on the good faith determinations of public broadcasters in interpreting its noncommercial guidelines.

The Commission notes that some noncommercial licensees are now offering program-related materials as a device to raise funds for program acquisition. A 1982 Commission Order permits public broadcasters to air announcements promoting program-related materials sold by nonprofit organizations including the station itself. In keeping with the mandate of section 317 of the Communications Act and § 73.1212 of the Commission's Rules (sponsorship identification), however, the Commission says that the nonprofit organization sponsoring such offerings should be clearly identified in the announcements. The Commission points out that guidelines covering announcements for the sale of program related materials by for-profit entities require that the licensee (1) receive no consideration for the announcement; and (2) offer the materials on the basis of public interest considerations and not the private economic interests of the offeror; or (3) charge a nominal price for the materials.

In a related matter, the Commission says its attention has been drawn to what appear to be instances of "host-selling" of progrm-related materials by some public broadcasters during children's programming. It notes that existing Commission policy proscribes use of programming hosts on commercial televsion to promote products during children's programming because it tends to take unfair advantage of children. The Commission says it sees no rational basis for not applying this policy to public broadcasters.

Finally, the Commission notes that complaints by the public and staff review of specific foreign language programs aired by public broadcasters indicate that some noncommercial licensees may not be exercising sufficient control over these programs. It cautions licensees that failure to maintain adequate controls over such programming to ensure sufficient familiarity with what is being broadcast and whether it conforms with the station's policies and Commission requirements could raise serious questions as to the station's operation in the public interest.

FOR FURTHER INFORMATION CONTACT: Thomas D. Wyatt, Enforcement Division, Mass Media Bureau, (202) 632-3860.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, FCC 86-161, released April 11, 1986, corrected April 24, 1986.

The complete text of this Notice may be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800.

2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-13514 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

Petitions for Reconsideration of May 20 Access Tariff Order Filed; Consolidated Pleading Cycle Set

June 5, 1986.

Petitions for Reconsideration or Clarification of the *Midyear 1986 Access Tariff Filings Order (Midyear Order)* issued by the Chief, Common Carrier Bureau on May 20, 1986 were filed by Mountain Bell, Northwestern Bell and Pacific Northwest Bell on May 22, 1986, and by Southern New England Telephone Company and Southwestern Bell Telephone Company on May 23. The Commission will consider all petitions for reconsideration or clarification of the *Midyear Order* in a consolidated proceeding. Petitions for reconsideration of the *Midyear Order* should be filed no later than June 19, 1986. Comments on all petitions should be filed no later than July 10, 1986; reply comments may be filed no later than July 24, 1986.

Copies of the pleadings in this matter may be obtained from the International Transcription Service, 2100 M. St. NW., First Floor, Washington, D.C. 20036 (202) 857-3800.

For further information, please contact Pat McQuie Nagle at 1919 M. St. NW., Room 518, Washington, D.C. 20554 (202) 632-6917.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-13504 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Black Gold Broadcasting et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant, city and State	File No.	MM Docket No.
A. Black Gold Broadcasting, Hazard, KY.	BP-841119AS	86-142
B. Kenneth R. Finnission, Hazard, KY.	BP-850329AH	
C. Katherine Fields, Combs, KY.	BP-850329AJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Aplicant(s)

307(b), All applicants
Contigent comparative, All applicants
Ultimate, All applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-13517 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Des Moines Educational Broadcasting Foundation et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant city and State	File No.	MM Docket No.
A. Des Moines Educational Broadcasting Foundation, Des Moines, IA.	BPED-831103AF	86-123
B. Family Stations, Inc., Des Moines, IA.	BPED-840217AY	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Comparative—Noncommercial Educational FM, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-13516 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 86-198]

Digital Paging Systems of Philadelphia, Inc., et al.

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order designating applications for hearing.

SUMMARY: The Commission is responding to Pocono Mobile Radio Telephone Company's (Pocono) petition for designation of hearing which was filed in response to the Commission's determination that Pocono's application to add transmitters to its existing facilities to operate on the existing frequency 454.075 MHz may be mutually exclusive with the application of Digital Paging Systems of Philadelphia, Inc. (Digital).

The Commission has determined that Pocono's application and Digital's applications are electrically mutually exclusive and that Pocono has demonstrated that its proposal qualifies for comparative consideration. Therefore, the Commission designated the applications for a comparative hearing to determine which applicant would best serve the public interest.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gerald M. Goldstein, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the hearing designation

order, CC Docket No. 86-198, adopted May 9, 1986, and released June 4, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-13508 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Great Lakes Radio Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant, city and State	File No.	MM Docket No.
A. Great Lakes Radio Corp., Shepherd, MI.	BMP-850226AD	86-140
B. Christian Media, Inc., Hemlock, MI.	BP-850429AB	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues had been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

Air Hazard, B
Environmental Impact, B
307(b)-Modification, All applicants
Contingent comparative, All applicants
Ultimate, All applicants.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay, *Assistant Chief,*

Audio Services Division, Mass Media Bureau.

[FR Doc. 86-13512 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Nekoosa Broadcasting Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant, city and State	File No.	MM Docket No.
A. Nekoosa Broadcasting Co., Nekoosa, WI.	BP-850122AG	86-141
B. Margaret E. Maney, Biron, WI.	BP-850429AA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

Site Availability, B
307(b), All applicants
Contingent comparative, All applicants
Ultimate, All applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the compete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800)).

W. Jan Gay, *Assistant Chief,*

Audio Services Division, Mass Media Bureau.

[FR Doc. 86-13513 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Northern California Communications Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant, city and State	File No.	MM Docket No.
A. Northern California Communications Corporation, Redding, CA.	BP-850304AA	86-139
B. Jerry J. Collins, Carmel Valley, CA.	BP-850531L	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

City Coverage—AM, B
Environmental Impact, B
307(b)—Modification, All applicants
Contingent Comparative, All applicants
Ultimate, All applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the compete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800)).

W. Jan Gay, *Assistant Chief,*

Audio Service Division, Mass Media Bureau.

[FR Doc. 86-13515 Filed 6-13-86; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 86-195]

Re Ram Communications of Michigan, Inc., et al.; Memorandum Opinion and Order

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order designating applications for hearing.

SUMMARY: This order designates two applications in the Public Land Mobile Radio Service for comparative hearing pursuant to § 22.33(c)(i) of the Federal Communications Commission's Rules, 47 CFR 22.33(c)(i). Ram Communications of Michigan, Inc., File No. 22213–CD–P/L–1–85, proposes to add a location for a one-way channel on frequency 158.700 MHz to its station in Port Huron, Michigan. Port City Communications, Inc., File No. 23686–CD–P/L–85 proposes to begin new service with a one-way channel on frequency 158.700 MHz in Yale, Michigan. The Commission finds that it is in the public interest to alow RAM the opportunity to prove that an additional location on its existing system will benefit the public more than will Port City's new service.

DATES: Within 20 days of the release date of this order, applicants must file a written notice of their intention to appear on the day of the hearing and to present evidence on the specified issues.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's designation order, pursuant to delegated authority; adopted May 7, 1986, and released June 3, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

William J. Tricarico,

Secretary.

[FR Doc. 86–13506 Filed 6–13–86; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Adrienne Richardson et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM docket No.
A. Adrienne Richardson	Brawley, CA...	BPH–830419AE	86–177
B. Lois Mandel and Calvin Jacob Mandel d/b/a Brawley Broadcasting Company	Brawley, CA...	BPH–840214AF	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicants
1. Environmental Impact	A
2. Air Hazard	A
3. Comparative	A, B
4. Ultimate	A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for ispection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–13509 Filed 6–13–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0096

Title: Summary of State and Local Expenses for Emergency Management Assistance

Abstract: This 50–50 matching fund grant program requires this form to be submitted as a request or amended request for a financial contribution that constitutes the plan (including cost categories) under which the program funds will be distributed.

Type of Respondents: State or local governments

Number of Respondents: 56

Burden Hours: 112.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Dave Reed, Desk Officer for FEMA, Office of Information and Regualtory Affairs, OMB, Rm. 3221, New Executive Office Building Washington, DC 20503.

Wesley C. Moore,

Acting Director, Office of Administrative Support.

[FR Doc. 86–13450 Filed 6–13–86; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–767–DR]

Major Disaster and Related Determinations; Indiana

AGENCY: Federal Emergency Managment Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–767–DR), dated June 5, 1986, and related determinations.

DATED: June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

Notice: Notice is hereby given that, in a letter of June 5, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Indiana resulting from tornadoes on March 10, 1986, is of

sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93–288. I therefore declare that such a major disaster exists in the State of Indiana.

To the extent authorized by law, Federal assitance pursuant to this major disaster declaration will be provided by the Department of Education.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Ronald Buddecke of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster. I do hereby determine the following area of the State of Indiana to have been affected adversely by this declared major disaster and is designated eligible as follows:

Randolph County for assistance as authorized by the President's declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718–02)

Julius W. Becton, Jr.,

Director.

[FR Doc. 86–13448 Filed 6–13–86; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL HOME LOAN BANK BOARD

[No. 86–577]

Application for Unlisted Trading Privileges and Opportunity for Hearing

Date: June 9, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Midwest Stock Exchange has filed on April 24, 1986, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1, an application with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities:

Nevada Savings and Loan Association (FHLBB No. 5922) Common Stock, $1.00 Par Value

Western Savings and Loan Association (FHLBB No. 1920) Common Stock, $1.00 Par Value

Columbia Savings and Loan Association (FHLBB No. 6325) Series A Cumulative Convertible Preferred Stock $1.00 Par Value

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the application at the Board and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will issue an order granting the application after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: Tom Herman, Attorney, (202–377–6451), Corporate and Securities Division, Office of General Counsel, at the above address.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–13445 Filed 6–13–86; 8:45 am]

BILLING CODE 6720–01–M

[No. 86–582]

FSLIC Insurance Premium

Date: June 10, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTON: Notice.

SUMMARY: The Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the corporation ordered the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one-thirty-second of one percent of the total amount of the accounts of the insured members of each insured institution determined as of March 31, 1986.

EFFECTIVE DATE: June 10, 1986.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Director, Insurance Division, Office of the FSLIC, (202) 377–6620; or Terrill Rupp, Attorney, Office of General Counsel (202) 377–6773, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Whereas, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *provided* that the total amount so assessed in any one year against any insured institution shall not exceed one-eighth of one per centum of the total amount of the accounts of the insured members of such institution; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85–142, dated February 22, 1985, by Resolution No. 85–437, dated June 5, 1985, by Resolution No. 85–770, dated August 28, 1985, by Resolution No. 85–1142, dated December 9, 1985, and by Resolution No. 86–213, dated March 6, 1986, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one-thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, as of September 30, 1985 for the fourth and as of December 31, 1985 for the fifth; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85–142, expressed its inention to consider the assessment of further additional premiums in amounts equal to one-thirty-second of one per centum on a quarterly basis during 1986, not to exceed an aggregate of one-eighth of one per centum of the total amount of the accounts of the insured members of each insured institution; and

Whereas, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC, (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to

Resolution No. 85–142, dated February 22, 1985, Resolution No. 85–437, dated June 5, 1985, Resolution No. 85–770, dated August 28, 1985, Resolution No. 85–1142, dated December 9, 1985, and Resolution No. 86–213, dated March 6, 1986, upon the Corporation's insurance reserves:

Now, Therefore, It Is Resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through 1985 and the first quarter of 1986; and

Resolved Further, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85–142, require the assessment of additional insurance premiums pursuant to 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85–142, No. 85–437, No. 85–770, and No. 85–1142, and No. 86–213, in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. It appears that the Corporation will incur further substantial losses and expenses in calendar year 1986;

3. It is appropriate, therefore, to provide for the assessment of an additional insurance premium at this time, pursuant to 404(a)(2) of the NHA, by order of the Corporation; and

Resolved Further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the second quarter of 1986, in an amount equal to one-thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of March 31, 1986; and

Resolved Further, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about June 30, 1986; and

Resolved Further, That the Director or Deputy Director, Office of the FSLIC ("Director"), shall determine the amount of the additional premium due to be paid on June 30, 1986, by each insured institution and shall notify each insured institution of such amount at least fifteen (15) days prior to the date such amount is due; and

Resolved Further, That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved Further, That the Secretary shall forward this Resolution for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–13446 Filed 6–13–86; 8:45 am]

BILLING CODE 7620–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreements pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010952.

Title: Port of Oakland Terminal Agreement.

Parties:

Yamashita Shinnihon Steamship Co., Ltd. (Carrier)

Stevedoring Services of America (Contractor)

Synopsis: The proposed agreement would permit the contractor ro provide container terminal services at Berth 5/6 Marine Terminal facility, located in the Port of Oakland. The Carrier agrees to use Contractor's services for containers to be loaded onto or discharged from container vessels owned, operated, and chartered by Carrier in its Far East-North America Pacific coast regular service. The initial term of the agreement shall be for five (5) years.

Agreement No.: 213–010955.

Title: ACL/GCL/CGM/H–L Reciprocal Space Charter and Sailing Agreement.

Parties:

Atlantic Container Line, G.I.E.

Gulf Container Line (GCL), B.V.

Compagnie Generale Maritime

Hapag-Lloyd AG

Synopsis: The proposed agreement would permit the parties to agree on services to be provided, schedules, number of sailings and frequency of port calls and to charter space from each other in the trade between U.S. Atlantic and Gulf Ports and non-Mediterranean Ports in Europe as well as the Atlantic and St. Lawrence River Ports of Canada and ports on the East Coast of Mexico. The parties would be authorized to operate up to 20 vessels, each being up to 55,000 deadweight tons in the trade.

Agreement No.: 224–010956.

Title: Orient Overseas Container Line/Stevedoring Services of America Terminal Agreement.

Parties:

Orient Overseas Container Line Ltd. (OOCL)

Stevedoring Services of America (SSA)

Synopsis: The proposed agreement would permit SSA to provide container terminal services at Berth 5/6 in the Port of Oakland for containers to be loaded onto or discharged from container vessels owned, operated, chartered or otherwise controlled by OOCL in OOCL's regular Far East-North America Pacific Coast Service.

Agreement No.: 224–010958.

Title: Neptune Orient Lines/ Stevedoring Services of America Terminal Agreement

Parties:

Neptune Orient Lines, Ltd. (NOL)

Stevedoring Services of America (SSA)

Synopsis: The proposed agreement would permit SSA to provide container terminal services at Berth 5/6 in the Port of Oakland for containers to be loaded onto or discharged from container vessels, owned, operated, chartered or otherwise controlled by NOL in NOL's regular Far East-North America Pacific Coast Service.

Dated: June 10, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86–13490 Filed 6–13–86; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of

the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name/address	Date reissued
2885	Metro Freight Service, Inc., 22 Lawrence Lane, Lawrence, NY 11559.	June 2, 1986.

Robert G. Drew,

Bureau of Tariffs.

[FR Doc. 86-13492 Filed 6-13-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses has been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 1734
Name: Gal Air Freight, Inc.
Address: 5429 N.W. 72nd Avenue, Miami, FL 33166
Date Revoked: May 29, 1986
Reason: Failed to maintain a valid surety bond

License Number: 1285
Name: Imperial Air Freight Service, Inc.
Address: 474 Wilson Avenue, Newark, NJ 07105
Date Revoked: May 27, 1986
Reason: Requested revocation voluntarily

License Number: 2054-R
Name: Gem Express Corporation
Address: P.O. Box 52-3117, Miami, FL 33152
Date Revoked: May 31, 1986
Reason: Surrendered license voluntarily.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86-13491 Filed 6-13-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Ames Holding Company, Ltd.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 25, 1986.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ames Holding Company, Ltd.*, 1Omaha, Nebraska; to acquire the voting shares of Western Security Bank, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, June 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13688 Filed 6-13-86; 10:10 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement Program for Capacity Building in Occupational Safety and Health for State, Territorial, and Local Public Health Departments Availability of Funds for Fiscal Year 1986

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1986 to continue cooperative agreements with State, territorial, and local health departments to enable them to build capacity in environmental and occupational safety and health activities. The cooperative agreements will be administered by CDC (jointly by the National Institute for Occupational Safety and Health (NIOSH) and the Center for Environmental Health (CEH) under the research and demonstration grant authority of section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)) and section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)).

The purpose of the cooperative agreement is to assist State and local health agencies in developing and sustaining components to identify, control, contain, or prevent occupationally-related morbidity and mortality. Emphasis is place upon (1) State-initiated occupational safety and health activities, (2) occupational injury and fatality surveillance, and (3) occupational/environmental capacity building activities (sponsored jointly by NIOSH and CEH).

In Fiscal Year 1986, it is estimated that $1,200,000 will be available to support continuation of 14 cooperative agreements. The funding estimate may vary and is subject to change. Continuation awards within the project period are made on the basis of satisfactory performance and on the availability of funds. no new aplications are being accepted in Fiscal Year 1986.

Application Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Application Submission and Deadline

The original and two copies of the application must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, on or before July 15, 1986.

For Further Information Contact

For business information: Mr. Luther DeWeese, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, Telephone (404) 262-6575 or FTS 236-6575.

For technical information and assistance

State-Initiated Activities/Occupational Injury and Fatality Surveillance: Phillip W. Strine, Public Health Advisor, NIOSH, Building 1, Room 3120, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 329-3190 or FTS 236-3190.

Occupational/Environmental Capacity Building: John Gallagher, Public Health Advisor, CEH, Chamblee, Building 9, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 452-4118 or FTS 236-4118.

The applicable catalog of Federal Domestic Assistance Program Number is

13.262, Occupational Safety and Health Research Grants.

Dated: June 10, 1986.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 86-13472 Filed 6-13-86; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket Nos. 84P-0304 and 84P-0305]

Helena Laboratories and Aviv Biomedical, Inc.; Neonatal Total and Unbound Bilirubin Test Systems; Panel Recommendation on Petitions for Reclassification

Correction

In FR Doc. 86-9364 beginning on page 15839, in the issue of Monday, April 28, 1986, make the following corrections:

1. On page 15840, in the first column, delete the following, beginning in the second line: After reviewing and public comments on the recommendation.";

2. On page 15843, in the first column, in the second complete paragraph, add the following between the fourteenth and fifteenth lines:

The correlation coefficients were 0.96, 0.95, and 0.95, respectively. The accuracy of the ABBAS Analyzer was further assessed with seven artificially elevated bilirubin samples with constant hematocrit (55 percent) and varied bilirubin concentrations (0.0, 5, 10, 15, 20, 25, 30 mg/dL). Again the samples were assayed simultaneously on the ABBAS Analyzer and the Bell Laboratories' Bilirubin Hematofluorometer prototype system for total bilirubin, reserve bilirubin-binding capacity, and albumin-bound bilirubin.

3. On pages 15843 and 15844, delete the following, which begins with the last word on page 15843 and continues on page 15844: "(The coefficient of variation (C.V.), "expressed as a percentage."; and

4. On page 15846, in the first column, under the heading "References", in 1 e, sixth line, "1970" should read "1979".

BILLING CODE 1505-01-M

Health Care Financing Administration

[BERC-333-CN; BERC-335-CN]

Medicare Program; Schedule of Limits on Skilled Nursing Facility Inpatient Routine Service Costs

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

ACTION: Correction of final notices.

SUMMARY: This document corrects some erroneous wage index values that appeared in two final notices published in the **Federal Register** on April 1, 1986 (51 FR 11234 and 51 FR 11253).

FOR FURTHER INFORMATION CONTACT: Steve Kirsh, (301) 594-9465.

SUPPLEMENTARY INFORMATION: The following changes result from corrections that we made in the data used to compute the HCFA survey-based wage index.

A. In **Federal Register** Document 86-7132 beginning on page 11234, in the issue of April 1, 1986, we are correcting an erroneous wage index value. On page 11243, in the third column, the wage index value for Minneapolis-St. Paul, MN-WI is corrected by replacing "1.0099" with "1.0110".

B. In **Federal Register** Document 86-7131 beginning on page 11253, in the issue of April 1, 1986, make the following corrections to the wage index values:

1. On page 11259, the value for Dallas, TX, in the middle column, is corrected to read 1.0733.

2. On page 11260, the value for Fort Worth-Arlington, TX, in the first column, is corrected to read .9998.

3. On page 11261, the value for Nassau-Suffolk, NY, in the second column, is corrected to read 1.3399.

4. On page 11261, the value for New York, NY, in the third column, is corrected to read 1.3809.

5. On page 11262, the value for Philadelphia, PA-NJ, in the first column, is corrected to read 1.1783.

6. On page 11262, the value for Pittsburgh, PA, in the first column, is corrected to read 1.1011.

(Secs. 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program)

Dated: June, 1986.

Barbara S. Wamsby

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-13481 Filed 6-13-86; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Meeting of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Biomedial Research Support Subcommittee (MBRSS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), July 24, 1986, 8:30 a.m., at the National Institutes of Health. The meeting will be held in Conference Room 9, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 29892.

This meeting will be open to the public from approximately 2:30 p.m. to adjournment on July 24, 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 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 July 24 from 8:30 a.m. to 2:30 p.m. 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 associatd with the applications, disclusure 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. Michael A. Oxman, Chief, Office of Review, DRR, Building 31, Room 5B09, 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).

[FR Doc. 86-13528 Filed 6-13-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of the Cancer Center Support Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, National Institutes of Health, July 31-August 1, 1986, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. This meeting will be open to the public on July 31, 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 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 July 31, from approximately 9:30 a.m. until recess and on August 1, from 8:30 a.m. until adjournment for the review, discussion and evaluation of 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 the applications, 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 Insitutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John Abrell, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 826, National Institutes of Health, Bethesda, Maryland 20892 (301/496–9767) will furnish substantive program information.

Dated: June 6, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–13529 Filed 6–13–86; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Preclinical Program Project Review Committee

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, July 31–August 1, 1986, Linden Hill Hotel and Racquet Club, 5400 Pooks Hill Road, Bethesda, Maryland 20892. This meeting will be open to the public on July 31, from 8:30 a.m. to 9:15 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 July 31, from approximately 9:15 a.m. until recess, and on August 1, from 8:30 a.m. until adjournment for the review, discussion and evaluation of 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 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 roster 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: June 6, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–13530 Filed 6–13–86; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Therapeutics Program Project Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Therapeutics Program Project Review Committee, National Cancer Institute, National Institutes of Health, August 7–8, 1986, Building 31C, Conference Room 6, Bethesda, Maryland 20892. This meeting will be open to the public on August 7, from 8:30 a.m. to 9:00 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 August 7, from approximately 9:00 a.m. until recess, and on August 8, from 8:30 a.m. until adjournment for the review, discussion and evaluation of 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 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 roster of committee members, upon request.

Dr. Suzanne E. Fisher, Executive Secretary, Cancer Therapeutics Program Project Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20892 (301) 496/2330 will furnish substantive program information.

Dated: June 6, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–13531 Filed 6–13–86; 8:45 am]

BILLING CODE 4140–01–M

Office of Human Development Services

Child Abuse and Neglect Prevention and Treatment, Proposed Research Priorities for Fiscal Year 1987

AGENCY: Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Notice of Proposed Fiscal Year 1987 Child Abuse and Neglect Research Priorities for the Office of Human Development Services (OHDS).

SUMMARY: The National Center on Child Abuse and Neglect in the Children's Bureau, Administration for Children, Youth and Families, Office of Human Development Services (OHDS) is proposing eight areas of research in the field of child abuse and neglect prevention and treatment for public comment. Comments on these research priorities or suggestions for other research priorities are invited. No proposals, concept papers or other forms of application should be submitted at this time.

DATE: In order to be considered, comments must be received no later than August 15, 1986.

ADDRESS: Comments should be sent to: Commissioner, Administration for Children, Youth and Families, Attn: National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Roland H. Sneed, (202) 245–2840.

SUPPLEMENTARY INFORMATION: The National Center on Child Abuse and Neglect (NCCAN) conducts activities designed to assist and enhance national,

State and community efforts to prevent, identify and treat child abuse and neglect. These activities include: conducting research and demonstrations; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; providing grants to eligible States for strengthening and improving child protective service programs; and coordinating Federal activities related to child abuse and neglect through an Advisory Board on Child Abuse and Neglect.

In fiscal year 1987, NCCAN intends to continue the Information Clearinghouse on Child Abuse and Neglect, and to support a Baby Doe Information Clearinghouse as well as a system for aggregating data from official reports of child abuse and neglect collected by the States.

Recently funded research projects and research areas soon to be funded (resulting from the September 4, 1985 Fiscal Year 1986 Coordinated Discretionary Funds Program Announcement) address the following research topics: Decision making at intake and investigation; reporting practices of mandated reporters; utilization of central registries; substantiation of child maltreatment reports; meta-analysis of evaluative studies of child abuse and neglect programs outcomes; effects of disclosure and intervention on sexually abused children; impact of child sexual abuse on victims; impact of therapeutic approaches in the treatment of child sexual abuse; use of clinicians for child abuse and neglect treatment, child sexual abuse by women; etiologic factors, dynamics and effects of sexual abuse on male children and adolescents; validation of operationally defined measures of emotional maltreatment; and the ability of children to recount events.

OHDS solicits specific comments and suggestions concerning each of the priorities below. Suggestions may also be made on research topics not covered in this announcement, but which are timely and relate to specific needs in the field of child abuse and neglect. No proposals, concept papers or other forms of application should be submitted at this time. Any such submission will be discarded. Applications will be accepted only in response to the OHDS Coordinated Discretionary Funds Program Announcement to be published in the **Federal Register**, at a later date. No acknowledgments will be made of the comments in response to this notice, but all comments will be considered in preparing the final funding priorities in child abuse and neglect research activities for the Fiscal Year 1987 OHDS Coordinated Discretionary Funds Program Announcement. In addition, a copy of the OHDS program announcement will be sent to all persons who comment on these proposed priorities. OHDS anticipates that the program announcement for the Coordinated Discretionary Funds Program will be published in the late summer of 1986.

The suggestions for fiscal year 1987 research priorities are intended to build on the current base of knowledge on child abuse and neglect and its prevention, identification and treatment. The eight areas proposed here include research on the effectiveness of responses in the prevention, identification and treatment of child abuse and neglect and the impact of child abuse and neglect on the victims and their families. These studies are intended to benefit the field and lead to improved services for children and their families.

Proposed Child Abuse and Neglect Research Priorities for Fiscal Year 1987

OHDS is considering the following research priorities for fiscal year 1987:

1. Risk Assessment Systems Utilized by Child Protective Services in the Decision Making Process

Reported cases of child abuse and neglect to child protective services agencies require some of the most difficult and perplexing decisions in the human services field. These decisions, with significant and sometimes traumatic impact upon the child and family, must be made at various stages along the critical path from intake to disposition. While respecting the basic legal rights of the child and of the family, the agency must both protect the child and avoid unnecessary intrusiveness into the family. Among the decisions which demand criteria for decision making and risk assessment determinations include whether or not to: (a) Take further action upon receipt of a call or contact by a complainant; (b) conduct an on-site investigation; (c) provide emergency protective services (in or out of home); (d) make a finding that a case is substantiated or unsubstantiated;

(e) remove the child or the perpetrator from the home; (f) refer the case to a law enforcement agency for criminal action; (g) initiate juvenile court proceedings; or (h) return the child to the home.

Some risk profiles or indicators, often fragmented, have been recognized, but often without a clear relationship to all of the stages of the decision making process or the impact of their use in meeting the dual objectives of protecting children and avoiding unwarranted intervention into family life.

Research is needed to review and analyze risk assesssment systems utilized by State, local and/or private agencies in the decision making process from intake to disposition of reported cases of child abuse and neglect. Criteria and indicators for risk assessment need to be studied in relation to their use in assessing risk at critical points in the decision making process to ensure proper protection and at the same time prevent the damaging consequences of inappropriate or precipitous intervention or removal of the child from the home. Exemplary practices can be highlighted and made available to the field.

2. State and Local Responses to Child Abuse and Neglect Allegations in Custody Disputes

Allegations of child abuse and neglect by one parent against the other parent are frequently made in cases of contested child custody. This may occur during a pending divorce action or may arise at a later time when one parent is awarded custody and the other parent appeals to the court for a change of custody or change of visitation arrangements. Sometimes both the juvenile court and the criminal court are involved. This further complicates the case by surfacing court jurisdictional questions.

Child protective services agencies are often reluctant to investigate allegations of abuse or neglect when a case of contested custody is before the court because of jurisdictional issues, absence of criteria for intervention, and the untenable position of being caught between parents engaged in an adversarial relationship. Courts are not staffed to investigate allegations of child maltreatment in cases where the court has jurisdiction of the case, and must rely upon other community agencies for investigation.

One study was funded in fiscal year 1985 to develop materials for domestic and/or family court personnel for handling sexual abuse allegations in custody disputes. This project includes a research component that will contribute knowledge on the actual incidence and disposition of sexual abuse allegations in domestic relations cases as well as methods of processing cases including exemplary policies, key problems and needed reforms.

Research is needed to study how courts and State and local agencies are

responding to increasing complaints of child maltreatment by one parent against the other custody cases. The roles and responsibilities of law enforcement agencies, protective services agencies, and the courts need to be examined in such cases. The need of the child for independent representation when judicial action is taken should also be examined.

3. Abused and Neglected Children Involved in Court Actions

According to the American Humane Association (AHA), there has been a major increase in the amount of court action for child abuse and neglect cases since 1980. Cases involved in court actions represent some of the most serious forms of child abuse and neglect. They also present the most difficult problems for child protective services workers, law enforcement officers, prosecutors, and court personnel. Issues of child protection and child custody are almost always at the heart of these cases.

Little is known about (1) the experience of children and families in these court cases and (2) the effectiveness of the courts' involvement. Data to be gathered and examined should include: source of referral, type of abuse or neglect, use of protective custody, manner of handling (official or unofficial), time lines between stages of court handling, age and sex of children, and disposition of the case.

Research is needed on the impact of court involvement on abused and neglected children and their families. Studies should include a comparison of cases where prosecution occurs versus no prosecution in criminal courts, juvenile courts, cases involving family court, and cases where no court initiated proceedings are involved.

4. Perceptions of Abused versus Non-Abused Children Using Anatomical Dolls in the Conduct of Interviews

In the last few years a wide range of professionals have instituted the usage of anatomical dolls in conducting interviews with children who have been alleged to be sexually abused. Many of those using the dolls as part of the investigatory process lack training to do so. Collaterally, while use of the dolls has increased throughout the United States, there is very little published on how to conduct and interpret investigative interviews of the child when utilizing anatomically correct dolls. Further, there is substantial disagreement in the field on how to interpret the preschooler's behavior towards the doll and evidence gained from these interviews is being challenged by the legal community.

NCCAN has recently funded a study to compare the behavior of sexually abused and non-abused preschool children toward anatomical dolls. This study will provide the first known normative data on what is "normal" curiosity and play with dolls among children who have not been sexually abused.

Research is needed on how to effectively conduct the interview with the child victim utilizing an anatomical doll, how to interpret play behavior, and how to avoid "leading" the child. Validation of the use of anatomical dolls would provide professionals responsible for child abuse cases with sound and conclusive evidence for use in court.

In addition, there are alternative approaches to the utilization of anatomical dolls for interviewing the victimized child. Research contrasting interviews with child victims utilizing an anatomical doll and interviews with child victims in an alternative clinical manner would further benefit the field.

5. Removal of the Perpetrator Versus Removal of the Victim from the Home: Effects on the Victim and the Family.

The literature suggests that there are at least two perspectives regarding the issue of whether a child or the perpetrator is removed from the home as part of the intervention strategy following disclosure of intrafamilial child sexual abuse.

Research is needed on the effectiveness of the respective approaches in the context of the treatment strategies utilized with the victim and the family in situations involving child physical abuse, emotional maltreatment and sexual abuse. Such questions to be addressed include: What is the effect of the removal of the perpetrator compared to removal of the victim? What is the effectiveness of voluntary removal versus involuntary removal of the perpetrator? How are service providers structuring treatment services and what is the extent of treatment services when the perpetrator is removed compared to when the victim is removed?

NCCAN funded three research studies in fiscal year 1985 on the effects of intervention and disclosure of sexual abuse on the families. At least one of these studies is collecting information about the negative and positive aspects of the children's removal from the home as part of intervention following disclosure of sexual abuse and will contribute knowledge to this area.

Studies are needed to specifically address the issue of the effects on the victim and the family of the removal of the perpetrator versus removal of the victim from the home as part of the intervention strategy. With the increase of child sexual abuse reports, the need for treatment and prevention methodologies are emerging and a study of this subject is vitally needed to assist and support management of child sexual abuse reports and cases. It is needed as well to assist in the management of child physical abuse and emotional maltreatment reports and cases.

6. School Performance of Child Abuse and Neglect Victims

Data suggest and child protective services and school system administrators acknowledge that children in school who are identified as child abuse and neglect victims may be inhibited in social (personal) and academic development and achievement because of the abuse and/or neglect they experience.

Research is needed to determine the relationship between child abuse and neglect, educational achievement and the response of the school system in providing social and academic enhancements for the abused or neglected child. Of interest are such issues as effects of abuse and neglect on children as related to their personal and academic achievement and types of programs and measures used in schools to deal with children who have been abused or neglected.

Other studies, including those funded in fiscal year 1984 by NCCAN on school system treatment programs, can provide information on appropriate approaches to expand school involvement in response to child abuse and neglect; coordination of education, child protective services and other agencies in provision of services; and coordination of the resources of the educational, child protective services, and juvenile justice systems for intervention with acting out children in public schools.

Needed are studies of the school performance of child abuse and neglect victims from foster care, single parent, and two parent families.

7. Assessing the Impact of Child Abuse and Neglect on Victims

Literature indicates that child abuse and neglect have long term impacts on the victims which may not be evident for years after the incident and subsequent intervention.

Research is needed to study the residual effects of differing types of child maltreatment, the nature of the impact, and its manifestations at critical

developmental periods throughout the child's maturation and adulthood.

At the present time, NCCAN has underway four studies which were funded in fiscal year 1985 to assess the impact of child sexual abuse on victims. Therefore, such studies on child sexual abuse are not planned for solicitation for fiscal year 1987.

Research on the impact of physical abuse, neglect (including lack of supervision) and emotional maltreatment on victims is needed. Two studies funded by NCCAN in fiscal year 1984 on lack of supervision can provide background information for research in this area. Two research studies on emotional maltreatment, one pertaining to operational definition and the second to a study on the effects of emotional maltreatment, are getting underway in fiscal year 1986 and they will also be helpful when completed.

Needed are both retrospective and short term follow up studies on victims of child abuse and neglect to determine the residual effects after the conclusion of treatment in the areas of physical abuse, neglect including lack of supervision, and emotional maltreatment.

8. Unintended Consequences on Children of Child Abuse and Neglect Prevention Programs

Although the number of child abuse and neglect prevention programs has proliferated in the last few years, we are now beginning to see fragmentary indications of the possible adverse consequence to a child of prevention approaches and programs. In the past many professionals saw primary prevention as unworkable, given the complex picture of child abuse and neglect that was emerging from the research. In point of fact, prevention is not very well understood by many professionals in the field (Coolsen and Weschler, 1984). Prevention in child abuse refers to those efforts, programs and supportive services aimed at positively influencing children and parents before abuse or neglect occurs. Anecdotal information is generally available regarding the "unintended consequences" issue. A thorough current literature review indicates a dearth of published or unpublished research or reports. However, one 1984 report on a study of the attitudes of sixty-nine fifth grade children after a three-hour instructional program on preventing child sexual abuse indicates the need for research on the question of consequences. (Plummer, 1984). Similar prevention programs which provide information and materials both to non-abused and abused childen without differentiation do exist. The unknown consequences(s) of prevention programs to the child population is of interest to NCCAN.

Research is needed to examine the question of possible short and long term deleterious effects on children as a result of participation in child abuse and neglect prevention focused programs. Such areas to be studied include the psychological impact on children of community-based prevention programs; the impact on children's attitudes and emotional well-being of self-defense; victim avoidance; and personal protection and similar programs. The consequences such as fear of stranges, frightening dreams or fantasies, and changes in phyical contact between children and adults should also be addressed.

(Catalog of Federal Domestic Assistance Program Number: 13.670, Child Development-Child Abuse and Neglect Prevention and Treatment)

Dated: June 5, 1986.

Dodie Livingston,

Commissioner for Children, Youth and Families.

Approved: June 9, 1986.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 86-13482 Filed 6-13-86; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

Notice of Reestablishment of Committees

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92-463, 86 Stat. 770-776] and the Health Research Extension Act of 1985, November 20, 1985 [Pub. L. 99-158, section 402(b)(6)], the Director, National Institutes of Health, announces the reestablishment, effective July 1, 1986, of the following committees:

Allergy, Immunology, and Transplantation Research Committee
Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases
Board of Scientific Counselors, National Institute of Child Health and Human Development
Maternal and Child Health Research Committee
Mental Retardation Research Committee
Microbiology and Infectious Diseases Research Committee
Population Research Committee.

The duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: June 10, 1986.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 86-13524 Filed 6-13-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[INT-DEIS 86-29]

Newlands Project Proposed Operating Criteria and Procedures, Nevada; Availability of Draft Environmental Impact Statement

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation, Department of the Interior, has prepared a draft environmental impact statement (DEIS) addressing alternative diversions for the Newlands Project Proposed Operating Criteria and Procedures (OCAP).

This DEIS describes the environmental consequences of adopting the long-term OCAP for the Newlands Project. The OCAP consists of criteria to define the amount and timing of diversions from the Carson and Truckee Rivers to meet the decreed water rights requirements for the Newlands Project water use and to insure the criteria are met.

ADDRESSES: Copies of the DEIS and the technical appendices are available for inspection at either of the following addresses and at libraries in the vicinity of the Project. Single copies of the statement may be obtained upon request to the Director of Environmental Affairs and the Regional Director in Sacramento.

Director, Office of Environmental Affairs, Bureau of Reclamation, Room 7425, Department of the Interior, Washington, DC 20240, Telephone: (202) 343-4991

Regional Director, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, Telephone: (916) 978-5049

Division of Acquisition and Property Management, Document Systems Management Branch, Library Section, Code 823, Engineering and Research Center, Denver Federal Center, Denver, CO 80225, Telephone: (303) 236-6463.

SUPPLEMENTARY INFORMATION: Alternatives examined include diversion amounts between 288,000 acre-feet per year and 406,000 acre-feet per year and eight diversion criteria which address the timing of diversions. A no-action alternative is also described. This DEIS fulfills the requirements of Executive Order 11988, Floodplain Management, and Executive Order 11990, Potection of Wetlands.

Detailed discussions on the legal background of the Newlands Project, the Truckee-Carson Hydrologic Model, water resources, biological resources, human resources, and Newlands Project descriptions are available in the technical appendices to the DEIS.

Dated: June 10, 1986.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 86-13489 Filed 6-13-86; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

New River Gorge National River Boundary Establishment; Extension of Comment Period

AGENCY: National Park Service; New River Gorge National River.

ACTION: Extension of public comment period for final park boundary.

SUMMARY: This notice extends the public comment period given in the **Federal Register** of May 9, 1986, Volume 51, #90, page 17256 in which the National Park Service announced that it has completed the final park boundary delineation required by section 1109(4) of Title IX of Pub. L. 95-625, November 20, 1978. A General Management Plan, approved in November 1982, identified potential modifications to the external boundaries of the park. These modifications include both additions and deletions. Together they result in an overall reduction of approximately 5,572 acres from the 62,000 originally included in the National River boundaries. Additions are based primarily on the need to protect scenic resources within the river's visual corridor. Deletions exclude certain incompatible uses, some significant coal reserves, and a number of properties outside the visual corridor (including portions of two communities) that are not important to the purpose of the National River and are suitable for private development, agricultural and timber harvesting activities. Minor boundary adjustments were drawn in most cases, to coincide with individual tract property lines and topographical features. Copies of the proposed final boundary map of the park are available and the public is invited to review them at the times and place listed below.

DATE: The public comment period that began on May 1, 1986, will now be closed on June 30, 1986. During this period the park staff will respond to any questions or comments individuals wish to make regarding the park boundary.

ADDRESS: The public may present comments in writing or orally to park headquarters. Correspondence should be addressed to Superintendent, New River Gorge National River, Box 1189, 137½ Main Street, Oak Hill, West Virginia 25901. Appointments should be made by telephone to meet with the Superintendent or Assistant Superintendent.

FOR FURTHER INFORMATION CONTACT: Superintendent Jim Carrico or Assistant Superintendent Bob Whitman at the park headquarters address or call (304) 465-0508.

SUPPLEMENTARY INFORMATION: The National Park Service will be available to indicate property line relationship to the proposed boundary. Citizens may call to ascertain whether their property is included or excluded in the final boundary without visiting park headquarters if they so desire. A confirmation letter will be provided if requested. Park headquarters is located at 137½ Main Street, Oak Hill, West Virginia. Office hours are 8:00 a.m. to 4:30 p.m., Monday through Friday.

Dated: June 4, 1986.

John W. Bond,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 86-13478 Filed 6-13-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Postponement of ICC Practitioner Examination

Notice

The Commission has voted to postpone the July 1986 ICC Practitioner's Examination due to the low number of applications received. The exam, which is scheduled to be given once a year, was last administered in December 1985.

This year, the Commission received only 12 applications for the examination. For this reason, it will be rescheduled for December 2, 1986. The 12 applicants will be rescheduled and will be notified individually. The deadline for registration will be October 7, 1986.

Questions concerning this postponement should be directed to the Commission Service Section, (202) 275-7233.

Decided: May 30, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13476 Filed 6-13-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 106)]

Southern Pacific Transportation Co., Abandonment in Houston, Harris County, TX; Findings

The Commission has found that the public convenience and necessity require or permit Southern Pacific Transportation Company to abandon its 1.976-mile line of railroad between milepost 1.098 near 7th Street and milepost 3.074 near 26th Street in Houston, Harris County, TX. A certificate will be issued authorizing abandonment within 15 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 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 publication of this Notice. Any offer previously made must be remade within this 10-day period. The following notation must be typed in bold face on the lower lefthand corner of the envelope containing the offer: "Rail Section, AB-OFA."

Information and procedures regarding financial assistance for continued rail service are set forth at 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: June 11, 1986.

By the Commission, Division 2, Commissioners Andre, Gradison and Simmons. Commissioner Simmons dissented with a separate expression.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13594 Filed 6-13-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; Sub-No. 173X]

Seaboard System Railroad, Inc.; Exemption of Abandonment and Discontinuance of Trackage Rights in Orleans Parish, LA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment and discontinuance of trackage rights by Seaboard System Railroad, Inc., of 4.55 miles of track in New Orleans, Orleans Parish, LA, subject to standard labor protective conditions.

DATES: This exemption will be effective on July 16, 1986. Petitions to stay must be filed by June 26, 1986. Petitions for reconsideration must be filed by July 7, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 173X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to: T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: June 6, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86–13474 Filed 6–13–86; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

Niagara Mohawk Power Corp. Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing; Correction

[Docket No. 50-220]

The notice that appeared in the Monday, June 9, 1986, **Federal Register** (51 FR 20902) contained a typographical error. On page 20902, the date in the second paragraph to the notice should be May 27, 1986 instead of May 22, 1986.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 10th day of June 1986.

John Philips,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration.

[FR Doc. 86–13480 Filed 6–13–86; 8:45 am]

BILLING CODE 7590-01-M

Regional State Liaison Officers' Meeting

On June 19 and 20, 1986, the Nuclear Regulatory Commission (NRC) will sponsor a Regional meeting with the Governor-appointed State Liaison Officers from Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming. The subjects which will be discussed include uranium milling, LLW compacts, the Sequoyah Fuels incident, HLW and Regional activities as well as other areas of mutual interest.

The meeting will be conducted at the NRC Region IV Office, 611 Ryan Plaza Drive, Suite 1000, Arlington, TX 76011. The meeting is open to the public for attendance and observation and will take place from 8:30 a.m. to 5:00 p.m. on Thursday, June 19, 1986, and from 8:15 a.m. to 12:00 noon on Friday, June 20, 1986.

Questions regarding this meeting should be directed to Mindy Landau at (301) 492–9880.

Dated at Bethesda, Maryland, this 9th day of June 1986.

For the Nuclear Regulatory Commission.

G. Wayne Kerr, Director,

Office of State Programs.

[FR Doc. 86–13479 Filed 6–13–86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published May 19, 1986 (51 FR 18391). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 A.M. and Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the July 1986 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) between 8:15 A.M. and 5:00 P.M., Eastern Time.

ACRS Subcommittee Meetings

Babcock and Wilcox (B&W) Reactor Plants, June 25, 1986, Washington, DC. The Subcommittee will consider the B&W Owners Group plans to reassess the long-term safety of B&W reactors, including the implications of operating experience on the adequacy of B&W plant designs. The Subcommittee will also be briefed on the NRC Staff's Incident Investigtion Team's (IIT) findings related to the 12/26/85 loss of integrated control system power and overcooling transient at the Rancho Seco nuclear power plant.

Metal Components, June 25, 1986, Churchill, PA (outskirt of Pittsburgh, PA). The Subcommittee will review the status of NDE of cast stainless steel and changes in steel-making practice.

Auxiliary Systems, June 26, 1986, Washington, DC. The Subcommittee will discuss: (1) The status of the Appendix R compliance, (2) differing technical views among the Staff, (3) proposed research and associated budget for FY 1988 and 1989 in the fire protection area, (4) updates on the progress being made in the Sandia experimental program on fire protection, (5) inspection activities to determine compliance with the Fire Protection Requirements, and (6) recent experiences associated with inadvertent actuation of fire protection systems.

Regulatory Policies and Practices, June 26, 1986, Washington, DC. The Subcommittee will review the regulatory process as it relates to the June 9, 1985 Davis-Besse event using the Report of the Independent Ad Hoc Group for the Incident (NUREG–1201) as the basis for the meeting.

Gas Cooled Reactor Plants, June 26, 1986 (afternoon 1:30 P.M.), WAshington, DC. The Subcommittee will review the applicability of NRC requirements for equipment qualification and cable testing to Fort St. Vrain, an HTGR. The Subcommittee will also discuss other

licensing matters related to the operation of Fort St. Vrain.

Davis-Besse, June 27, 1986, Washington, DC. The Subcommittee will review start-up activities for Davis-Besse.

Joint Occupational and Environmental Protection Systems and Auxiliary Systems, June 27, 1986, Washington, DC. The Subcommittees will: (1) Be briefed by NRR and Region Staffs on the status of various control room HVAC systems problems and the control room habitability improvement effort, (2) be briefed by the AEOD Staff on the effects of ambient temperature on I&C systems, (3) discuss with the Staff their procedures and criteria for reviewing Chilled Water Systems, their "walk-down" of the Chilled Water Systems at Shearon Harris, and the contribution to the risk to safety due to Chilled Water Systems failures based on PRA studies, and (4) discuss with the Staff de minimis environmental radiation levels.

Plant Operating Procedures, July 1, 1986 (afternoon), Washington, DC. The Subcommittee will review "Proposed Commission Policy Statement on Technical Specifications."

Metal Components, July 1 and 2, 1986, Columbus, OH. The Subcommittee will review the degraded piping program of RES and NRR and visit its primary testing facility at Columbus, OH.

Improved LWR Designs, July 9, 1986, Washington, DC. The Subcommittee will be briefed and discuss: (1) The Standardization Policy Statement, (2) proposed changes to 10 CFR Part 50, and (3) the EPRI Advanced Light Water Requirements documents.

Human Factors, July 15, 1986, Washington, DC. The Subcommittee will review: (1) SECY–86–153, industry and Staff comments on proposed fitness for duty Policy Statement, (2) SECY–86–70, proposed rulemaking on degree requirements for SROs at nuclear power plants, and (3) SECY–86–119, the annual status report on implementation of the Commission Policy Statement on training and qualification.

Waste Management, July 21, 22 and 23, 1986, Washington, DC. The Subcommittee will review: (1) Residual radiation limits and the disposition of land, buildings, equipment and metals (including contaminated smelted alloys) resulting from the decontamination and decommissioning of nuclear power plants and fuel facilities, (2) various issues pertinent to the storage of high-level radioactive wastes in geologic repositories, including the predicted performance of repository systems under realistic field conditions, and (3) various issues pertinent to the disposal of low-level radioactive wastes, including mixed radioactive and hazardous wastes.

Westinghouse Reactor Plants, July 30 1986, Washington, DC. The Subcommittee will continue discussion and comment on NRC Staff actions taken with respect to the SONGS–1 water hammer/loss of AC power event. This will be a follow-up Subcommittee meeting to the February 12, 1986 meeting on the same subject.

Scram Systems Reliability, July 31, 1986, Washington, DC. The Subcommittee will review the status of the ATWS Rule implementation effort.

Metal Components, August 4 and 5, 1986, Hanford, WA. The Subcommittee will visit and review the steam generator integrity program. In addition, the integrated FM/NDE program will be discussed.

Reliability Assurance, August 5 1986, Washington, DC. The Subcommittee will review the final resolution of USI A–46, "Seismic Qualification of Equipment in Operating Plants."

Reactor Operations, August 5, 1986, Washington, DC. The Subcommittee will review recent events at operating reactors.

Safeguards and Security, August 5, 1986 (afternoon), Washington, DC. The Subcommittee will review the Technical Assistance Program on the "Evaluation of Methods of Reduction of Vulnerability to Sabotage (Generic Issue A–29)" with the NRC Staff.

Extreme External Phenomena, August 6, 1986, Washington, DC. The Subcommittee will conduct a workshop to review the importance of seismic risk to nuclear power plants. Seismic hazard will be the principal topic to be discussed.

Maintenance Practices and Procedures, August 13, 1986, Washington, DC. The Subcommittee will review the report on Phase I of Maintenance Program Plan.

Decay Heat Removal Systems, September 24, 1986, Washington, DC. The Subcommittee will continue its review of NRR's proposed resolution position for USI A–45, "Shutdown Decay Heat Removal Systems."

Instrumentation and Control Systems, Date to be determined (July), Washington, DC. The Subcommittee will review the Westinghouse RVLIS level instrumentation.

Spent Fuel Storage, Date to be determined (July/August), Washington, DC. The Subcommittee will continue its review of 10 CFR Part 72 and Monitored Retrievable Storage (MRS).

I&E Activities, Date to be determined (late July/mid-August), Washington, DC. The Subcommittee will review I&E Inspection Programs with focus on the Safety System Functional Inspection (SSFI) Program.

Decay Heat Removal Systems, Date to be determined (mid-August), Washington, DC. The Subcommittee will continue its review of NRR's proposed resolution position for USI A–45, "Shutdown Decay Heat Removal Systems."

Thermal Hydraulic Phenomena, Date to be determined (mid-August), Washington, DC. The Subcommittee will continue its review of the RES-proposed revision to the ECCS Rule (10 CFR 50. 46 and Appendix K).

AC/DC Power Systems Reliability, Date to be determined (August), Washington, DC. The Subcommittee will review the proposed Station Blackout rule (SECY–85–163).

Regional Operations, Date to be determined (August/September), Chicago, IL. The Subcommittee will begin its review of the activities of the NRC Regional Offices. This meeting will focus on the activities of the Region III Office.

Nuclear Plant Chemistry, Date to be determined (August/September), Washington, DC. The Subcommittee will discuss fission product source terms, aerosol behavior, emergency planning, etc.

Seabrook Units 1 and 2, Date to be determined (late summer/early fall), Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook 1 and 2.

Structural Engineering, Date to be determined (late 1986), Albuquerque, NM. The Subcommittee will visit and review containment integrity and Category I structures, facilities, and programs.

Probabilistic Risk Assessment, Date to be determined (September/October), Washington, DC. The Subcommittee will review the probabilistic risk assessment for Millstone 3.

ACRS Full Committee Meeting

July 10–12, 1986: Items are *tentatively* scheduled.

*A. *Davis-Besse Nuclear Power Plant Unit 1*—Restart of plant following incident on June 9, 1985.

B. *TVA Reorganization*—Discussion regarding proposed reorganization of the Tennessee Valley Authority nuclear power sections.

C. *B&W Water Reactors*—Briefing regarding plans for review of the long-term safety of Babcock and Wilcox Company nuclear power plants.

D. *Nuclear Power Plant Technical Specifications*—Consider proposed NRC policy statement regarding the program

for improved technical specifications for nuclear power plants.

E. *NRC Regulatory Guides*—Consider proposed revisions to NRC regulatory guides regarding prestressing tendons in concrete containments.

F. *Requirements for Standard Nuclear Power Plants*—Briefing regarding joint NRC-EPRI program for development of requirements for standardized nuclear power plants.

G. *Safety Related Check Valves*—Briefing of the members regarding requirements for design, maintenance and testing of safety related check valves in nuclear power plants.

H. *ACRS Subcommittee Activities*—Hear and discuss reports regarding activities of designated ACRS subcommittees regarding safety related and regulatory matters, including the NRC regulatory processes associated with the review of the Davis-Besse Nuclear Plant auxiliary feedwater systems, and fire protection provisions in nuclear power plants.

I. *Standardized Nuclear Plants*—Consider proposed NRC policy statement and topics important to the execution of this policy.

J. *NMSS Activities*—Briefing by NRC representatives regarding NMSS activities and items of mutual interest.

K. *Control Room Habitability*—Discuss the NRC effort to evaluate and improve, as necessary, control room habitability in nuclear power plants.

L. *Nuclear Power Plant Auxiliary Systems*—Discuss NRC review and evaluation of chilled water systems in nuclear power plants.

M. *Reactivation of Deferred and Cancelled Nuclear Power Plants*—Briefing by representatives of NRC Staff regarding factors to be considered in reactivation of nuclear power plants whose construction and licensing has been deferred or cancelled.

N. *Anticipated ACRS Activities*—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

*O. *Activities of ACRS Members*—Discuss non-ACRS activities of ACRS members and their impact on the Committee function.

*P. *New ACRS Members*—Discuss qualifications of candidates proposed as nominees for appointment to the Committee.

August 7–9, 1986—Agenda to be announced.

September 11–13, 1986—Agenda to be announced.

Dated: June 11, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–13544 Filed 6–13–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–322–OL–3; ASLBP No. 86–533–01–OL]

Long Island Lighting Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Long Island Lighting Company, Shoreham Nuclear Power Station, Unit 1, Construction Permit No. CPPR–95.

This Atomic Safety and Licensing Board is being designated pursuant to the provisions of a Memorandum and Order issued by the Commission on June 6, 1986 regarding motions from the Applicant and Intervenors concerning litigation of emergency planning exercise results. CLI–86–11, 23 NRC ___ (1986). In its Order the Commission directed the immediate initiation of the exercise hearing to consider evidence which Intervenors might wish to offer to show that there is a fundamental flaw in Applicant's emergency plan.

The Board is comprised of the following Administrative Judges:

Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulaotry Commission, Washington, DC 20555

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulaotry Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 10th day of June, 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86–13545 Filed 6–13–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–443–OL and 50–444–OL; (Offsite Emergency Planning)]

Public Service Co. of New Hampshire et al. (Seabrook Station, Units 1 and 2): Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of June 9, 1986, oral argument on the appeal of Francis X. Bellotti, Attorney General of Massachusetts, from portions of the Licensing Board's April 29, 1986 memorandum and order will be held at 9:30 a.m. on Wednesday, June 18, 1986, in the NRC Publich Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

Dated: June 9, 1986.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 86–13546 Filed 6–13–86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–23311; File No. SR–AMEX–86–15]

Self-Regulatory Organization's Proposed Rule Change by the American Stock Exchange, Inc., Relating to an Institutional Index Option (XII)

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 May 30, 1986 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Ameican Stock Exchange, Inc. ("Amex" or "Exchange") proposes to introduce a new, European-style broad market index option contract. The provisions of the Exchange Constitution and of all rules and policies of the Exchange, particularly Section 11 of the Exchange rules governing stock index options, shall apply to the proposed European-style contract. In addition, the following rule changes are proposed. Italics indicate material proposed to be

added; [brackets] indicate material proposed to be deleted.

Rule 900 C. Applicability and Definitions

(a) No change.

(b) Definitions—The following terms as used in the Rules in this Section shall, unless the context otherwise indicates, have the meanings herein specified:

(1)–(17) No change.

(18) American Style Option—The term "American style option" means an option contract that can be exercised at any time prior to its expiration pursuant to the rules of The Options Clearing Corporation.

(19) European Style Option—The term "European style option" means an option contract that can be exercised only at its expiration pursuant to the rules of The Options Clearing Corporation.

* * * * *

Rule 901 C. Designation of Stock Index Options

(a) The Exchange may from time to time approve for listing and trading on the Exchange *American style and European style* put option contracts and call option contracts in respect of underlying stock index groups comprised of 5 or more underlying stocks; provided that if stocks traded on the Exchange constitute 10% or more of the total market value of all of the underlying stocks included in a stock index group such group must consist of not less than 50 underlying stocks; and provided further that if the stock index group shall consist of less than 25 underlying stocks, at least 50% of the stock index group's numerical index value must be accounted for by stocks which meet the criteria and guidelines set forth in Rule 915 and none of such underlying stocks may be stocks which are traded on the Exchange.

(b)–(c) No change.

* * * * *

Rule 904 C. Position Limits

(a) No change.

(b) With respect to *American style* options on [each] *a* broad stock index group, the Exchange shall establish [and may change from time to time) a position limit which shall not exceed 10,000 contracts on the same side of the market. *With respect to European style options on a broad stock index group, the Exchange shall establish a position limit which shall not exceed 15,000 contracts on the same side of the market.*

* * * * *

Rule 918 C. Trading Rotations, Halts and Suspensions

(a)–(c) No change.

(.01)–(.03) No change.

(.04) [(Reserved)] *In the case of European style options on a broad stock index group, an opening trading rotation shall commence at or as soon as practicable after 9:30 a.m.*

(.05) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to introduce a new European-style broad market stock index option, the Institutional Index Option (XII). The XII is to be composed of the 75 stocks most favored by institutional investors, as determined by the dollar value of shares held by such investors.

The Exchange proposes to determine which stocks are to be included in the Institutional Investor Index by reviewing filings submitted to the Securities and Exchange Commission pursuant to section 13(f) of the Securities Exchange Act of 1934 and Rule 13f–1 promulgated thereunder, and selecting the 75 stocks which constitute the largest total institutional dollar holdings. Any XII component stocks must be held by at least 200 of the approximately 800 reporting institutions, and such stocks must have traded a minimum of 7,000,000 shares per quarter during the preceding two calendar quarters prior to inclusion in the Index. These selection parameters are intended to ensure the XII will closely track the investment portfolios of institutional money managers.

The 13(f) institutional reports are made publicly available as received from the reporting institutions. The Exchange will obtain and review summaries of the data included in the reports and make placements of component stocks quarterly, as necessary, to conform with the criteria set forth in the preceding paragraph. A stock shall not be replaced, however, unless the following conditions are met:

If a current component XII stock is no longer among the 75 largest dollar holdings of the reporting institutional investors, the dollar holdings of the replacement stock must exceed the dollar holdings of the stock to be replaced by 5% or more. Otherwise, no replacement will be made. However, a stock shall be replaced if it trades less than 7,000,000 shares per quarter in each of the preceding two calendar quarters.

Any changes in the component stocks shall not be made effective until the business day following the next option expiration after a new list of Index stocks has been prepared. For example, any changes to the list of component stocks determined during the first week in June would become effective on the first business day after the expiration of June contracts. Any changes to the list of component stocks, however, shall be announced as soon as such changes are determined.

The Exchange proposes that the XII be calculated as a market-weighted index, and that the XII be a European-style option exerciseable only at expiration. In addition, pursuant to current Rule 903C, the Exchange proposes to list up to four near-term consecutive expiration months and not more than four calendar months with three-month intervals on the March cycle. It is also proposed that position limits be established not in excess of 15,000 contracts on the same side of the market. Finally, XII options are to commence trading at or as soon as practicable after 9:30 a.m.

The proposed changes are consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by providing for a stock index options contract to mirror the investment holdings of institutional investors. Therefore, the proposed rule changes are consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will enhance competition with certain stock index options traded on other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.

The New Products Committee, a committee of the AMEX Board of Governors has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are 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 02549. 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-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 7, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 9, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13543 Filed 6-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15137; File No. 811-3552]

Build America Government Securities Trust; Notice of Application

June 6, 1986.

Notice is hereby given that Build America Government Securities Trust ("Applicant"), 320 North Meridian Street, Indianapolis, Indiana 46204, registered under the Investment Company Act of 1940 ("Act") as an open-end diversified management investment company, filed an application on January 30, 1986, for an order of the Commission pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company.

According to the application, on June 28, 1985, Applicant notified all of its unitholders by letter, that the trustees of Applicant had decided on June 21, 1985, to redeem all of the remaining outstanding units of beneficial interest of Applicant owned by investors and to cease its activities as a public investment company. Applicant states that as of July 14, 1985, 380,965.67 shares of beneficial interest, or $1.00 per share, were outstanding. Applicant further states that the Trustees instructed First Pennsylvania Bank, N.A. not to accept further deposits from existing unitholders into their accounts. On July 15, 1985, a final redemption distribution of the net asset value, as defined in the Trust Indenture, of each unitholder's account was effected by mailing a check or wire transfer to such unitholder in the amount of such net asset value. Applicant states that at the time of filing this application it has no securityholders.

Applicant states that cash income in the amount of $2,272.68, the only remaining asset of Applicant, has been retained by Applicant at the time of this filing in order to pay processing costs of year-end Federal Forms 1099 of the Internal Revenue Service. Applicant represents that such assets will not be invested in any securities.

Applicant states that it owes Fund/Plan Services, Inc. the amount of $3,518.83 for winding-up expenses and that all expenses related to liquidation and winding-up the affairs of Applicant incurred by Fund/Plan Services, Inc. shall be paid by The Fund, Inc., Applicant's adviser.

Applicant represents that it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs, is not a party to any litigation or administrative proceeding, and has not within the past 18 months transferred any of its assets to a separate trust.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 26, 1986, 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, DC 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13539 Filed 6-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15136; File No. 811-2252]

Finomic Investment Fund Inc., Notice of Application

June 6, 1986.

Notice is hereby given that Finomic Investment Fund Inc. ("Aplicant"), 2600 InterFirst Plaza, 1100 Louisiana, Houston, Texas 77002, filed an application on May 30, 1986, pursuant to section 8(f) of the Investment Company Act of 1940 ("Act") for an order of the Commission declaring that Applicant has ceased to be an investment company. 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 and rules thereunder for the text of the applicable provisions thereof.

According to the application, Applicant registered under the Act on December 21, 1971 and filed a registration statement pursuant to secton 8(b) of the Act on the same date. Also on December 21, 1971, Applicant filed a registration statement pursuant to the Securities Act of 1933 registering 1,000,000 shares of common stock and commenced a public offering of its shares on June 6, 1972.

Applicant states that by special meeting on February 11, 1986, its Board of Directors adopted a Plan of Liquidation and Dissolution ("Plan"). On

April 8, 1986, a special meeting of the Applicant's shareholders was held at which the shareholders approved by a vote in excess of two-thirds the liquidation and dissolution of Applicant pursuant to the Plan. Articles of Dissolution were filed with the Secretary of the State of Texas on April 30, 1986.

As of March 31, 1986, there were 379,066,210, of Applicant's shares outstanding with a net asset value of $2,645,882.15 in the aggregate and $6.98 per share. Immediately preceding the liquidation, the Applicant's portfolio consisted of stock and $1,904,881.94 cash. All of the stock was sold through brokers or market makers at no less than market value on the date of sale. On or about April 15, 1986, Applicant distributed $2,582,714.48 in cash to the shareholders in complete redemption of their shares. Each shareholder received $6.90 per share representing the net asset value per share on the distribution date.

Applicant states that at the time of the filing of the application, it has not retained any assets, there are no debts or other liabilities outstanding, and it has no shareholders. Applicant is not a party to any litigation or administrative proceeding and is not now engaged nor does it propose to engage in any business activities other than those necessary for the winding-up of Applicant's affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 26, 1986, 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, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the addresses 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13540 Filed 6-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15135]

Moseley Securities Corporation; Filing of Application and Order of Temporary Exemption

June 6, 1986.

NOtice is hereby given that Moseley Securities Corporation, formerly Moseley, Hallgarten, Estabrook & Weeden, Inc. ("Moseley") has filed an Application pursuant to section 9(c) of the Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.*, as amended (the "Act"), for an order permanently exempting Moseley and any company of which it is an affiliated person (collectively the "Applicants") from section 9(a) of the Act. The Applicants also request that the Commission enter an order of temporary exemption from the prohibitions of section 9(a) pending the determination of the Application for permanent exemption. All interested persons are referred to the Application on file with the Commission for a statement of the representations therein, pertinent parts of which are summarized below.

Moseley is registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act") and is a member firm of the New York Stock Exchange, Inc. (the "Exchange") and certain other national securities exchanges. Moseley is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

Moseley is a wholly-owned subsidiary of The Moseley Holding Corporation, formerly Moseley, Hallgarten, Estabrook & Weeden Holding Corporation. Another wholly-owned subsidiary, Moseley Capital Management, Inc. ("MCM"), is also a registered investment adviser under the Advisers Act. Among other things, MCM serves as the investment adviser and manager of certain open-end investment companies registered under the Act (the "Funds"). MCM is the sole owner of the Funds distributor, ITB Distributors, Inc., and a 50% owner of Warlick & Baker, Inc., also a registered investment adviser.

In addition, Moseley has, beginning in 1977, acted as depositor or co-depositor of successive series of certain unit investment trusts registered under the Act, including the Massachusetts Tax Exempt Unit Trust, Multistate Tax Exempt Unit Trust, Empire State Municipal Exempt Trust, Puerto Rico Total Tax Exempt Income Trust, The Telephone Exchange Fund—AT&T Shares and the Municipal Insured National Trust (collectively, the "Trusts").

At the present time, the aggregate number of certificate holders in the Trusts exceeds 145,150.

Mr. Eliot J. Robinson ("Robinson") joined Moseley as an investment broker in its Boston office in 1974, and subsequently became an officer and Director of Moseley. Prior to joining Moseley, Robinson was a defendant in an action entitled *SEC* v. *Shapiro, et al.*, 72 Civil Action 269 (U.S.D.C., S.D.N.Y.). The Complaint alleged, *inter alia*, that Robinson had violated the anti-fraud provisions of the securities laws. On or about May 12, 1972, Robinson consented to a final judgment of permanent injunction (the "Injunction") and order of disgorgement, without admitting or denying the allegations of the Complaint, which injunction enjoined him from: (1) Employing any device, scheme or artifice to defraud; (2) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the offer, sale or purchase of common stock of Harvey's Stores, Inc. or any other security.

To the extent it may be applicable herein, section 9(a) of the Act disqualifies any person or any company with which such person is affiliated, from acting in the capacity of employee, officer, director, member of any advisory board, investment adviser, or depositor for any registered investment company, or principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company if such person is by reason of any misconduct permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

By reason of being an employee, officer and Director of Moseley, Robinson is an affiliated person of Moseley within the meaning of the Act. MCM, Warlick & Baker, Inc. and ITB Distributors, Inc. are affiliated companies of Moseley.

Section 9(c) of the Act provides that, upon application, the Commission shall grant an exemption from the provisions of section 9(a) either unconditionally or upon an appropriate temporary or other conditional basis if it is established that the prohibitions of section 9(a), as

applied to the applicants are unduly or dsiproportionately severe or that the conduct of such applicants has been such as not to make it against the public interest or protection of investors to grant such application.

In support of the present Applicant, the Applicants state that:

(a) The Injunction against Robinson was issued in 1972, fourteen years ago and two years prior to Robinson's employment by Moseley.

(b) A similar exemption was previously granted to Robinson's prior employer, Wood, Struthers & Winthrop, Inc., by Order dated June 19, 1972 (*See* Investment Company Act Release Nos. 7199 and 7233).

(c) On May 30, 1980, the Commission pursuant to delegated authority issued an Order pursuant to Rule 19h–1(d) of the Exchange Act permitting Robinson to become a Director of Moseley and an allied member of the Exchange.

(d) At all times since his employment with Moseley, Robinson has been engaged in sales and marketing activities in Moseley's Boston office. At no time has Robinson been engaged in any activity relating to the performance of investment advisory services by Moseley, or in any activities where Moseley has acted as a depositor or co-depositor of a registered unit investment trust or as a principal underwriter for any registered openend investment company or any registered unit investment trust.

(e) At the present time, the aggregate number of certificateholders of the Trusts exceeds 145,150. If Moseley were unable to act as a depositor or co-depositor for the various series of the Trusts, the investment and administrative functions of the Trusts, and the secondary market for the units of the Trusts maintained by Moseley, would be disrupted to the detriment of the Trusts and the certificateholders, and the certificateholders of each of the Trusts could not be assured that any new depositor or co-depositor would serve under the same terms and conditions similar to those under which Moseley serves, or would maintain a secondary market for the units of each of the Trusts presently maintained by Moseley.

(f) The prohibitions under section 9(a) of the Act, which result in the substantial disruption of operations of investment and administrative operations of the Trusts and to the secondary market for the units of the Trusts, are unduly and disproportionately severe in relation to the Injunction and the alleged acts and practices complained of by the Commission in the aforementioned civil action. Moreover, no conduct of Moseley has been such as to make it against the public interest to grant the relief requested herein.

Notice is given that any interested party may, not later than July 7, 1986, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Kevin J. Moynihan, General Counsel, Moseley Securities Corporation, One New York Plaza, New York, New York, 10004. Proof of such service (by Affidavit or, in the case of an attorney, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided in Rule 0–5 of the Rules and Regulations promulgated under the Act, an Order disposing of the Application herein may be issued by the Commission upon the basis of the information stated in said Application unless an order for hearing upon said Application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponement thereof.

The Commission has considered the matter and the Application for exemption pending final determination of the matter by the Commission and finds that the conduct of the Applicants has been such as not to make it against the public interest or protection of investors to grant Applicants' Application for exemption from the provisions of section 9(a) of the Act pending final determination by the Commission of the Application which is the subject of this Notice.

Accordingly, it is ordered, pursuant to section 9(c) of the Act, that the Application of Moseley and affiliated companies for exemption from the provisions of section 9(a) of the Act pending final determination by the Commission of the Application which is the subject of this Notice, insofar as any ineligibility to serve or act in the capacities enumerated in such Section arises out of the injunction referred to in this Notice, be and is hereby granted, effective forthwith.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86–13542 Filed 6–13–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15138; File No. 812–6361]

Thomson McKinnon Global Trust et al.; Application for an Order Amending a Previous Order

June 6, 1986.

Notice is hereby given that Thomson McKinnon Global Trust ("Global"), Thomson McKinnon Investment Trust ("Investment") and Thomson McKinnon Securities, Inc. ("Thomson") (collectively, "Applicants"), One New York Plaza, New York, N.Y. 10004, filed an application on April 25, 1986 for an order amending a previous order (Investment Company Act Release No. 13877, April 10, 1984) ("Original Order"). The Original Order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempted Investment from the provisions of section 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c–1 and 22d–1 thereunder to the extent necessary to permit Investment to assess a contingent deferred sales charge on redemptions of its initial and future series of shares, and to permit Investment to waive the contingent deferred sales charge in certain cases. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the text of the relevant provisions thereof.

Applicants state that Investment is an open-end, diversified series investment company which is organized as a Massachusetts business trust and registered under the Act. Investment at present consists of six series (each such series hereinafter to be referred to as "Investment Fund" and collectively as the "Investment Funds") with differing investment objectives and strategies. Applicants further state that Global is an open-end, diversified investment company which is organized as a Massachusetts business trust and it filed a registration statement under the Act on March 13, 1986. Applicants intend that Global will have a single portfolio although its Trust Agreement dated February 7, 1986, permits the Trustees to establish one or more additional series (each such series hereinafter to be referred to as "Global Fund" and collectively as the "Global Funds") and also gives the Trustees the power to convert each Global Fund into an

Investment Fund without shareholder approval if, under federal tax laws each Global Fund would continue to be treated as a separate tax entity and if the conversion could be accomplished as a tax-free reorganization.

Applicants state that Thomson is the distributor and principal underwriter of Investment and Global. Thomson is a broker-dealer registered under the Securities Exchange Act of 1934 and is a wholly-owned subsidiary of Thomson McKinnon Inc., a holding company which, through its subsidiaries, is engaged primarily in providing customers with a wide variety of financial services in connection with securities, commodities, options, corporate and public finance and related fields. The application has been filed by Applicants on behalf of themselves and other registered investment companies to be organized with Thomson or a corporate affiliate of Thomson as principal underwriter and/or investment adviser (such companies to be referred to as "Subsequent Companies"). Applicants further state that it is contemplated that these Subsequent Companies would be open-end investment companies organized as Massachusetts business trusts with one or more series (each portfolio represented by such a series, will be referred to as a "Subsequent Fund" and collectively the "Subsequent Funds"). Each Investment Fund, Global Fund and Subsequent Fund is sometimes hereinafter referred to as a "Fund" and collectively as the "Funds".

Applicants state that, as noted above, Investment has already received an exemptive order from the Commission permitting Investment to implement the contingent deferred sales charge described below. Applicants also state that but for the fact that the initial Fund of Global and each Subsequent Fund being organized as a separate registered investment company rather than as an Investment Fund because of federal income tax considerations, such exemptive order would be applicable by its terms to such Funds.

According to the application, Investment is a no-load fund and currently pays (and it is proposed that Global and any Subsequent Company would pay) Thomson, the distributor, a distribution fee with respect to each Fund equal to a maximum of 1.0% per annum of the lesser of (i) aggregate investments made in the Fund or (ii) the Fund's average daily net assets.

The Applicants state that pursuant to the Original Order, Investment currently imposes and Global and the Subsequent Companies propose to impose, a deferred sales charge as follows: The charge is imposed by Investment (and will be imposed by Global and the Subsequent Companies) if an investor redeems an amount which causes the current value of the investor's account in a Fund to fall below the total dollar amount of purchase payments during the past five years, except that no sales charge is imposed if the shares redeemed have been acquired through the reinvestment of dividends or capital gains distributions or if the amount redeemed is derived from increases in the value of the investor's account above the amount of purchase payments during the past five years. Where a contingent deferred sales charge is imposed by Investment (or by Global and the Subsequent Companies), the amount of the charge will depend on the number of years since the investor made the purchase payment from which an amount is being redeemed, according to the following table:

Years since purchase payment made	Contingent deferred sales charge as a percentage of amount redeemed
First	5
Second	4
Third	3
Fourth	2
Fifth	2
Sixth	0

Applicants further state that currently, shares of any Investment Fund may be exchanged for shares of any other Investment Fund on the basis of their respective net asset values and without incurring a contingent deferred sales charge. Shares of the Investment Fund acquired through the exchange are deemed to have been purchased at the time that the shares of the Investment Fund transferred in the exchange were purchased. It is proposed that for these purposes shares of a Global Fund or Subsequent Fund would be treated like shares of an Investment Fund and *vice versa*; that is, shares of any other Fund could be exchanged for shares of any Fund on the basis of their net asset values without imposition of a contingent deferred sales charge. Shares of a Fund acquired through exchange of shares of another Fund would be deemed to have been purchased at the time or times that the exchanged shares were purchased for the purpose of determining the applicable percentage of contingent deferred sales charge. In determining whether a contingent deferred sales charge is payable and, if so, the percentage charge applicable, it is assumed by Investment (and would be assumed by Global and the Subsequent Companies) that the purchase payment from which the redemption is made is the earliest purchase payment (from which a redemption has not already been effected). Any contingent deferred sales charges imposed on redemptions of shares of Investment are paid and charges on redemptions of shares of Global or a Subsequent Company are proposed to be paid to Thomson as principal distributor of shares of the Investment Funds, the Global Funds and the Subsequent Companies.

The application states that the imposition of the contingent deferred sales charge will be waived in the following circumstances: (i) Redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code, of a shareholder (including one who owns the shares as joint tenant with his or her spouse), provided the redemption is requested within one year of the death or initial determination of disability; (ii) any partial or complete redemption in connection with certain distributions from Individual Retirement Accounts or other qualified retirement plans; (iii) redemptions by the Trustees, officers and any employees of the Applicants and by employees of Thomson, the Applicants' principal underwriter, or of Thomson McKinnon Asset Management Inc., the Applicant's investment manager or of their parent corporation Thomson McKinnon Inc. or its other (existing and future) subsidiaries or of the respective sub-advisers of Investment, Global or each Subsequent Company.

Pursuant to section 6(c) of the Act, Applicants are requesting an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rules 22c–1 and 22d–1 thereunder to the extent necessary for Global and any Subsequent Company to impose a contingent deferred sales charge as described and are requesting further that the Commission amend the Original Order to the extent necessary for Investment to impose its contingent deferred sales charge and to treat exchanges between Funds as described.

For the reasons set forth in the application for the Original Order, the Applicants assert that the exemptions requested are appropriate and in the public interest, consistent with the protection of investors and the purposes of the Act. Applicants further represent that Investment, Global and the Subsequent Companies will fully disclose in their prospectuses and/or statements of additional information the types of transactions for which the contingent deferred sales charge will be waived.

Notice is further given that any interested party wishing to request a

hearing on the application may, not later than June, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issue, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, g Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13541 Filed 6-13-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Copies of forms, request for clearance, (S.F. 83s), supporting statements, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Richard Vizachero, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538

OMB Reviewer: Patricia Aronsson, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7231.

Title: Record of Hotline Call
Form No. SBA 266CO
Frequency: As calls are received.
Description of Respondents: This form is used to record information supplied by callers who suspect fraud, waste, abuse, or mismanagement in programs or operations. The information is evaluated to determine investigative merit.
Annual Responses: 65
Annual Burden Hours: 16.25
Type of Request: Extension

Title: Request for Information Concerning Portfolio Financing
Form No. SBA 857
Frequency: Annually
Description of Respondents: An independent confirmation by the financed small concern of the licensee's financing with provision for any comments by the small concern.
Annual Responses: 2,160
Annual Burden Hours: 2,160
Type of Request: Extension.

Title: Financial Institution Confirmation
Form No. SBA 860
Frequency: Annually
Description of Respondents: A confirmation of by bank or other depository of licensee activity.
Annual Responses: 1,500
Annual Burden Hours: 750
Type of Request: Extension.

Title: Questionnaire for Section 503 Development Company
Form No. SBA 1301
Frequency: On occasion
Description of Respondents: This information is obtained from Certified Deveopment Companies and is used in audit of Section 503 Development Company
Annual Responses: 90
Annual Burden Hours: 180
Type of Request: Extension.

Title: Questionnaire for Company Doing Business with a Section 503 Development Company
Form No. SBA 1302
Frequency: On occasion
Description of Respondents: This information is obtained from Certified Development Companies and is used in audit of Section 503 Development Company.
Annual Responses: 720
Annual Burden Hours: 1,440
Type of Request: Extension.

Dated: June 9, 1986.

Richard Vizachero,

Chief, Administrative Procedures and Documentation Section, Small Business Administration.

[FR Doc. 86-13442 Filed 6-13-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 968]

Determination To Authorize Continuation of Certain Assistance to Peru

Pursuant to section 537 of the Foreign Assistance and Related Programs Appropriations Act, 1986 (Pub. L. 99-190), I hereby determine and report that the Government of Peru is sufficiently responsive to the United States Government concerns on drug control and that the added expenditures of funds for that country are in the national interest of the United States. I also hereby report, pursuant to section 612(a)(1) of the International Security and Development Cooperation Act of 1985 (Pub. L. 99-83), that the Government of Peru has demonstrated substantial progress in developing a plan that will establish its legal coca requirements, license the number of hectares necessary to produce the legal requirement, and eliminate illicit and unlicensed coca production.

This determination shall be reported to the Congress immediately and shall be published in the **Federal Register.**

Dated: May 28, 1986.

Michael H. Armacost,

Acting Secretary of State.

[FR Doc. 86-13456 Filed 6-13-86; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended June 6, 1986

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the

adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further procedings. (See 14 CFR 302.1701 et. seq.)

Date filed	Docket No.	Description
June 2, 1986	44066	Orion Lift Service, Inc. d/b/a Orion Air, c/o Stephen L. Gelband, Hew sa Morella, Gelband & Lamberton, 1010 Wisconsin Ave., N.W., Washington, D.C. 20007 Application of Orion Lift Service, Inc. d/b/a/ Orion Air pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for expedited issuance of a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property and mail between the points in the United States and the points in Canada: Denver—Calgary—Edmonton Louisville—Toronto—Montreal Indianapolis—Toronto—Montreal Dayton—Toronto—Montreal Conforming Applications, Motions to Modify Scope and Answers may be filed by June 30, 1986.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 86-13535 Filed 6-13-86; 8:45 am]
BILLING CODE 4910-62-M

Agreements Filed With the Department of Transportation During the Week Ending June 6, 1986

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
June 2, 1986	44065	Members of International Air Transport Association	So. Africa-Ireland-UK APEX Fares	June 1, 1986.
June 3, 1986	44072, R-1-R-7	Members of International Air Transport Association	Expedited Cargo Composite Resolutions	July 1, 1986.
June 3, 1986	44074	Members of International Air Transport Association	Germany/W. Berlin-Japan Fares	July 1, 1986.
June 3, 1986	44075, R-1-R-10	Members of International Air Transport Association	North Atlantic Cargo Rates	July 1, 1986.
June 3, 1986	44076, R-1-R-3	Members of International Air Transport Association	TC3 Cargo Resolutions	July 1, 1986.
June 3, 1986	44077, R-1-R-2	Members of International Air Transport Association	TC1 Cargo Resolutions	July 1, 1986.
June 5, 1986	44080, R-1-R-2	Members of International Air Transport Association	TC1 Commodity Rates	July 1, 1986.
June 5, 1986	44081, R-1-R-5	Members of International Air Transport Association	Ricketing Amendments	July 1, 1986.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 86-13534 Filed 6-13-86; 8:45 am]
BILLING CODE 4910-62-M

Application of Galena Air Service, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, (Order 86-6-7) docket 43234.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Galena Air Service fit and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATE: Persons wishing to file objections shall do so no later than June 30, 1986.

ADDRESSES: Objections and answers to objections should be filed in Docket 43234 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Jr., Office of Aviation Enforcement and Proceedings (C-70, Room 4116), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 426-7631.

Dated: June 9, 1986.

Matthew V. Scocozza,
Assistant Secretary for Policy and International Affairs.
[FR Doc. 86-13449 Filed 6-13-86; 8:45 am]
BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement: City of Chesapeake, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the City of Chesapeake, Virginia.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, telephone (804) 771-2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Highways (VDH&T), will prepare an environmental impact statement (EIS) on a proposal to construct a four-lane limited access highway in the City of Chesapeake from 0.68 miles north of the westbound lane of Route 58 at Bowers Hill to a connection with Interstate Route 664 at the City of Chesapeake/City of Suffolk Corporate Limits. The length of the proposed highway is 4.13 miles. The proposed project will provide easy and rapid access to the developing areas of the Western Branch section of Chesapeake; facilitate intercity travel; and close the gap between Interstate Route 664 and the Interstate System south of Hampton Roads.

Alternatives under consideration include (1) taking no action (no build), (2) mass transit, (3) Transportation System Management (improving existing streets), and (4) build alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local

agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following publication of the Draft EIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions concerning this proposed action and the Draft EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on: June 9, 1986.

George E. Kirk, Jr.,

District Engineer, Richmond, Virginia.

[FR Doc. 86-13452 Filed 6-13-86; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Petitions for Exemptions From the Vehicle Theft Prevention Standard; General Motors Corp.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for exemption.

SUMMARY: General Motors Corporation petitioned the agency for an exemption from the marking requirements of the vehicle theft prevention standard for the Cadillac Allante and Chevrolet Corvette passenger car lines for model year 1987, pursuant to the provisions of section 605 of the Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft device which the petitioner intends to install on those lines as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements of the standard. Therefore, the agency grants the petition.

DATE: The exemption granted by this notice will become effective beginning with the 1987 model year.

SUPPLEMENTARY INFORMATION: On November 5, 1985, General Motors Corporation (GM) petitioned the agency for an exemption form the parts marking requirements of the vehicle theft prevention standard (49 CFR Part 541), pursuant to section 605 of the Motor Vehicle Information and Cost Savings Act. On January 7, 1986 (51 FR 706), NHTSA published an interim final rule establishing requirements to be followed by manufacturers in preparing and submitting petitions for exemption during model year 1987 (49 CFR Part 543). GM submitted supplemental information in a letter dated February 7, 1986, to meet the requirements of Part 543, and requested an exemption for the Cadillac Allante and Chevrolet Corvette car lines. The agency reviewed the material submitted by GM with its letters and concluded that GM had met the requirements for petitions in § 543.5, as of February 11, the date on which the last GM letter was received by the agency. Accordingly, the 120-day period for processing GM's petition began on that date. As provided by § 543.7, the processing of a petition does not begin until the petition is complete.

In its petition, GM described an antitheft device which has two basic parts, an alarm and the new Vehicle Antitheft System (VATS). The antitheft device is activated in both car lines by removing the key from the ignition and locking the driver's door. The features of the alarm system vary between convertible and non-convertible models. For model year 1987, the Allante will be offered as a convertible while the Corvette will be sold with removable hardtop panels and as a convertible. The VATS portion of the device provides the starter interrupt.

The agency has determined that installation of GM's device in the Allante and Corvette lines is likely to be as effective as these lines' compliance with the parts marking requirements of Part 541 in reducing and deterring vehicle theft. This determination is based on the information submitted by GM with its petition and on other available information. The agency believes that the device will provide the types of performance listed in § 543.6(a)(2), i.e., promote activation, attract attention to unauthorized entries, prevent defeating or circumventing of the device by unauthroized persons, and prevent operation of the vehicle by unauthorized entrants.

As required by section 605(b) of the statute and Part 543.6(b), the agency also finds that GM has provided viable reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on GM's discussion of VATS' new technology which utilizes the ignition key, ignition lock cylinder, and a VATS decoder module. VATS is fully functional once the ignition is turned off and the key is removed from the ignition, thus making its use by the driver virtually automatic. If a key whose shank lacks the correct electrical resistance for a particular vehicle is inserted in that vehicle's ignition, the VATS decoder module will shut down for a period of two to four minutes. GM claims that any attempt to make further resistance comparisons during the module shut down period will only cause the timer to recycle to zero and start again. GM submitted data showing its belief that a lengthy period of time would be necessary to defeat VATS in addition to the time it would take to disable the alarm portion of the antitheft device. Thus, GM believes that time is the basis of the effectiveness of the device as a theft deterrent.

As required by section 605(b) of the statute and Part 543.(b), GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. GM discussed the Highway Loss Data Institute study of an earlier GM antitheft system which had both alarm and starter interrupt functions, but lacked the VATS technology. NHTSA's evaluation of this study and other currently available theft data in the Preliminary Regulatory Evaluation for the interim final rule showed effectiveness varying from 7.8 to 54.4 percent for the optional GM antitheft system in Model Years 1983 and 1984 when it was installed on Buick, Cadillac, and Oldsmobile models. It was also installed on the Corvette as standard equipment; however, the theft rate continued to rise. The new antitheft device includes the more sophisticated VATS component which GM believes should increase its effectiveness. The agency agrees that, despite the mixed results with GM's old antitheft system, the new VATS technology offers potential for increased effectiveness in reducing and deterring theft.

As an aside, the agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs makes it difficult in this first year of the theft legislation's implementation to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly requires such a comparison, which the agency has made on the bisis of the limited data available.

For the reasons stated above, the agency grants GM's petition for exemption from the parts marking requirements of Part 541 for the Cadillac Allante and Chevrolet Corvette car lines based on substantial evidence that this standard equipment antitheft device is

likely to be as effective in reducing and deterring theft of this line as compliance with Part 541 would be. This exemption will become effective beginning with the 1987 model year.

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(c) provides that an exemption granted under Part 543 applies only to vehicles which are equipped with the antitheft device on which the exemption of the line including those vehicles was based. Further, § 543.9(b)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(b)(2) could place on exempted vehicle manufacturers and itself. The agency does not believe that Congress intended, in providing for the exemption process, to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA reserves the authority to consider as *de minimis* any changes whose effects might be so characterized, and to advise a manufacturer that a modification petition is not required.

(15 U.S.C. 2025, delegation of authority at 49 CFR 1.50).

Issued on June 10, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-13464 Filed 6-11-86; 11:27 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Date: June 9, 1986.

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, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0467
Form Number: ATF F 5000.24
Type of Review: Revision
Title: Excise Tax Return
Clearance Officer: Robert G. Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Stephen Bashein,

Departmental Reports Management Office.

[FR Doc. 86-13459 Filed 6-13-86; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 115
Monday, June 16, 1986

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).

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1

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 21436.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Tuesday, June 17, 1986.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed Federal Reserve Bank salary structure adjustments.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13566 Filed 6-12-86; 10:22 am]

BILLING CODE 6210-01-M

2

MERIT SYSTEMS PROTECTION BOARD

Notice of Change in Status of Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 51, No. 106, 19921, June 3, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Tuesday, June 3, 1986, 10:00 a.m.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

CHANGE IN THE MEETING: The closed hearing scheduled for June 26, 1986, in *Woods* v. *U.S. Customs Service*, MSPB Docket No. PH07528310145, will now be open to the public since it no longer appears that there are sensitive issues involved.

CONTACT PERSON FOR MORE INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Dated: June 12, 1986.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 86-13667 Filed 6-12-86; 4:00 pm]

BILLING CODE 7400-01-M

3

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Thursday, June 19, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Proposed Rule: Part 706, Member Business Loans by Federally Insured Credit Unions.

RECESS: 10:15 a.m.

TIME AND DATE: 10:30 a.m., Thursday, June 19, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Special Assistance Under Section 208 of the Federal Credit Union. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Administrative Actions under Section 206 of the Federal Credit Union. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
4. Policy for Reimbursement of Employees for Damage or Loss of Personally-Owned Equipment. Closed pursuant to exemption (2).
5. NCUA Organizational Charts. Closed pursuant to exemption (2).
6. Changes to NCUA Delegations of Authority. Closed pursuant to (2).
7. Board Briefings. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
8. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86-13625 Filed 6-12-86; 1:41 pm]

BILLING CODE 7535-01-M

4

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, June 24, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first item will be open to the public; the following two items will be closed to the public under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report:* Provincetown-Boston Airlines, Embraer EMB-110P1, N96PB, Jacksonville International Airport, Jacksonville, Florida, December 6, 1984.
2. *Opinion and Order:* Application of Alphin for attorney fees and other expenses; Docket 25-EAJA-SE-4824; disposition of applicant's appeal from denial of award.
3. *Opinion and Order:* Administrative v. Worldwide Airline et al., disposition of the appeals of the Administrator and Conner Air Lines.

FOR MORE INFORMATION, CONTACT: H. Ray Smith (202) 382-6525.

Catherine T. Kaputa,

Federal Register Liaision Officer.

June 12, 1986.

[FR Doc. 86-13655 Filed 6-12-86; 12:21 pm]

BILLING CODE 7533-01-M

federal register

Monday
June 16, 1986

Part II

Department of Agriculture

Agricultural Stabilization and Conservation Service
Commodity Credit Corporation

7 CFR Parts 713, 770, 795 and 1425
Food Security Act; Implementation; Interim Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 713, 770, 795, 1425

Food Security Act; Interim Rule

AGENCY: Commodity Credit Corporation, and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: The Food Security Act of 1985 (the "1985 Act"), approved on December 23, 1985, amended the Agricultural Act of 1949 (the "1949 Act") to authorize price support, payment, and production adjustment programs for the 1986 through 1990 crops of rice, upland cotton, feed grains, and wheat. An interim rule was published on March 11, 1986 (51 FR 8428), which set forth terms and conditions of these programs. The Food Security Improvements Act of 1986 (the "1986 Act"), approved on March 20, 1986, further amended the 1949 Act with respect to such programs. Accordingly, this interim rule amends the regulations found at 7 CFR Part 713 to set forth certain terms and conditions of these programs which must be changed to implement the provisions of the 1986 Act. These regulations are also amended to set forth additional provisions of the 1986 and subsequent year programs with respect to the determination of ineligible land for purposes of program participation, the adjustment of crop acreage bases, the determination of considered planted acreages, and the consideration of failed and prevented planted acreages.

Due to the late date of enactment of the 1985 Act and the 1986 Act, the regulations found at CFR 7 Part 795 are amended to facilitate the determinations made with respect to the application of the staturtor maximum payment limitation to 1986 program participants. This interim rule also revises for clarity the regulations found at 7 CFR Part 770 with respect to commodity certificates and in kind payments, and the regulations found at 7 CFR Part 1425 with respect to approved marketing cooperatives.

Since this interim rule amends provisions ot title 7 of the Code of Federal Regulations which were added by an interim rule published on March 11, 1986 (51 FR 8428), the comment period for the previously published interim rule has been extended to coincide with the comment period applicable to this interim rule.

DATES: June 13, 1986 Comments must be received on or before July 16, 1986, in order to be assured of consideration. The comment period for the interim rule published at 51 FR 8428, March 11, 1986 is extended to July 16, 1986.

ADDRESS: Send comments to: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Tom VonGarlem, Assistant Deputy Administrator, State and County Operations, ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447-6761.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Impact Analyses are being prepared with respect to the programs for the 1986 crops of wheat, feed grains, cotton, and rice. Copies of the analyses will be available to the public from Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, USDA, Room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055, Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity 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).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560-0030, 0560-0071, 0560-0091, 0560-0092, and 0560-0650 have been assigned.

Since producers participating in the programs authorized by 7 CFR Parts 713, 770, 795, and 1425 have already planted or are preparing to plant the crops affected by this interim rule, it has been determined that this interim rule shall be effective upon filing with the **Federal Register.** However, comments are requested with respect to this interim rule and such comments, in addition to the comments received in response to the interim rule published on March 11, 1986 (51 FR 8428), shall be considered in developing the final rule.

Since this interim rule amends provisions added to title 7 of the Code of Federal Regulations by the interim rule published on March 11, 1986 (51 FR 8428), the comment period for the interim rule published at 51 FR 8428 is extended to July 16, 1986.

I. Statutory Background.

The 1986 Act amended several provisions of the 1949 Act which have been added to such Act by the 1985 Act. Part A of this section sets forth a discussion of these provisions of the 1985 Act. Part B of this section sets forth a description of the amendments made by the 1986 Act.

A. The 1985 Act.

(1) *Nonprogram crops.* The 1985 Act generally amended the 1949 Act to provide for making "established price" or deficiency payments to producers on farms who participate in the annual commodity program in effect for each of the 1986 through 1990 crops of rice, upland cotton, feed grains, or wheat. Such deficiency payments are computed by multiplying: (i) the payment rate, by (ii) the farm program acreage for the crop, by (iii) the farm program payment yield for the crop.

The 1985 Act provided for including acreages devoted to nonprogram crops

and conservation uses in excess of 8 percent of the permitted acreage of the program crop in the farm program acreage for a crop for which an acreage limitation program is in effect. However, such acreages of nonprogram crops and conservation uses may be included only if the acreage of the program crop planted for harvest is at least 50 percent of the permitted acreage for the crop. "Nonprogram crops" were defined by the 1985 Act as crops other than wheat, feed grains, upland and extra long staple (ELS) cotton, rice, and soybeans. No restrictions were placed on the use which could be made of the acreages devoted to conservation uses and nonprogram crops. The 1985 Act provided that, for the purpose of computing crop acreage bases, an acreage devoted to nonprogram crops equal to the difference between the permitted acreage of a program crop and the acreage planted to the program crop, shall be considered as planted to such program crop.

(2) *Farm program payment yields.* The 1985 Act provided that the farm program payment yield for the 1986 and 1987 crops shall be the average of the farm program payment yields for the 1981 through 1985 crop years, excluding the highest and lowest yields. The 1985 Act provided the Secretary with two options which may be used to establish the farm program payment yields for the 1988 and subsequent crop years. Under the first option, the farm program payment yield for a crop is based upon the average of the farm program payment yields for the 1981 through 1985 crop years, excluding the lowest and highest yields. Alternatively, the Secretary is authorized to establish the 1988 and subsequent crop year farm program payment yields based upon the average of the yields for the 5 immediately preceding crop years, excluding the crop year with the highest yield per harvested acre, the crop year with the lowest yield per harvested acre, and any crop year in which such crop was not planted on the farm. For the purpose of making these determinations, the Secretary was required by the 1985 Act to use the farm program payment yield for the 1983 through 1986 crop years and the actual yield per harvested acre with respect to the 1988 and subsequent crop years.

(3) *Haying and grazing ACR.* The 1985 Act provided, with respect to the 1986 through 1990 crop years, that the Secretary shall issue regulations with respect to the conservation uses to which reduced acreage, set-aside acreage, and diverted acreage must be devoted. This acreage is referred to as the "acreage conservation reserve" ("ACR"). The Secretary may permit the acreage to be devoted to certain crops and uses if the production is needed to provide an adequate supply of the commodity, is not likely to increase the cost of the price support program, and will not affect farm income adversely. State Agricultural Stabilization and Conservation Committees ("State committees") are authorized to approve haying and grazing of this acreage for the 1986 crop year and grazing in the 1987 through 1990 crop years, except that haying and grazing may not be permitted during a 5-consecutive month period of the year which is established by the State committee.

B. The 1986 Act.

(1) *Nonprogram crops.* The 1986 Act amended the 1949 Act to delete the authority, when computing deficiency payments, for including in such computations acreages of "nonprogram crops" in the farm program acreage for a crop of rice, upland cotton, feed grains, or wheat. However, the 1986 Act provides that the Secretary may permit all or part of the acreage devoted to conservation uses included in the farm program acreage to be devoted to certain commodities. The commodities include sweet sorghum, guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, commodities grown for experimental purposes, and commodities for which no substantial domestic production or market exists but that could yield industrial raw material being imported or likely to be imported into the United States. Before approving the planting of any of these commodities, the Secretary must determine that the production of the commodity is not likely to increase the cost of the price support program, will not affect farm income adversely, and production is needed to assure an adequate supply of the commodity. The Secretary is required to permit, at the request of the State committee, haying and grazing of the acreage devoted to conservation uses which can be credited as the program crop, except that haying and grazing shall not be permitted if haying and grazing are determined to have an adverse economic effect.

The 1986 Act provides that, with respect to the 1986 crops of wheat, feed grains, upland cotton, and rice, the provisions of the 1986 Act with respect to nonprogram crops shall not apply to any producer who, before February 26, 1986, planted or contracted to plant a portion of the permitted acreage to nonprogram crops as defined by the 1985 Act.

(2) *Additional yield payments.* The 1986 Act provides that the Secretary shall make available to producers payments in the form of commodities owned by the Commodity Credit Corporation when the 1986 farm program payment yield for a commodity on a farm is reduced more than 3 percent below the farm program payment yield for the 1985 crop year. Such payments are required for the 1987 crop year when the 1987 farm program payment yield is reduced by more than 5 percent below the farm program payment yield for the 1985 crop year. The payments are required to be in such amount as is determined to be necessary to provide the same total return to producers as if the farm program payment yield for the year had not been reduced by more than 3 or 5 percent, as applicable, below the farm program payment yield for the 1985 crop year.

The 1986 Act provides that, for the purpose of establishing a farm program payment yield for any program crop for the 1988 and subsequent crop years, the farm program payment yield for the 1986 crop year shall not be reduced more than 10 percent below the farm program payment yield for the farm for the 1985 crop year.

(3) *Haying and grazing ACR.* The 1986 Act amended the 1949 Act, with respect to the 1986 crops of wheat and feed grains, to provide that the Secretary shall permit, at the request of the State Agricultural Stabilization and Conservation (ASC) committee, acreage which is designated as Acreage Conservation Reserve (ACR) under the wheat and feed grain price support and production adjustment programs to be devoted to haying and grazing for the 1986 crop year during not less than 5 of the principal growing months, as established by the State ASC committee

The 1986 Act retained the same provisions as the 1985 Act for the 1987 through 1990 crops of wheat and feed grains. Accordingly, for such crop years, the Secretary shall permit, at the request of the State ASC committee, grazing of ACR except that grazing shall not be permitted during any 5-consecutive month period established by the State ASC committee. The 1986 Act did not affect provisions of the 1949 Act with respect to acreage designated as ACR under the upland cotton and rice programs. Therefore, with respect to upland cotton and rice, the Secretary shall permit, at the requst of the State ASC Committee, haying and grazing for the 1986 crop year and grazing for the 1987 through 1990 crop years, except that haying and grazing shall not be permitted during any 5-consecutive

determined for the farm for the 1985 crop year.

* * * * *

(r) *"Nonprogram crop"* means any crop other than a crop of rice, upland of ELS cotton, feed grains, wheat, or soybeans as determined in accordance with instructions issued by the Deputy Administrator.

(r–1) *"Approved nonprogram crop"* means:

(1) Any nonprogram crop, including any crop which is grown for experimental purposes, which is approved by the Administrator, or a designee of the Administrator, after determining: (i) that the production of such crop is not likely to increase the cost of the price support program, and will not affect farm income adversely, and (ii) the production is needed to provide an adequate supply of the commodity, or, in the case of commodities for which no substantial domestic production or market exists but that could yield industrial raw materials, the production is needed to encourage domestic manufacture of such raw material and could lead to increased industrial use of such raw material to the long-term benefit of United States Industry.

(2) With respect only to the 1986 crop, any nonprogram crop which the producer has, after December 23, 1985, and before February 26, 1986, planted or contracted to plant, as determined by the State committee or its representative in accordance with instructions issued by the Deputy Administrator.

(r–2) *"Other nonprogram crop"* means any nonprogram crop except approved nonprogram crops.

* * * * *

C. Section 713.63 of the regulations is amended by revising paragraphs (a) and (c)(1) to read as follows:

§ 713.63 Use of ACR acreage.

(a) *State committee determination.* The State committee may authorize grazing of ACR acreage for the 1986 through 1990 crops and haying for the 1986 crop, except that:

(1) With respect to ACR designated for the 1986 crop of upland cotton, ELS cotton, and rice, haying and/or grazing shall not be permitted during any 5-consecutive month period, as determined by the State committee, during the 1986 calender year;

(2) With respect to ACR designated for the 1986 crops of wheat and feed grains, haying and/or grazing shall, if authorized, be permitted during at least 5 of the principal growing months as determined by the State committee; and

(3) With respect to ACR designated for the 1987 through 1990 crops of rice, upland cotton, ELS cotton, feed grains, and wheat, grazing shall not be permitted during any 5-consecutive-month period, as determined by the State committee, during the applicable calender year.

* * * * *

(c) *Other uses.* (1) Removing catfish, crayfish, and other fish for commercial purposes is prohibited during any period during which haying and/or grazing is prohibited in accordance with paragraph (a) of this section.

* * * * *

D. Section 713.97 of the regulations is amended by revising paragraph (a) and adding paragraphs (e) and (f) to read as follows:

§ 713.97 Ineligible land.

(a) Land described in paragraphs (b)-(f) of this section shall not be eligible for the following purposes:

(1) Payments under any program in accordance with this part;

(2) Designation as ACR; or

(3) Consideration as being planted to a crop in accordance with § 713.102.

* * * * *

(e) Land that is flooded or under water at any time during the year unless one of the following applies:

(1) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year, or

(2) After being flooded, such land could be planted in the current year by no later than the final reporting date for spring planted crops.

(f) Land that is going out of agricultural production during the current year unless the county committee determines that the land could have been planted to a program crop and that such crop could have been harvested.

E. Section 713.102 of the regulations is revised to read as follows:

§713.102 Crediting of nonprogram crops and conserving uses.

(a) As a condition of eligibility for loans, purchases and payments in accordance with the provisions of this part, the operator must submit a report of acreage in accordance with Part 718 of this chapter that lists all crops and land uses which are subject to the contract for all cropland on the farm for the crop year. Except as otherwise provided in this part, all acreage determinations shall be made in accordance with Part 718 of this chapter.

(b) *Designation to a program crop.* The operator shall designate on the report of acreage filed in accordance with Part 718 of this chapter whether the acreage of approved nonprogram crops and conserving uses on the farm shall be credited to one or more of the crops of wheat, feed grains, upland cotton, and rice. The operator shall also designate the acreage of other nonprogram crops to one or more of the crops of wheat, feed grains, upland cotton, and rice. If the operator fails to so designate such acreages to such crops by the final reporting date established for the farm, the county committee shall allocate the acreage of approved nonprogram crops and conserving uses and the acreage of other nonprogram crops in accordance with instructions issued by the Deputy Administrator.

(c) *Irrigated acreage.* In accordance with instructions issued by the Deputy Administrator, an acreage of approved nonprogram crops and conserving uses may be credited as an irrigated acreage of wheat or feed gains if:

(1) Both irrigated and nonirrigated yields have been established for such crop of wheat or feed grains:

(2) All or part of the acreage actually planted to wheat or feed grains for harvest is irrigated; and

(3) The acreage of approved nonprogram crops and conserving uses is irrigated or considered to be irrigated in the current crop year.

(d) *Limitation.* The sum of the acreage of approved nonprogram crops and conserving uses and the acreage of other nonprogram crops credited to the crop shall not exceed the difference between the acreage base for the crop for the crop year and the sum of:

(1) The acreage of the crop planted for harvest;

(2) The acreage which the county committee determines, in accordance with § 713.105, the producer was prevented from planting to the crop due to a natural disaster or similar condition beyond the producer's control; and

(3) The acreage which is designated as ACR for the crop.

(e) *Other nonprogram crops.* An acreage of other nonprogram crops, excluding peanuts, shall be credited to a crop of rice, upland cotton, feed grains, or wheat only as follows:

(1) Producers on the farm must be participating in the acreage reduction program for such program crop;

(2) The acreage of the program crop planted for harvest must equal at least 50 percent of the permitted acreage for such crop;

(3) The amount of acreage of other nonprogram crops to be credited shall be limited to:

(i) 50 percent of the permitted acreage of the program crop for each of the 1986 and 1987 crop years;

(ii) 35 percent of the permitted acreage of the program crop for the 1988 crop year; and

(iii) 20 percent of the permitted acreage of the program crop for the 1989 crop year.

(4) No acreage of other nonprogram crops shall be credited to a crop of rice, upland cotton, feed grains, or wheat if the farm program acreage for the crop determined in accordance with § 713.108(b) includes any acreage of approved nonprogram crops or conserving uses.

(f) *Haying and grazing.* Haying and grazing of approved nonprogram crops and conserving uses credited as the program crop shall only be permitted if haying and/or grazing is requested by the State committee and the Secretary approves such a request.

F. Section 713.105 of the regulations is amended by revising paragraph (d) to read as follows:

§ 713.105 Disaster credit.

* * * * *

(d) When prevented planting or failed acreage credit for a crop is approved for an acreage:

(1) And producers on the farm are participating in the production adjustment program for such crop, such credit shall be limited to the permitted acreage for each crop.

(2) Except for established practices of doublecropping as prescribed by the Deputy Administrator, any later crop planted on such acreage shall not be considered to be planted for any purpose under the programs authorized by this part, and parts 1421 and 1427 of this title regardless of the permitted acreage for such crop.

G. Section 713.108 of the regulations is amended by revising the heading of paragraph (b), paragraphs (b)(2), and (c) and by adding paragraph (e) to read as follows:

§ 713.108 Deficiency payments.

* * * * *

(b) *Farm program acreage.* * * *

(2) If an acreage reduction program or required land diversion program is in effect for the crop, the farm program acreage shall be the acreage of the crop planted for harvest for the current year, not to exceed the permitted acreage. However, for wheat, feed grains, upland cotton, and rice, if an acreage reduction program is in effect and the acreage of the crop planted for harvest is less than 92 percent of the permitted acreage for the crop, the farm program acreage may be increased, but not to exceed 92 percent of the permitted acreage of the crop, as follows:

(i) If the acreage of the crop planted for harvest is less than 50 percent of the permitted acreage of the crop, the farm program acreage shall not be increased.

(ii) If the acreage of the crop planted for harvest is at least 50 percent of the permitted acreage of the crop for the year, the farm program acreage shall be the sum of:

(A) The acreage of the crop planted for harvest, plus

(B) The amount by which the sum of the acreages of approved nonprogram crops and conserving uses credited to the crop in accordance with § 713.102 exceeds 8 percent of the permitted acreage for the crop; and

(iii) If a State or local agency has imposed in an area of the State or county a quarantine on the planting for harvest of any crop for which price support is available, the Deputy Administrator, based upon a recommendation of the State committee, may allow the acreage subject to the quarantine to be considered as eligible for purposes of program payments as follows:

(A) Acreage subject to the quarantine may be credited to a crop in accordance with § 713.102, and

(B) The farm program acreage on a farm where such acreage is credited to the crop shall be the sum of the acreage of the crop planted for harvest and the sum of the acreages of approved nonprogram crops and conserving uses credited to a crop in accordance with § 713.102 which is in excess of 8 percent of the permitted acreage for such crop.

(c) *Payment computation.* Deficiency payments shall be determined for:

(1) The 1986 crop year, for each crop by multiplying the farm program acreage by the higher of the farm program yield as provided for in § 713.6 or 97 percent of the 1985 farm program payment yield by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

(2) The 1987 crop year, for each crop by multiplying the farm program acreage by the higher of the farm program payment yield as provided for in § 713.6 or 95 percent of the 1985 farm program payment yield by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

(3) The 1986 through 1990 crop years for each crop by multiplying the farm program acreage by the farm program payment yield as provided for in § 713.6 by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

* * * * *

(e) *Additional yield payments.* If, with respect to the 1986 crop of any commodity, 97 percent of the 1985 farm yield exceeds the farm program payment yield for the 1986 crop or, with respect to the 1987 crop of any commodity, 95 percent of the 1985 farm yield exceeds the farm program payment yield for the 1987 crop, the portion of the deficiency payment which is attributable to such difference shall be made in commodity certificates in accordance with Part 770 of this title. Such payments shall be made no later than the dates specified in paragraph (d) of this section. Advance payments may be made as announced by the Secretary.

2. Part 770 of Chapter VII of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 770—COMMODITY CERTIFICATES, IN KIND PAYMENTS, AND OTHER FORMS OF PAYMENT

Sec.

770.1 Applicability.
770.2 Payments in lieu of cash payments.
770.3 Payments to persons with outstanding CCC loans.
770.4 Commodity certificates.
770.5 In kind payments.
770.6 Assignments.
770.7 Miscellaneous provisions.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101A, 103A, 105C, 107C, 107D, 107E, and 405 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1446, 1383, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1441–1, 1444–1, 1444b, 1444b–2, 1444b–3, 1444b–4, 1445d, and 1425).

§ 770.1 Applicability.

This part shall be applicable to payments and loans made in accordance with the programs administered by the Commodity Credit Corporation (CCC) or the Agricultural Stabilization and Conservation Service (ASCS) as determined and announced by the Secretary of Agriculture or a designee of the Secretary. The definitions of the terms applicable to 7 CFR Part 713 set forth at § 713.3 also shall be applicable to this part, except that the term "commodity" shall mean any agricultural commodity.

§ 770.2 Payments in lieu of cash payments.

(a) CCC will, in accordance with applicable program provisions, make payments in a form other than in cash to persons who otherwise are eligible to

receive a cash payment from CCC. Further, subject only to statutory prohibition and notwithstanding any provisions of the contract to participate in a program administered by CCC or ASCS, CCC may, at its option, make payments in a form other than in cash.

(b) As determined by CCC, payments in a form other than in cash may be made in the following manner:

(1) By delivery of a commodity to a person at a warehouse or other similar facility;

(2) By transfer of negotiable warehouse receipts;

(3) By the issuance of certificates which CCC shall redeem in accordance with this part;

(4) By the acquisition and use of commodities pledged as collateral for CCC price support loans;

(5) By the use of commodities owned by CCC; and

(6) By such other methods as CCC determines appropriate, including methods to enable the producer to receive payments in order to assure that the producer receives the same total return as if the payments had been made in cash.

(c) The value of the payments made in any manner set forth in paragraph (b) of this section shall be determined by CCC.

(d) Notwithstanding any other provision of this part, CCC may, with respect to producers who are members of a cooperative marketing association which has been determined in accordance with Part 1425 of this title to be eligible to receive price support on behalf of its producer-members, enter into agreements with such producers and such cooperatives to facilitate the making of payments to such producers. Such agreements may include a provision which allows a producer to make available for the use of the cooperative the value of the non-cash payment which would otherwise be made to the producer.

§ 770.3 Payments to persons with outstanding CCC loans.

(a) Persons with outstanding CCC loans who are eligible to receive payments from CCC, including a person authorized to receive a payment on behalf of another person, may be required to liquidate such loans in accordance with this section in order to be eligible to receive a payment authorized by § 770.2.

(b) A person with an outstanding CCC loan must, unless otherwise agreed upon by the person and CCC, redeem and sell to CCC a quantity of the commodity pledged as collateral for a CCC loan, as determined by CCC, in an amount equal in value to the value of the payment which would otherwise be made to such person. If the person has more than one outstanding CCC loan, CCC may, by contract or otherwise, prescribe which loan collateral the person shall be required to redeem in order to receive payment. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advance storage payments received with respect to the redeemed collateral. After redemption and the subsequent sale to CCC of the commodity pledged as collateral for such CCC loan, CCC shall make available to the person a like quantity of the commodity.

§ 770.4 Commodity certificates.

(a) *General.* CCC may issue commodity certificates as a form of payment. Commodity certificates will bear a dollar denomination. Such certificate may be transferred, exchanged for the inventory of CCC (including the receipt in accordance with paragraph (e) of this section of loan collateral by a person to whom a loan secured by such collateral is made), or exchanged for cash, as provided for in this section. Commodity certificates shall be subject to the provisions of this part, and to any terms, conditions and restrictions provided on the certificate, which are incorporated by reference herein.

(b) *Liens, encumbrances, and State law.* (1) The provisions of this section or the commodity certificates shall take precedence over any state statutory or regulatory provisions which are inconsistent with the provisions of this section or with the provisions of the commodity certificates.

(2) Commodity certificates shall not be subject to any lien, encumbrance, or other claim or security interest, except that of an agency of the United States Government arising specifically under Federal statute.

(3) The provisions of this paragraph (b) of this section shall apply without regard to the identity of the holder of the certificate.

(c) *Transferability.* Except as provided in paragraph (f) of this section, any person may transfer a commodity certificate to any other person. However, any such transfer must be in the full amount of the certificate, and can be effected only by restrictive endorsement on the back of the certificate, showing the name of the transferee and the date of the transfer, and signed by the transferor. CCC will not honor any certificate bearing any endorsement to "bearer" or any other nonrestrictive endorsement, or otherwise transferred in a manner contrary to the regulations contained in this section. The person who submits a commodity certificate to CCC shall endorse the certificate to CCC.

(d) *Exchange of commodity certificate for CCC-owned commodities.*—(1) *General.* Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may exchange such certificate, by itself or together with other commodity certificates, for such commodities as are made available by CCC by endorsing and submitting the certificate to CCC. If a person submits commodity certificates for exchange in order that the person would be eligible to receive a quantity of a commodity which includes less than an entire unit in which the commodity is stored (e.g., less than an entire bale of cotton or an entire barrel of honey):

(i) Such person may forefeit the partial unit of the commodity to CCC, or

(ii) CCC may issue a check to such person for the partial unit of the commodity or permit such person to purchase the remainder of such unit at a price determined by CCC. A person may obtain information regarding commodities available for exchange and the procedure for exchange from Kansas City Commodity Office, ASCS–USDA, Kansas City, MO 64141–0205.

(2) *Minimum quantities.* A holder of an amount of commodity certificates sufficient to acquire a carload lot, or other quantity as may be determined by CCC, may present such amount for exchange at any time on or before the expiration date of such certificates. A holder who is permitted to exchange the certificate for CCC-owned commodities but who does not possess commodity certificates in the amount specified in the preceding sentence may, not to exceed once during a calendar month, submit such certificates to CCC. CCC will, at CCC's option, pay such holder by check in the amount of the certificate or transfer to such holder title to commodities owned by CCC.

(3) *CCC-owned commodities stored by a person who submits commodity certificates to CCC.* CCC may require or permit holders of commodity certificates to exchange such certificates for commodities owned by CCC which are stored by such holder, without making such commodities or kinds of commodities available to other holders of commodity certificates.

(4) *Valuation.* Except as otherwise may be announced by CCC, CCC will determine the value of CCC-owned commodities made available to holders of commodity certificates.

(5) *Transfer of title.* Title to commodities owned by CCC which are transferred to a person who submits commodity certificates to CCC shall be transferred in store, except as may be determined and announced by CCC. The person who submits certificates to CCC shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC. The transfer of title to such commodities shall occur without regard to any State law or any claim of lien against the commodity or proceeds thereof which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute.

(6) *Expiration date.* CCC may, at its option, discount or refuse to accept any commodity certificate presented for exchange after the expiration date stated on the certificate.

(e) *Use of commodity certificates to receive loan collateral.*

(1) *General.* Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may use such certificate to receive commodites pledged as collateral for CCC loans made to such person, at any time on or before the expiration date stated on the certificate. A holder of a commodity certificate who wishes to receive a quantity of a commodity pledged by such person as collateral for a CCC loan in exchange for a certificate shall redeem and sell to CCC a quantity of the commodity equal in value to the dollar denomination of the certificate, as determined by CCC. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advanced storage payments received with respect to the redeemed loan collateral. Upon submission of the certificate, which is endorsed to CCC, to the county ASCS office which issued the loan, the holder of a commodity certificate will receive the quantity of the commodity which has been sold to CCC. Except as otherwise determined by CCC, if the holder of such certificate does not have commodities pledged as collateral for CCC loans equal in value to the dollar denomination of the certificate, as determined by CCC, CCC will, at CCC's option and after the producer has submitted the certificate, pay the difference to the person by check or in the form of a new commodity certificate.

(2) *Ineligible commodities.* No person may use a commodity certificate to receive a quantity of tobacco, peanuts, or extra long staple cotton pledged as collateral for a CCC loan. No person may, before August 1, 1986, use a commodity certificate to receive a quantity of upland cotton pledged as collateral for a CCC loan.

(f) *Certificates bearing a first transfer deadline.* If a commodity certificate bears a "first transfer deadline" date, the person to whom the certificate is issued may not transfer such certificate to another person after such date. Further, the person to whom such a certificate is issued may not exchange the certificate for commodities owned by CCC. Nor after the "first transfer deadline" may such person use such a certificate to receive a quantity of a commodity pledged as collateral for CCC a loan. However, such person may, but only during the ten business days immediately following the first transfer deadline date, submit such certificate, endorsed to CCC, at the issuing county ASCS office in exchange for payment by check in the amount of the commodity certificate.

(g) *"Generic" and commodity-specific commodity certificates.*

(1) *General.* If a commodity certificate indicates that it is a "generic" certificate, such certificate may, subject to the provisions of paragraphs (a) through (f) of this section, be exchanged for any commodity made available by CCC or, as appropriate, used to receive a quantity of any commodity which serves as collateral for a CCC loan. If a certificate is not a "generic" certificate, such certificate may be exchanged for or used to receive only a quantity of the commodity or commodities indicated on the face of the certificate.

(2) *Payments to first handlers and inventory protection payments for upland cotton.* Notwithstanding any other provision of this section, a certificate issued as payment to first handlers of cotton, as determined by CCC, in accordance with section 103A(a)(5)(D)(ii) of the Agricultural Act of 1949, as amended, amay not be exchanged for CCC-owned upland cotton until after the expiration of five months following the month in which such certificate is issued. Certificates issued as payments which are determined to be necessary to make raw cotton in inventory on August 1, 1986 available at competitive prices as determined by CCC in accordance with section 103A(a)(5)(D)(ii) of the Agricultural Act of 1949, as amended, may not be exchanged for CCC-owned upland cotton only during such period or periods as may be determined and announced by CCC.

(3) *Commodities not available in CCC inventory.* Notwithstanding any other provision of this section, if a person submits a commodity specific certificate to CCC in exchange for a quantity of such commodity and CCC determines it is not possible to make such commodity available, CCC may:

(i) Require such person to exchange the commodity specific certificate for a generic certificate; or

(ii) Refuse to accept submission of such certificate until CCC is able to make available a quantity of the commodity specified on such certificate.

(h) CCC, at its option, may discount or refuse to accept any certificate made, transferred, or submitted in violation of this section.

§ 770.5 In kind payments.

(a) Subject to the provisions of §§ 770.2 and 770.3, CCC may make payments in the form of commodities. Quantities of commodities made available as payment shall be based upon the value of the commodity, as determined by CCC. Such quantity may be adjusted by CCC to reflect the location, quality, and other similar factors which CCC determines to affect the value of the commodity.

(b) The transfer of title to commodities made available in accordance with paragraph (a) of this section shall be in store, except as determined by CCC, and shall be made without regard to any State law or any claim of lien against the commodity, or proceeds thereof, which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute. The recipient of such commodities shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC.

§ 770.6 Assignments.

Notwithstanding any other provision of this chapter, a payment made under this part may not be the subject of an assignment, except as determined and announced by CCC.

§ 770.7 Miscellaneous provisions.

Except as determined by CCC, the following provisions of this title shall apply to this part:

(a) Part 13, Setoffs and Withholding.

(b) Part 707, Payments Due Persons Who Have Died, Disappeared, or Been Declared Incompetent.

(c) Part 718, Determination of Acreage and Compliance.

(d) Part 780, Appeal Regulations.

(e) Part 790, Incomplete Performance Based Upon Actions or Advice of an

Authorized Representative of the Secretary.

(f) Part 791, Authority to Make Payments When There has been a Failure to Comply Fully with the Program.

(g) Part 795, Payment Limitation.

(h) Part 796, Denial of Program Eligibility for Controlled Substance Violations.

(i) Part 1403, Interest on Delinquent Debts.

(j) All other parts of the Code of Federal Regulations which are made applicable to this part.

3. Part 795 of Chapter VII of Title 7 of the Code of Federal Regulations is amended as follows:

PART 795—[AMENDED]

A. The authority citation continues to read as follows:

Authority: Sec. 1001, Pub. L. 98-199, 7 U.S.C. 1308; 99 Stat. 1444.

B. Section 795.5 is revised to read as follows:

§ 795.5 Timing for determining status of persons.

Except as otherwise set forth in this part, the status of individuals or entities as of March 1, or such other date as may be determined and announced by the Administrator shall be the basis on which determinations are made in accordance with this part for the year for which the determination is made.

4. Part 1425 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended as follows:

PART 1425—[AMENDED]

A. The authority citation continues to read as follows:

Authority: Secs. 4, 5, and 12 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072, 1073 (15 U.S.C. 714b, 714c, and 714j); secs. 101, 201, 203, 301, and 401 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 70 Stat. 212, 63 Stat. 1053, as amended, 1054, as amended (7 U.S.C. 1444, 1441, 1446d, 1447, and 1421).

B. Section 1425.4 is revised by revising the title of the section and paragraph (a) to read as follows:

§ 1425.4 Approval.

(a) *Application.* In order for a cooperative to obtain price support with respect to the 1986 and subsequent crops of authorized commodities, a cooperative must submit an application for approval with respect to such authorized commodities to CCC.

* * * * *

C. Section 1425.11 is amended by revising paragraph (c) to read as follows:

§ 1425.11 Operations.

* * * * *

(c) Any marketing agreement entered into by a cooperative in accordance with the provisions of paragraph (b) of this section, must as determined by CCC:

(1) Adequately protect the ownership and control interests of the cooperative members;

(2) Be in the best interest of the members of the cooperative acquiring the service; and

(3) Require that all proceeds from the marketing operation be distributed as provided in § 1425.17.

D. Section 1425.13 is amended by revising paragraph (c) to read as follows:

§ 1425.13 Uniform marketing agreement.

* * * * *

(c) An approved cooperative, when authorized by CCC, may offer additional marketing methods to its members on a limited membership basis for not to exceed two crop years before making such marketing method available to all members. If such limited marketing method is adopted as a permanent marketing method by the cooperative, information concerning such method and participation in such method shall be made available to all members. Such information may be published in the cooperative's membership publication or included in other written notice mailed to members.

E. Section 1425.16 is amended by revising paragraph (c) to read as follows:

§ 1425.16 Eligible commodity and pooling.

* * * * *

(c) *Availability of price support.* (1) Price support will be available to the cooperative for the quantity of a commodity stored commingled in an approved warehouse equal to the smaller of:

(i) The quantity of an eligible commodity received from members of the cooperative, or

(ii) The quantity of commodity which is in the cooperative's inventory. The cooperative must have in inventory a quantity of commodity of each class and grade at least equal to the quantity of that commodity of each class and grade pledged as loan collateral.

(2) Price support will be available as provided in §§ 1421.3(g) and 1434.3(d) for farm-stored commodities that have been delivered to the cooperative.

(3) Except as provided in paragraph (c)(2) of this section, price support will be available to the cooperative for the quantity of the eligible commodity stored identity preserved in an approved warehouse which was received from members of the cooperative and which is in the cooperative's inventory at the time such commodity is pledged as collateral for a price support loan or is offered to CCC for purchase.

(4) Price support eligibility for commingled commodities stored on a farm or in a warehouse may be transferred to an approved warehouse.

* * * * *

E. Section 1425.17 is amended by revising paragraph (b)(4) to read as follows:

§ 1425.17 Distribution of proceeds.

* * * * *

(b) *Pool proceeds.* * * *

(4) Pool proceeds obtained from price support loans made by CCC shall not be combined with proceeds from other eligible or ineligible pools.

* * * * *

F. Section 1425.19 is revised to read as follows:

§ 1425.19 Nondiscrimination.

The cooperative shall not, on the ground of race, color, age, sex, religion, national origin, or physical or mental handicap, deny any producer participation in, or otherwise subject any producer to discrimination with respect to any benefits resulting from its approval to obtain price support and shall comply with the provisions of Title VI of the Civil Rights Act of 1964 and the Secretary's regulations issued thereunder, appearing in §§ 15.1-15.12 of this title (29 FR 16274 and 38 FR 16966), and any amendments thereto; section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978; and provisions of the Age Discrimination Act of 1975 as amended. The cooperative shall not discriminate against employees under Title VII of the Civil Rights Act of 1964, as amended, or the Equal Pay Act of 1963 or Title VI of the Civil Rights Act of 1964 as administered by the Equal Employment Opportunity Commission, and will handle employee discrimination complaints as provided for in 28 CFR Part 42 and 29 CFR Part 1691. The United States shall have the right to enforce compliance with such statutes and regulations by suit or by any other action authorized by law. The cooperative shall submit a certification with its application that the above cited regulations and rules have been read and understood and that the cooperative will abide by them.

Signed at Washington, DC on June 10, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation and Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86-13477 Filed 6-13-86; 8:45am]

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Part III

Department of the Interior

National Park Service

36 CFR Parts 1, 2, and 4
Vehicles and Traffic Safety; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1, 2, and 4

Vehicles and Traffic Safety

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking revises the National Park Service's (NPS) regulations pertaining to vehicles and traffic safety. The existing regulations have not been revised significantly since 1966 and are outdated in many respects. The proposed rule reflects the fact that the NPS considers the respective States to be the appropriate authorities to regulate traffic, and relies heavily on the assimilation of individual State vehicle codes. The other objectives of this rulemaking are: (1) To delete unnecessary general and special regulations; (2) to eliminate the remaining references to the management categories formerly used to classify park areas; and (3), to make use of and expand the discretionary authority provided park superintendents in other NPS general regulations to protect resources and provide for public safety. The revised traffic regulations are limited to those that address problems or situations unique to park areas, those that are not found consistently in individual State vehicle codes and/or those that reflect a need to apply a consistent Servicewide regulatory approach. The results of this revision will provide a consistent, yet flexible approach to the management of traffic in park areas in the interests of public safety and the protection of park resources and public and private property.

DATE: Written comments will be accepted through August 15, 1986.

ADDRESS: Comments should be addressed to: Associate Director, Park Operations, National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: Andy Ringgold, National Park Service, Branch of Ranger Activities, P.O. Box 37127, Washington, DC 20013-7127, Telephone: 202-343-4187.

SUPPLEMENTARY INFORMATION:

Background

The NPS administers 337 park areas throughout the country under the broad statutory mandates to promote and regulate their use; to conserve the scenery, the natural and cultural objects and the wildlife therein; and to provide for their enjoyment in such manner as will leave them unimpaired for the enjoyment of future generations. Facilities developed by the NPS in park areas, including roads, are limited to those necessary to carry out these legislative mandates and to support the purposes of the individual park areas as defined by Congress.

Although visitors to the National Park System use a variety of access methods, the vast majority continue to rely on motor vehicles and roadways to reach park areas and to circulate within them. Consequently, the NPS has major responsibilities and program involvement in the areas of road construction and maintenance, traffic safety and traffic law enforcement.

The NPS currently administers almost 8,000 miles of roads within the National Park System that are open to the public. There is great variety in the nature and extent of park roads, ranging from very short lengths of unpaved secondary roadways, to well-developed road systems complete with spur roads, parking areas and overlooks, to parkways running for hundreds of miles through several states, to parkways used primarily as commuter routes in the Washington, DC area. Although the types of roadways vary, their designs are generally consistent with the policy of providing the public safe, but low profile, low impact and low speed road access that blends into its natural surroundings. NPS roads are intended to facilitate and enhance a visitor's leisurely enjoyment of a park area, not to detract from it. As a result, park roads generally relate simply and harmoniously with the topography and environment and are often more narrow and windy than roads outside parks that are designed to facilitate the movement of vehicles in the most direct and expeditious manner.

The following statistics provide an indication of the scope of NPS traffic safety and traffic law enforcement activities. In 1985 there were 263,900,000 visits recorded to the National Park System and 2,433,000,000 vehicle-miles traveled on roads administered by the NPS. There were 9,146 traffic accidents reported that resulted in 77 fatalities, 1,806 personal injuries and $5.9 million in property damage. A total of 3,292 incidents of driving while intoxicated occurred and a total of 79,811 citations were issued by NPS law enforcement officers (Park Rangers and U.S. Park Police) for moving traffic violations.

NPS general regulations pertaining to vehicles and traffic safety are codified in Title 36 of the Code of Federal Regulations (36 CFR Part 4). These regulations apply to all units of the National Park System. Special regulations pertaining to traffic that apply only to individual park areas are codified in 36 CFR Part 7 and supplement provisions of the general regulations. The general regulations in Part 4 were last revised significantly in 1966, although some provisions were added in the early 1970's in response to situations for which the existing regulations were inadequate. The evolution of the National Park System, new statutory authorities and directions, changes in vehicle technology and designs, modifications in recreation and visitation patterns and the general strengthening of State vehicle codes since then have all contributed to rendering many of the existing NPS regulations unnecessary, ineffective and/or otherwise outdated.

This rulemaking represents an effort on the part of the NPS to strengthen its overall traffic safety program and, in the process, to update and clarify certain of its traffic regulations and delete others that are unnecessary. Unnecessary regulations are those whose provisions are duplicated by the respective State vehicle codes or those that contain provisions that can be imposed by park superintendents without a rulemaking, using discretionary authority provided by general regulations promulgated in 1984 and codified elsewhere in 36 CFR. The following existing regulations in Part 4 are proposed for deletion:

1. *Section 4.4—Commercial Towing:* Commercial activity can be regulated under Part 5; accident reporting requirement was moved to § 4.3.

2. *Section 4.5—Drivers License:* Adequately covered by State vehicle codes.

3. *Section 4.7—Entrances and Exits:* All provisions can be enforced using other existing regulations.

4. *Section 4.8—Excessive Acceleration:* Noise can be regulated under 36 CFR 2.12 Audio Disturbances; spinning tires provision moved to § 4.22.

5. *Section 4.9—False Report:* covered under 36 CFR 2.32.

6. *Section 4.10—Following Vehicles:* Adequately covered by State vehicle codes.

7. *Section 4.12—Mufflers:* Adequately covered by State vehicle codes.

8. *Section 4.20—Vehicle Registration:* Adequately covered by State vehicle codes.

9. *Section 4.21—Brakes:* Adequately covered by State vehicle codes.

The NPS also intends to delete from Part 7 a number of special regulations that will be rendered unnecessary by the provisions of this rulemaking. Further discussion on this subject is

found in the section-by-section analysis of this rulemaking.

The NPS is also proposing to remove from Part 4 the last remaining references to the administrative categories of natural, historic and recreational areas formerly used to classify park areas for purposes of guiding management, protection and visitor use activities. The NPS ceased using these categories in 1978 and subsequently removed all references to them from its Management Policies (1978) and general regulations (1983–84).

The NPS is proposing that the foundation of its vehicle and traffic safety regulations be the nonconflicting provisions of the respective State vehicle codes, which will be assimilated. Proposed regulations in addition to those codes are limited to ones that are necessary to resolve visitor safety and/or resource protection concerns that cannot be satisfied on a Servicewide basis by applying and enforcing State vehicle code provisions.

This rulemaking was developed by a group of eight NPS employees with a wide range of experience in park management and law enforcement, and an attorney advisor from the Department of the Interior. It is based largely on suggestions submitted by NPS field managers and their staffs and their suggested changes to a draft of the rule that was circulated for Servicewide internal review in the fall of 1985.

Section-by-Section Analysis

The following terms used in the regulatory text of this rulemaking are defined in 36 CFR 1.4 and have specific meanings:

Authorized person, bicycle, carry, developed area, motor vehicle, operator, pack animal, park area, park road, permit, person, possession, State, superintendent, traffic, vehicle, and wildlife.

These terms are used throughout the NPS regulations codified in 36 CFR Parts 1, 2, 3, 7, and 13 in order to facilitate consistent interpretation, understanding and enforcement. The definition of the terms "authorized person" and "superintendent" are particularly important to a reader's clear understanding of the provisions of this rulemaking. "Authorized person" means "an employee or agent of the National Park Service with delegated authority to enforce the provisions of this chapter", i.e. a NPS law enforcement officer. "Superintendent" means "the official in charge of a park area or an authorized representative thereof".

This rulemaking also incorporates the use of discretionary authority provided park superintendents in 36 CFR 1.5. That section authorizes a superintendent, after having met certain decision criteria, to establish public use limits, impose closures, designate areas for a specific use or activity or impose conditions or restrictions on a use or activity. These management tools provide the flexibility necessary for a superintendent to react to changing situations in the field without having to resort to a lengthy rulemaking process each time closures or restrictions are imposed, changed or relaxed. Whenever the text of a section of this rulemaking contains the terms "designate" or "designated", or authorizes the superintendent to "establish conditions or restrictions", the NPS intends that language to constitute authorization for a superintendent to exercise the discretionary authority provided in § 1.5. When exercising the authority of § 1.5, a superintendent is required to comply with public notice procedures specified in 36 CFR 1.7. The use of this discretionary authority is discussed further under the headings of the individual sections in Part 4 in which it is included.

Although the primary focus of this rulemaking is Part 4, other Parts of the CFR are affected as well. The following outlines the purpose and intent of each section of this rulemaking and provides applicable background information.

Part 1

Section 1.2 Applicability and scope. A provision has been added to this section, which pertians to the general applicability and scope of all the regulations codified in 36 CFR, clarifying the fact that NPS regulations are not intended to restrict the activities of a disabled or physically handicapped person using a wheelchair, beyond the degree that the activities of pedestrians are restricted by the same regulations. The purposes of this provision are to eliminate potential confusion and to emphasize the Service's intent that wheelchairs not be considered bicycles, vehicles, or motor vehicles within the context of NPS regulations.

Section 1.4 Definitions. The list of definitions in § 1.4 is amended as follows. The definition of "authorized emergency vehicle" is revised to restrict the types of vehicles that qualify for this designation to vehicles in official use for emergency purposes by a Federal agency or emergency vehicles as defined by applicable State law. The NPS considers the existing definition too broad and not clearly delineating the few vehicle types that are appropriately classified as emergency vehicles. This defined term is subsequently used in § 4.2 of this rulemaking.

A comprehensive definition of "State Law" has been added to clarify the many references made to those terms in Part 4 as well as in other parts of 36 CFR.

A definition of "traffic control device" has also been added to this section. This definition is intended to cover the various types and purposes of signs and other markings used for the purpose of regulating traffic. By policy, NPS traffic control devices must comply with the Manual or Uniform Traffic Control Devices, the document that establishes national standards for traffic signs and markings. The term is used in §§ 4.2, 4.12 and 4.21 of this rulemaking.

Section 1.8 Information collection. This section has been revised to list the permit requirement contained in § 4.11.

Part 2

Section 2.18 Snowmobiles. The NPS addresses the use of snowmobiles separately from traffic regulations. However, the close connection between snowmobile activities and certain aspects of traffic control are reflected in the fact this section lists nine regulations in Part 4 that are made applicable to snowmobile operations. These references are being revised to reflect the deletions and renumbering of the sections in Part 4 proposed as part of this rulemaking. In addition, in response to requests from affected field area staffs, the NPS is adding proposed § 4.12 (Open Container) to the list of sections that apply to snowmobile operations in order to address public safety problems related to the consumption of alcoholic beverages by individuals while operationg oversnow machines.

Section 2.33 Report of injury or damage. This section is also being revised to reflect a change in the number of a section in Part 4 that is cross-referenced.

Section 2.35 Alcoholic beverages and controlled substances. This section of the general regulations pertains to the use of alcoholic beverages and controlled substances in park areas. Paragraphs (a)(2) (iii) and (iv) of that regulation address carrying or storing an opened container of an alcoholic beverage within a motor vehicle on a park road or parking area. The NPS feels that, since these restrictions apply directly to vehicles and traffic safety, Part 4 is the more appropriate location for these provisions to be codified. Section 2.35 was revised to delete those two paragraphs. Additional discussion is found under the listing for § 4.14.

This rulemaking also includes a very minor revision to paragraph (a)(3) of § 2.35, adding swimming beaches to the

existing list of portions of park areas that a park superintendent may close to the consumption of alcoholic beverages. As provided in § 2.35, such closures must be based upon one of two determinations: (1) That the consumption of alcohol would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or (2) incidents of aberrant behavior related to the consumption of alcohol are of such magnitude that the diligent application of the authorities to establish public use limits and to enforce disorderly conduct regulations over a reasonable period of time have failed to alleviate the problem. The NPS has found that, in many park areas, the consumption of alcoholic beverages by persons on swimming beaches contributes significantly to traffic safety problems on park roads leading to and from these beaches. Providing superintendents, as a last resort, when faced with significant problems related to the consumption of alcoholic beverages on a swimming beach, the authority to close swimming beaches to the consumption of alcoholic beverages, makes available an additional management tool to strengthen and support public safety programs.

Part 4

The proposed regulations in 36 CFR Part 4 are codified by general category in order to provide a logical system of organization and to facilitate their use and understanding by NPS employees and interested members of the public. These categories are: administrative provisions (§§ 4.1 through 4.3), general traffic provisions (§§ 4.10 and 4.15), moving violations (§§ 4.20 through 4.23) and non-motor vehicle provisions (§§ 4.30 and 4.31). Numerical gaps exist to allow for future changes and additions to each category.

Section 4.1 State law applicable. This section, which applies regardless of the type of jurisdiction exercised by the NPS, is necessary in order for the NPS to use State vehicle codes as the basis for the regulation and control of traffic in park areas. It allows the NPS to adopt, as if they were a part of the regulations in Part 4, all the applicable and nonconflicting vehicle and traffic laws of the State and local political subdivision(s) within whose exterior boundaries a park area or a portion thereof is located. The NPS regulations remaining in Part 4 will supercede any State vehicle code provisions that might conflict with or duplicate these sections.

The NPS wishes to emphasize the fact that, although substantive provisions of State law can be adopted, it has no authority to adopt, assimilate or impose administrative or penalty provisions of State law. A person convicted in Federal court of a violation of State law under § 4.1 would be subject only to the penalty provisions in 36 CFR 1.3, regardless of whether State law provides for a greater or less severe penalty, a mandatory penalty or only a minor administrative penalty such as remedial training. Furthermore, since drivers license suspensions and revocations are administrative procedures exercised by State agencies, the NPS has no authority or mechanism to apply such procedures to a conviction of a violation of State law under § 4.1 or a violation of any other section of Part 4 except through the cooperation of the appropriate State agency. The penalty provisions codified in 36 CFR 1.3 are established by statute and cannot be revised without Congressional authorization.

Section 4.2 Authorized emergency vehicles. This section, when used with the definition of "authorized emergency vehicle", allows operators of Federal, State, local or private emergency vehicles qualified exemptions from compliance with certain traffic regulations under certain emergency circumstances. Although this section is intended to facilitate prompt response in emergency situations and to provide operators a certain degree of protection from liability under those circumstances, it does not relieve them from the duty to drive safely.

Section 4.3 Report of vehicle accident. This section includes only those accident reporting requirements that pertain directly to the NPS and that are necessary for park area staffs to carry out their public safety responsibilities. These requirements are all that is to be retained from existing §§ 4.15 and 4.4, both of which are proposed for deletion. The requirements for notification of the superintendent are imposed so that park staffs can provide emergency assistance promptly and initiate and complete accident investigations in a timely manner. The reporting requirements that States impose to assure protection of the public interest and State agency notification are reflected in State law and are not affected by this section. A motor vehicle operator remains responsible for satisfying applicable State reporting requirements.

Section 4.10 Travel on park roads and designated routes. This section retains most of the basic provisions codified in the existing § 4.19, but they have been edited for clarity. Its purpose is to establish broad and consistent Servicewide standards for the operation of motor vehicles in the interest of protecting park resources. These particular limitations are not typically found in State vehicle codes. This section prohibits the operation of motor vehicles in park areas except on park roads, in parking areas and on routes designated for off-road vehicle use. Restricting motor vehicles to roads and parking areas provides ample and appropriate opportunities for visitors to circulate within park areas and also provides a significant measure of protection of park resources from the adverse effects of unrestricted motor vehicle operations.

This rulemaking does not revise the existing conditions under which off-road motor vehicle (ORV) activities may be conducted in park areas. These activities are governed by Federal statutory law and the provisions of Executive Orders 11644 and 11989 which apply to all Federal agencies. These Executive Orders require that ORV activities on public lands be limited to designated routes and that the designation of routes be based on the protection of resources, the promotion of visitor safety and the minimization of user conflicts. Furthermore, routes may be designated in units of the National Park System only if the agency head determines that ORV use in such locations will not adversely affect their natural, aesthetic or scenic values. The existing regulation requires that ORV routes in park areas be designated by special regulation and limits the designation of routes to national recreation areas, national seashores, national lakeshores and national preserves. These provisions are retained unchanged in this section.

Paragraphs (c) (3) and (d) of the existing regulation are considered unnecessary, however. The first authorizes the use of tire chains and studded snow tires; the second authorizes the superintendent to require spark arrestors on certain types of vehicles, a condition that can now be imposed without a rulemaking by the superintendent using the authority of § 1.5.

Section 4.11 Load, weight and size limits. This section is a revision and clarification of the existing section with the same number. It provides that limits established by State law are used as the standard in each park area, but authorizes the superintendent to designate more restrictive limits and require a permit for a motor vehicle that exceeds an established limit. This discretionary authority is essential in order for a superintendent to impose

restrictions, based on local conditions, for public safety purposes or for the protection of park resources or the road surface itself. This provision will result in the elimination of a number of special regulations. The size of auxiliary side mirrors that are allowed under specified conditions has been increased to 10 inches to conform to industry standards. The provision pertaining to transportation of explosives was deleted since it is adequately addressed in 36 CFR 2.38.

Section 4.12 Traffic control devices. This section is a revision of the existing section 4.18. Paragraph (a) of the existing section has been deleted since the superintendent's authorities to erect signs and control public use are already outlined in §§ 1.5 and 1.7. The lawful order provisions of paragraphs (b) and (c) of the existing section are adequately covered by 36 CFR 2.32(a)(2) and State law. The NPS intends to retain only the basic provision requiring compliance with a traffic control device (as defined in § 1.4), a requirement that is essential to assuring the safety of park visitors and the protection of resources.

Section 4.13 Obstructing traffic. This section is a revision of the existing section of the same number, the text having been clarified and simplified. The major provisions involving traffic obstruction or interference have been retained; those that describe actions that are more appropriately classified as unsafe driving actions, such as improper turns and weaving through traffic, were moved to proposed § 4.22 (Unsafe operation).

Section 4.14 Open container. This section addresses the carrying or storing of an open container containing an alcoholic beverage within a motor vehicle. These provisions are currently found in 36 CFR 2.35, but since they pertain directly to motor vehicles and traffic, the NPS feels that Part 4 is a more appropriate location for codification. Minor editorial changes have been made for clarity. The only substantive change has been to add designated off-road vehicle routes to the specified areas where the regulation's prohibitions apply. This section prohibits the carrying or storing of an open container of alcoholic beverages in a motor vehicle on park roads, in parking areas and on routes designated for off-road motor vehicle use except for specified areas within a motor vehicle that are not immediately accessible to the vehicle's operator or occupants. The NPS intends these provisions to apply to both moving and parked motor vehicles, but does not intend it to apply to the very few situations where alcoholic beverages might legitimately be consumed in a motor vehicle, such as when it is parked at a campsite in a campground and is used more as an extension of the camp than as a vehicle. The primary purpose of this section is to prevent public safety hazards created by individuals drinking and driving by physically separating vehicle operators and occupants from alcoholic beverages located in the vehicle. Although a similar provision is found in many State vehicle codes, the NPS believes that a Servicewide restriction is necessary and appropriate in order to facilitate a consistent Servicewide approach to this aspect of traffic safety.

Section 4.15 Safety belts. This new section provides a mandatory seatbelt regulation for NPS areas as part of a nationwide public safety effort. All states now have child restraint laws, but only seventeen and the District of Columbia have enacted mandatory seatbelt legislation. This section is patterned after a model regulation developed by the Department of Transportation. The NPS intends that this regulation be enforced primarily through signing, text in brochures and incidental public contact, not through checkpoints or other enforcement contacts that are not initiated as a result of another violation.

Section 4.20 Right-of-way. This revision retains the basic provisions of existing § 4.16 that address the protection of pedestrians, saddle and pack animals and horse-drawn vehicles. These elements, which are typical traffic safety concerns in park areas, are not addressed consistently by State law. However, the NPS is deleting the existing provision that pertains to yielding right-of-way to emergency vehicles in favor of applicable State law.

Section 4.21 Speed limits. This section contains the basic provisions of existing § 4.17, but was edited for simplification. The existing exception for emergency vehicles was moved to a new section (§ 4.2) and a provision authorizing the use of radar was added to resolve questions and potential conflicts in some park areas arising from provisions of State law. However, the NPS intends that law enforcement personnel who operate radar as part of traffic safety programs be certified according to applicable State or industry standards. Basic speed laws are established for park areas, but the superintendent is provided discretionary authority to alter those limits in the interset of public safety.

Section 4.22 Unsafe Operation. This section is a significant revision of the existing § 4.14 which combines elements related to reckless driving and careless driving. The reckless driving elements have been deleted from this section in favor of applying State law. The remaining elements, including the new provisions pertaining to passenger safety and excessive acceleration, constitute careless driving actions, less serious than reckless driving, that are not addressed consistently by State law but that occur frequently in park areas and are a threat to public safety.

Section 4.23 Operating under the influence of alcohol or drugs. This major revision of existing § 4.6 is based on a model regulation developed by the Department of Transportation, tailored to fit NPS needs. The existing regulation is completely inadequate and presents significant obstacles to NPS efforts to implement effective alcohol traffic enforcement and public safety programs. The new section prohibits operating a vehicle while under the influence of alcohol or drugs or a combination of both, includes a specific blood alcohol concentration limit, allows a great deal of flexibility in the use of State or Federal training and equipment standards, includes a provision requiring an alleged violator to submit to quantitative blood-alcohol tests and leaves the choice of tests to the officer or ranger rather than the alleged violator.

Paragraph (a) of this regulation addresses two individual offenses. The first is a standard prohibition against operating a motor vehicle while under the influence of alcohol or drugs. The elements necessary to prove a violation of this provision can be demonstrated through descriptions of observations made by the arresting officer and witnesses, physical evidence and the results of field tests conducted by the officer at the scene. The results of chemical or other quantitative tests conducted may be used to supplement the other items of evidence. The second offense involves operating a vehicle while the alcohol concentration in the operator's blood is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath. The elements necessary to prove a violation of this provision can be shown only through the results of chemical or other quantitative tests; the officer's probable cause for believing that the person is operating a motor vehicle while under the influence must be comprised of other factors.

A great deal of internal discussion has taken place within the NPS concerning the respective benefits and disadvantages, both to the public and the agency, of promulgating a DUI

regulation versus adopting applicable State law. Some of the advantages of adopting State law are: (1) Having the same regulation and testing criteria apply within a park area as without; (2) that cooperation between the Federal court system and State motor vehicle departments is facilitated (but by no means guaranteed) to assure that an operator's record reflects convictions of State law that occur in Federal Court; and (3) that cooperative enforcement efforts among NPS and neighboring agencies are sometimes facilitated, including joint training and the joint use of available testing equipment.

The major disadvantages of adopting State law are: (1) An inability to adopt any provision of State law that is administrative or civil rather than criminal in nature (including implied consent provisions) and an inability to adopt State penalty provisions, whether criminal or administrative; (2) some State motor vehicle departments will not accept any record of convictions of State law that occur in the Federal court system; (3) the NPS would be bound by State standards and specifications for alcohol and drug level testing equipment and the certification of its operators when in many cases that equipment and certified operators are not available near park areas, or the standards themselves are not up to date; and (4) a relatively minor consideration, that NPS enforcement personnel transferring from park area to park area would be required to familiarize themselves with different State laws, standards and procedures. However, this situation occurs regularly at present with other adopted provisions of State law and can be expected to continue in the future under conditions created by this revision.

The advantages of promulgating the NPS regulation as proposed are: (1) That a consistent standard will apply Servicewide; (2) that a quantitative testing requirement will be available to the NPS; the choice of tests and testing equipment rests with the NPS and can be made at the individual park area level based on local availability of testing equipment, facilities and certified equipment operators and the technological "state of the art"; (3) it does not necessarily disrupt cooperative relationships between the Federal court system and State motor vehicle departments or between the NPS and neighboring agencies; and (4) in general, it provides a flexible and effective tool for the NPS while assuring that both alleged violators and the general public benefit from prompt and effective enforcement actions.

Its potential disadvantages are that: (1) It may result in certain State agencies' refusing to recognize convictions; (2) it may result in different standards for blood alcohol levels and testing criteria applying within a park area than apply outside; and (3) the criminal penalty provision attached to the implied consent clause rather than the administrative penalty included in the typical State DUI law may cause some public concern and confusion.

The NPS feels that the decision to promulgate its own regulation rather than adopting applicable State law is the alternative that provides the most effective tool for use in Servicewide traffic safety efforts and results in the greatest benefit to the public. However, the NPS specifically invites public and State agency comments addressing this particular issue so that all relevant information and concerns can be reviewed before a final rule is promulgated.

Section 4.30 Bicycles. This section is a revision of the existing § 4.3. The major features of this revision are the elimination of references to the former administrative categories, the inclusion of specific operator responsibilities, provisions allowing for the designation of bicycle routes by the superintendent and by special regulation and the establishment of minimum visibility requirements. The statutory prohibition of mechanical forms of transport in designated wilderness areas is also reflected in a new provision specifically prohibiting the possession of a bicycle in designated wilderness.

This section provides that the use of bicycles is allowed in park areas under the same basic conditions as are motor vehicles, i.e. on park roads, in parking areas and on routes designated for their use. These provisions reflect the facts that the NPS generally considers bicycle use a very appropriate, low impact method for visitors to enjoy park areas, but that certain limitations on their use are necessary and appropriate in the interest of public safety, resource protection and the avoidance of visitor conflicts.

The NPS intends that the discretionary authority provided superintendents to designate bicycle routes without a formal rulemaking be a flexible tool used to accommodate the needs of bicyclists for reasonable access to areas away from park roads. This rulemaking provides the opportunity for a superintendent, after making the required written determination that such use is consistent with the protection of park values and purposes and safety considerations, to designate routes (trails) for bicycle use only and/or for the common use of bicyclists and other visitors as appropriate, given local conditions. However, this discretionary authority to designate bicycle routes without a formal rulemaking may be exercised only for routes located in developed areas or special use zones of park areas, which are land management and use categories established pursuant to an individual park area's Statement for Management and General Management Plan.

Developed areas include lands within development and historic zones; these areas are generally impacted to a certain degree by structures, facilities or other improvements which reflect the fact that the primary purpose or management objective for the use of these lands is other than the preservation of their natural resources. Special use zones include non-Federal lands within the exterior boundaries of a park area that are used for non-park purposes but over which the NPS exerts some degree of administrative control. Ranch, forest, industrial, or agricultural lands and transportation or utility corridors are all examples of land uses that could occur within special use zones and where recreational activities such as bicycling could be compatible.

However, the NPS feels that the designation of a bicycle route outside of such developed areas, in areas whose primary purpose and land uses are related more to the preservation of natural resources and values, would have a much greater potential to result in adverse resource impacts or visitor use conflicts. This section therefore provides for a much more stringent decisionmaking process for such a proposal by requiring that a bicycle route designated outside of developed areas or special use zones be accomplished through a formal rulemaking. Such a process will provide for a thorough review of all environmental and visitor use considerations and assure a full opportunity for public participation in and review of a decision concerning any such proposed designation.

Although this section's provision prohibiting the possession of a bicycle in a designated wilderness area is a new element in Part 4, it reflects a statutory prohibition on forms of mechanical transport in wilderness areas that is contained in the Wilderness Act of 1964 (16 U.S.C. 1133(c)) and which has been in effect since that law was passed. This rulemaking establishes a regulatory provision (and an accompanying penalty) that is consistent with regulations promulgated by the United

States Forest Service and the Bureau of Land Management, Federal land management agencies which administer extensive areas of public lands designated as wilderness.

Section 4.31 Hitchhiking. This section is a revision of the existing § 4.22 which prohibits hitchhiking altogether. This revision reflects the fact that a superintendent may decide that, under certain circumstances and in certain locations, hitchhiking is an appropriate method for pedestrians to circulate within park areas. This section provides the option of allowing hitchhiking through designations and conditions established by the superintendent in the interest of public safety, pursuant to the discretionary authority of § 1.5, eliminating the only two former options of promulgating a special regulation or not enforcing the existing prohibition.

Part 7

The NPS anticipates that this rulemaking, when issued in final form, will result in and incorporate the deletion of a number of special regulations (park-specific) in 36 CFR Part 7 that pertain to motor vehicles and traffic safety. These regulations will have been rendered unnecessary by the terms of this rulemaking either through duplication or by the fact that the restrictions can be imposed through use of the superintendent's discretionary authority. A preliminary estimate indicates that as many as 25 regulations may be affected, but the actual number cannot be determined until the provisions of the final rule are known. The subjects addressed by the regulations to be deleted are expected to include load, weight and size limitations, limitations on vehicle types, speed limits and hitchhiking, but other unnecessary provisions may also be identified.

Organizational Summary

The NPS has prepared the following organizational summary to assist in the location and analysis of the proposed revisions to 36 CFR Part 4.

Old Section	New Section
4.1 State Law applicable	4.1
4.3 Bicycles	4.30
4.4 Commercial towing service	4.3
4.5 Driver's license	Deleted in favor of State law.
4.6 Driving under the influence	4.23
4.7 Entrances and exits	Deleted.
4.8 Excessive acceleration	4.22
4.9 False report	Deleted in favor of 36 CFR 2.32.
4.10 Following vehicles	Deleted in favor of State law.
4.11 Load, weight, length and width limitations	4.11
4.12 Mufflers	Deleted in favor of State law.
4.13 Obstructing traffic	4.13
4.14 Reckless or careless driving	4.22 and State law.
4.15 Report of vehicle accident	4.3
4.16 Right-of-way	4.20
4.17 Speed limits	4.21
4.18 Traffic control and signs	4.12
4.19 Travel on roads and designated routes	4.10
4.20 Vehicle registration	Deleted in favor of State law.
4.21 Brakes	Deleted in favor of State law.
4.22 Hitchhiking	4.31
New Regulations	
4.2	Authorized emergency vehicles.
4.14	Open container (deleted from 36 CFR 2.35 and revised).
4.15	Safety belts.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. To aid the NPS in the review and analysis of public comments, commenters should address each regulation separately, preferably in a separate paragraph. Draft or revised regulatory language is specifically solicited in instances where the proposed regulation is judged to be inadequate, or for issues on which the proposed rule is silent.

Drafting Information

The workgroup that developed this rulemaking is composed of Paul Anderson (Delaware Water Gap National Recreation Area—Yosemite National Park), Pat Buccello (Sequoia National Park), Jim Fox (Blue Ridge Parkway), Bob Mihan (Yellowstone National Park), Pete Nigh (Grand Canyon National Park), Bob Reid (U.S. Park Police), Andy Ringgold (Branch of Ranger Activities), Steve Shackelton (Hawaii Volcanoes National Park) and John Sharp (Office of the Solicitor). Numerous other NPS employees also contributed to its development and review.

Paperwork Reduction Act

The information collection requirements contained in § 4.11 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These findings are based on the fact that the overall economic effects of this rulemaking are negligible; they impose no additional costs on any group or class of individuals.

The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects

36 CFR Part 1

National parks, Penalties.

36 CFR Part 2

National parks, Signs and symbols.

36 CFR Part 4

National parks, Traffic regulations.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 16 U.S.C. 1, 3, 9a, 460*l*–6a(e), 462(k).

2. By adding a new paragraph (f) to § 1.2 to read as follows:

§ 1.2 Applicability and scope.

* * * * *

(f) The regulations in this chapter are intended to treat a disabled or physically handicapped person using a standard non-motorized or motorized wheelchair as a pedestrian, and are not intended to restrict the activities of such a person beyond the degree that the activities of a pedestrian are restricted by the same regulations.

§ 1.4 [Amended]

3. By amending the list of definitions in § 1.4 as follows:

a. By revising the definition of "Authorized emergency vehicle" to read as follows:

"Authorized emergency vehicle" means a vehicle in official use for emergency purposes by a Federal agency or an emergency vehicle as defined by State law.

b. By adding the following definitions and inserting them in alphabetical order: "State law" means the applicable and nonconflicting laws, statutes, regulations, ordinances, infractions and codes of the State(s) and political subdivision(s) within whose exterior boundaries a park area or a portion thereof is located.

"Traffic control device" means a sign, signal, marking or other device placed or erected by, or with the concurrence of, the Superintendent for the purpose of regulating, warning, guiding or otherwise controlling traffic or regulating the parking of vehicles.

4. By revising § 1.8 to read as follows:

§ 1.8 Information collection.

The information collection requirements contained in §§ 1.5, 2.4, 2.5, 2.10, 2.12, 2.17, 2.33, 2.38, 2.50, 2.51, 2.52, 2.60, 2.61, 2.62, 3.3, 3.4, and 4.11 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. This information is being collected to provide superintendents data necessary to issue permits for special uses of park areas and to obtain notification of accidents that occur within park areas. This information will be used to grant administrative benefits and to facilitate prompt emergency response to accidents. In §§ 2.33, and 3.4, the obligation to respond is mandatory; in all other sections the obligation to respond is required in order to obtain a benefit.

PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

5. The authority citation for Part 2 is revised to read as follows: **Authority:** 16 U.S.C. 1, 3, 9a, 462(k).

6. In § 2.18 paragraphs (a) and (d)(4) are revised to read as follows:

§ 2.18 Snowmobiles.

(a) Notwithstanding the definition of vehicle set forth in § 1.4 of this chapter, the provisions of §§ 4.3, 4.12, 4.13, 4.14, 4.20, 4.22 and 4.23 of this chapter apply to the operation of a snowmobile.

* * * * *

(d) The following are prohibited: * * *

(4) Racing, or operating a snowmobile in excess of 45 mph, unless otherwise designated or restricted in accordance with § 4.22 of this chapter.

* * * * *

7. By revising paragraph (a) of § 2.33 to read as follows:

§ 2.33 Report of injury of damage.

(a) In addition to complying with the applicable requirements of §§ 3.4 and 4.3 of this chapter, a person involved in an incident resulting in personal injury, or property damage exceeding $100, shall report the incident to the superintendent as soon as possible. This notification does not satisfy State accident reporting requirements.

* * * * *

8. By amending § 2.35 as follows:

a. By removing paragraphs (a)(2)(iii) and (iv).

b. By revising paragraph (a)(3) to read as follows:

§ 2.35 Alcoholic beverages and controlled substances.

(a) * * *

(3) The superintendent may close all or a portion of public buildings, or structures, vessels, parking lots, picnic areas, swimming beaches, overlooks, walkways, gravesites, commemorative areas, historic areas, or archaeological sites within a park area to the consumption of alcholoic beverages when it is determined that:

(i) The consumption of an alcoholic beverage would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or

(ii) Incidents of aberrant behavior related to the consumption of alcoholic beverages are of such magnitude that the diligent application of the authorities in this section and §§ 1.5 and 2.34 of this chapter, over a reasonable time period, does not alleviate the problem. Failure to abide by such a closure is prohibited.

* * * * *

9. By revising Part 4 to read as follows:

PART 4—VEHICLES AND TRAFFIC SAFETY

Sec.

4.1 State law applicable.
4.2 Authorized emergency vehicles.
4.3 Report of accident.
4.10 Travel on park roads and designated routes.
4.11 Load, weight and size limits.
4.12 Traffic control devices.
4.13 Obstructing traffic.
4.14 Open container.
4.15 Safety belts.
4.20 Right of way.
4.21 Speed limits.
4.22 Unsafe operation.
4.23 Operating under the influence of alcohol or drugs.
4.30 Bicycles.
4.31 Hitchhiking.

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

§ 4.1 State law applicable.

(a) Unless specifically addressed by regulations in this chapter, traffic and the use of vehicles within a park area are governed by State law. State law that is now or may later be in effect is adopted and made a part of the regulations in this part.

(b) Violating a provision of State law is prohibited.

§ 4.2 Authorized emergency vehicles.

(a) The operator of an authorized emergency vehicle, when responding to an emergency or when pursuing or apprehending an actual or suspected violator of the law, may:

(1) Disregard traffic control devices;

(2) Exceed the speed limit; and

(3) Obstruct traffic.

(b) The provisions of paragraph (a) of this section do not relieve the operator from the duty to operate with due regard for the safety of persons and property.

§ 4.3 Report of accident.

(a) The operator of a motor vehicle involved in an accident resulting in property damage, personal injury or death shall report the accident to the superintendent as soon as practicable, but within 24 hours of the accident. This notification does not relieve the

operator of the responsibility to satisfy reporting requirements imposed by State law.

(b) A person shall not tow a vehicle that has been involved in an accident without first notifying the superintendent.

(c) Failure to comply with a reporting requirement specified in paragraph (a) or (b) of this section is prohibited.

§ 4.10 Travel on park roads and designated routes.

(a) Operating a motor vehicle is prohibited except on park roads, in parking areas and on routes designated for off-road motor vehicle use.

(b) Routes designated for off-road motor vehicle use shall be promulgated as special regulations. The designation of routes shall comply with § 1.5 of this chapter and E.O. 11644 (37 FR 2887). Routes may be designated only in national recreation areas, national seashores, national lakeshores and national preserves.

(c) The following are prohibited:

(1) Operating a motor vehicle not equipped with pneumatic tires, except that a track-laying motor vehicle or a motor vehicle equipped with a similar traction device may be operated on a route designated for these vehicles by the superintendent.

(2) Operating a motor vehicle in a manner that causes unreasonable damage to the surface of a park road or route.

(3) Operating a motor vehicle on a route designated for off-road motor vehicle use, from ½ hour after sunset to ½ hour before sunrise, without activated headlights and taillights that meet the requirements of State law for operation on a State highway.

§ 4.11 Load, weight and size limits.

(a) Vehicle load, weight and size limits established by State law apply to a vehicle operated on a park road. However, the superintendent may designate more restrictive limits when appropriate for traffic safety or protection of the road surface. The superintendent may require a permit and establish conditions for the operation of a vehicle exceeding designated limits.

(b) The following are prohibited:

(1) Operating a vehicle that exceeds a load, weight or size limit designated by the superintendent.

(2) Failing to obtain a permit when required.

(3) Violating a term or condition of a permit.

(4) Operating a motor vehicle with an auxiliary detachable side mirror that extends more than 10 inches beyond the side fender line except when the motor vehicle is towing a second vehicle.

(c) Violating a term or condition of a permit may also result in the suspension or revocation of the permit by the superintendent.

§ 4.12 Traffic control devices.

Failure to comply with the directions of a traffic control device is prohibited unless otherwise directed by the superintendent.

§ 4.13 Obstructing traffic.

The following are prohibited:

(a) Stopping or parking a vehicle upon a park road, except as authorized by the superintendent, or in the event of an accident or other condition beyond the control of the operator.

(b) Operating a vehicle so slowly as to interfere with the normal flow of traffic.

§ 4.14 Open container.

Carrying or storing a bottle, can or other receptacle containing an alcoholic beverage that has been opened, or a seal broken or the contents of which have been partially removed, within a motor vehicle upon a park road, parking area or designated off-road vehicle route is prohibited. This restriction does not apply to a container stored in the trunk of a motor vehicle or, if a motor vehicle is not equipped with a trunk, to a container stored in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by the operator or passengers. A utility compartment or glove compartment is deemed to be within the area normally occupied by the operator and passengers. This section does not apply to the living quarters of a motor home or camper.

§ 4.15 Safety belts.

(a) The following are prohibited:

(1) Operating a motor vehicle in motion unless restrained by a properly fastened safety belt.

(2) Operating a motor vehicle in motion unless all passengers are restrained by a properly fastened safety belt, except that children, as defined by State law, shall be restrained as provided by State law.

(b) This section does not apply to an operator or a passenger with a medical condition that prevents restraint by a safety belt.

(b) This section does not apply to an operator or a passenger with a motor vehicle occupying a seat not originally equipped by the manufacturer with a safety belt.

§ 4.20 Right of way.

An operator of a motor vehicle shall yield the right of way to pedestrians, saddle and pack animals and horse-drawn vehicles. Failure to yield the right of way is prohibited.

§ 4.21 Speed limits.

(a) Park area speed limits are as follows:

(1) 15 miles per hour: Within all school zones, campgrounds, picnic areas, parking areas, utility areas, business or residential areas, other places of public assemblage and at emergency scenes.

(2) 25 miles per hour: Upon sections of park road under repair or construction.

(3) 45 miles per hour: Upon all other park roads.

(b) The superintendent may designate a different speed limit upon any park road when a speed limit set forth in paragraph (a) of this section is determined to be unreasonable or unsafe. Speed limits shall be posted by using standard traffic control devices.

(c) Operating a vehicle at a speed in excess of the speed limit is prohibited.

(d) An authorized person may utilize radiomicrowaves or other electrical devices to determine the speed of a vehicle on a park road. Signs indicating that vehicle speed is determined by the use of radiomicrowaves or other electrical devices are not required.

§ 4.22 Unsafe operation.

(a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by State law and violations are prosecuted pursuant to the provisions of § 4.1 of this chapter.

(b) The following are prohibited:

(1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.

(2) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid or break free of the road surface.

(3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, property or wildlife.

(4) Operating a motor vehicle while allowing a person to ride:

(i) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle; or

(ii) On any exterior portion of the motor vehicle not designed or intended for the use of a passenger. This restriction does not apply to a person seated on the floor of a truck bed equipped with sides.

§ 4.23 Operating under the influence of alcohol or drugs.

(a) Operating or being in actual physical control of a motor vehicle is prohibited while:

(1) Under the influence of alcohol, or a drug, or drugs, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath.

(b) The fact that a person charged with a violation of paragraph (a) of this section is or has been legally entitled to use alcohol or another drug does not constitute a defense.

(c) *Tests.* (1) At the request or direction of an authorized person who has probable cause to believe that an operator of a motor vehicle within a park area has violated a provision of paragraph (a) of this section, the operator shall submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content. Refusal to submit to a test is prohibited and proof of refusal is admissable in any related judicial proceeding.

(2) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(3) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(d) *Presumptive levels.* (1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If there is less than 0.10 percent by weight of alcohol in the operator's blood at the time of testing, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

§ 4.30 Bicycles.

(a) The use of a bicycle is prohibited except on park roads, in parking areas and on routes designated for bicycle use; *provided, however,* the superintendent may close any park road or parking area to bicycle use pursuant to the criteria and procedures of §§ 1.5 and 1.7 of this chapter. Routes may only be designated for bicycle use based on a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources.

(b) Except for routes designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations.

(c) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except § 4.10.

(d) The following are prohibited:

(1) Possessing a bicycle in a wilderness area established by Federal statute.

(2) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible form a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(3) Operating a bicycle abreast of another bicycle except where authorized by the superintendent.

§ 4.31 Hitchhiking.

Hitchhiking or soliciting transportation is prohibited except in designated areas and under conditions established by the superintendent.

Dated: May 23, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-13522 Filed 6-13-86; 8:45 am]

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 215, 236 and 886

Definition of Income, Rents and Recertification of Family Income for the Rent Supplement and Section 236 Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 215, 236 and 886

[Docket No. R-86-1163; FR-1702]

Definition of Income, Rents and Recertification of Family Income for the Rent Supplement and Section 236 Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule responds to public comment on the interim rule published on July 23, 1984 (49 FR 29580). That interim rule implemented statutory changes affecting the definition of income for purposes of eligibility and rent determination, as well as the rent requirements and recertification of income, under the Rent Supplement (section 101) and section 236 programs.

The rent requirements in that interim rule had already been the subject of public comment based on a prior interim rule (47 FR 36814, August 24, 1982).

EFFECTIVE DATE: August 1, 1986.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, Washington, D.C. 20410, telephone (202) 426-3944. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Response to Public Comments

There were three public comments received on the interim rule, from the Massachusetts Housing Finance Agency, the Maine Housing Authority and the National Housing Law Project. The comments and HUD's responses to them are discussed below.

A. Restriction Against Admission of Over-Income Applicants

Sections 215.24 and 236.70(a) of the interim rule prohibit admission of tenants whose incomes are sufficient to pay the market rent if there are applicants who satisfy all other requirements who are unable to pay the unassisted rent. These sections require project owners to make good faith efforts to attract tenants who need assistance before renting to market rate tenants and to rent no more than ten percent of the units to tenants paying the market rent without prior HUD approval.

1. Extension to the Rental Assistance Program (RAP)

The National Housing Law project noted that although § 215.24 (applicable to Rent Supplement units) and § 236.70(a) (applicable to Section 236 units not under a Rental Assistance Program ("RAP") contract) contain a requirement that limits admission to income eligible tenants, § 236.715 (the comparable provision for RAP units) does not have a provision limiting admission to applicants eligible for RAP. We agree that the policy should be applied to RAP and are amending § 236.715 to clarify that RAP units are to be filled with RAP-eligible tenants under the same conditions as Rent Supplement units are to be filled with Rent Supplement-eligible tenants.

The restrictions on admission to projects covered by an interest reduction contract (Section 236), a Rental Assistance Payments contract, or a Rent Supplement contract, have been revised somewhat in this final rule, however. Sections 215.24 is being removed and its content combined into § 215.25, which deals with determination of eligibility. Sections 215.25(a), 236.70(a), and 236.715 of the final rule provide that an owner must observe an order in admitting applicants: First, those eligible for a tenant-based subsidy, such as Rent Supplement or Rental Assistance Payments; second, those eligible to pay a below market rent under a project-based subsidy, such as the Section 236 program; and third, those who can pay the market rent. Of course, the number of applicants in any category that may be admitted is dependent on the number of units authorized under the owner's contract and on the availability of sufficient funding. This order is being specified in the rule to ensure that owners understand the Department's intent, which may not have been clear from the way the admission restriction was worded in the interim rule.

Also included in these sections is the requirement that an owner obtain written HUD approval if a specified percentage of units authorized to receive a particular type of subsidy are occupied by tenants ineligible for that type of subsidy. This requirement appeared in the interim rule, as well, but in different language. A provision has been added to each of these sections to permit waiver of the order of admitting applicants and the written approval of admission requirements. This waiver authority is necessary so that the requirements can be waived in such circumstances as when temporary market problems occur or when an owner needs to make a transition for subsidized occupancy as the end of the subsidy contract nears and no extension is contemplated.

2. Applicability to State Agency Projects

The two State Agencies who submitted comments objected to the application of this policy to their section 236 and Rent Supplement projects that are not FHA-insured. They argued that the restriction against "over-income" market rent tenants in the section 236 program would hinder their ability to attain an economic mix, as required by State enabling legislation and by tenant selection plans. They contended that this mix is necessary for the economic and social health of their projects. With respect to the Rent Supplement program, the State Agencies claimed that HUD has inadequate funding available to fund at current rent levels all the units for which Rent Supplement assistance was committed. Therefore, they argue, they should not be required to admit income eligible tenants for whom subsidy is not available, since they will lose money on those tenants.

The State Agencies also claimed that, although the admissions restriction might already have been applied administratively to FHA-insured projects by the existing HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, the policy had not been applied to them, since that Handbook had not covered State Agency financed, non-insured projects. To apply the policy to them without prior opportunity to comment was inappropriate, they concluded.

On the other hand, the National Housing Law Project agreed with the Department that the income restriction for admission is needed to assure that housing units that receive indirect subsidy be used for the intended income group.

On the economic mix issue, we note that not all State Agency financed projects that participate in the section 236 program have all units covered by the program. In such projects, Part 236 (and Part 215 where units are authorized for Rent Supplement) is applicable only to the number of units covered under the applicable contract.

The requirements of Subpart A of Part 236 (including admission restrictions, income definition and rent calculations) are applicable to State Agency financed, FHA-insured projects. While the requirements of Subpart A do not explicityly apply to State Agency

financed, non-insured projects, section 236 of the National Housing Act does apply to all projects receiving interest reduction payments under that statute. Consequently, the requirements of Subpart A concerning income definition and rent calculations which are mandated by statute, are binding on State Agency financed, non-insured projects. In addition, all of Part 215 (concerning admission restrictions, income definition and rent calculations for the Rent Supplement program) is applicable to all State Agency projects participating in that program, and Subpart D of Part 236, which addresses the same issues for the Rental Assistance Payments program, is also applicable. Further, HUD has determined that, for the purpose of uniformity and of advancing the Department's mission to the greatest extend possible, the admission restrictions contained in Subpart A of Part 236 (§ 236.70(a)) are applicable to all State Agency financed projects. If a State Agency has executed a contract with HUD for interest reduction payments on behalf of 30 units, those 30 units should be made available to applicants who are income eligible for a below market rent. By agreeing to applicants who are income eligible for a below market rent. By agreeing to accept subsidy for these units, the State Agency has prevented the funding in comparison to the need for it warrants the requirement that tenants in the appropriate income group be served at the projects where the funding is available.

To the extent that legal obligations under contracts in existence before the effective date of the interim rule (October 1, 1984) for a particular State Agency financed, non-insured project contain provisions that would conflict with HUD policies or procedures that are not mandated by statute that result from the interim rule and this final rule. HUD will permit deviation from those provisions. However, when a State Agency or owner determines not to follow such policies and procedures because of conflicts with existing contracts, the State Agency must submit a certification to HUD containing a description of the policies or procedures used by the project owner under the contract, the nature of the conflict with HUD policies and procedures, and a statement that the owner's policies and procedures do not conflict with the applicable statute.

The funding issue raised by the State Agencies is a legitimate point, which is applicable to FHA-insured projects as well. Consequently, as described above, we are limiting the applicability of the income restriction to units for which there is sufficient funding available.

B. Utility Allowances

The National Housing Law Project supported HUD's changes to §§ 215.45(e), 236.55(d), 886.126 and 886.326, which now require owners to submit an analysis of utility allowances when requesting a rent increase or when a utility rate change causes a cumulative increase of ten percent or more However, the Law Project urged HUD to specify what factors should be taken into account in setting the utility allowances. It said that allowances should be based on average actual consumption levels for units of comparable size and construction instead of at a level based on "reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment," as provided in the definition of Utility Allowance in §§ 215.1 and 236.2.

HUD concludes that the goal of energy conservation must not be abandoned and that the definition contained in the interim rule is justified. However, we note that under Part 245 tenants have an opportunity for input in decisions affecting rental payments, including adjustment of utility allowances. A cross-reference to Part 245 is added in this rule to the paragraphs that deal with adjustments in Utility Allowances.

C. Utility Reimbursement—Rent Supplement Program

The National Housing Law Project advocated adding a provision to Part 215 to require payment of a utility reimbursement to a tenant who pays for utilities directly if the tenant's utility allowance exceeds its required rental payment, as is the case for RAP tenants under § 236.735(e).

Section 215.45(a) now states that "the payment on behalf of a qualified tenant shall be that amount by which the Gross Rent for the unit exceeds the Total Tenant Payment . . ." If HUD were to pay this amount to the owner of a project in which tenants pay their own utilities, and the owner did not pay a utility reimbursement to the tenant when the utility allowance exceeds the tenant's rental payment, the owner would receive more than the rent to which the owner is entitled. For example, if the Gross Rent were $800, the Utility Allowance were $200, and the Total Tenant Payment (a percentage of income) were $180, the tenant would pay the owner a $0 rent. However, the owner would receive $620 from HUD instead of the $600 to which the owner is entitled (Gross Rent less Utility Allowance). The extra $20 is an amount paid by HUD on behalf of the tenant, which should be passed along to the tenant as a reimbursement for the tenant's payment of utility expenses.

A paragraph similar to § 236.735(e), requiring payment of a utility reimbursement under these circumstances, is added in this rule to become § 215.45(e), and the current paragraphs (e) and (f) are redesignated paragraphs (f) and (g), respectively.

D. Termination of Assistance

Sections 215.55(c) and 236.80(c) discuss a few circumstances under which assistance is terminated: For example, when the tenant's portion of rent equals the rent due or when a tenant fails to submit requested income information. The National Housing Law Project stated that HUD should include in these sections requirements for the procedures to be followed by owners when they terminate assistance. The Law Project stated that owners must give tenants adequate notice of the reasons for termination of assistance and an opportunity to contest the determination before an impartial decision maker.

These paragraphs on termination of assistance in the Rent Supplement, section 236 and Rental Assistance Payments programs are located in sections dealing with income reexamination. The larger question of what procedural protections owners should give tenants beyond the ones required for termination of tenancy, under 24 CFR Part 247, was not addressed in the interim rule. We believe it inappropriate to develop a rule in response to that larger issue in this rule making, which largely makes final for the affected programs income definition and rent calculation provisions that have already been adopted as final for the Section 8 and Public and Indian Housing programs.

There is one minor change being made to these paragraphs. In the final sentence of §§ 215.55(c) and 236.80(c), an example is given of one reason for termination of assistance other than increased income: Failure of the tenant to submit requested verification information. Since 1981, the model lease form used in these programs has provided that assistance could be terminated for this reason and for deliberate submission of false eligibility information. However, rather than give examples of reasons for termination other than increased income, this language has been changed to reference

termination in accordance with "any requirements of the lease or with HUD requirements."

E. Definition of Substandard Housing

The National Housing Law Project recommended that the definition of substandard housing in Part 215 be revised to provide that overcrowding may create substandard housing. The definition of substandard housing was repeated in the interim rule without change from the rule in effect before. It appeared in the rule only because the entire definitions section was reorganized. The content of that definition is the subject of another rule making, implementing a statutory preference in admission to be given applicants for rent supplement assistance who are occuping substandard housing, involuntarily displaced or paying more than 50 percent of income for rent. (See the proposed rule published on September 26, 1984, 49 FR 37787.)

F. Definitions of Annual Income and Adjusted Income

Comments offered by the National Housing Law Project on this topic covered the treatment of lump sum payments for the delayed start of periodic payments, the age of children for whom child care deductions should be permitted, the treatment of non-income producing assets, and the calculation of income in States where welfare agencies pay families a shelter allowance based on actual housing cost, that is then reduced by an established percentage.

1. Lump-Sum Payments

The comment on treatment of lump-sum payments suggested that if a tenant were not a resident of the particular type of assisted housing covered by the rule during part of the period to which the lump-sum payment is attributable, the amount of the payment included in income should be reduced accordingly. We believe that under these circumstances the receipt of the payment might well have been anticipated and included in income at the first income examination. The commenter seeks to have an accrual rather than cash method of accounting applied to tenants of subsidized housing. We believe this is inappropriate. Additional guidance on treatment of lump sum income is furnished in HUD Handbook 4350.3 CHG–1 (paragraph 3–4).

2. Child Care Deduction

The age of children for whom child care expenses may be deducted under §§ 215.1 and 236.2 of the interim rule is "under 13 years of age." This is the age that has been used by HUD for many years in the Section 8 Housing Assistance Payments program and in the Public Housing program. The commenter suggested the age be changed to "up to 18 years of age" in order to encourage parents to arrange for the proper supervision of teenagers. Although HUD is sympathetic to the desire to encourage residents of assisted housing to arrange for their teenaged children to engage in supervised activities, we do not believe Congress intended this statutorily prescribed deduction from income to be extended to cover care for these other children. In a time of concern about minimizing Federal spending, HUD is reluctant to expand this deduction, and thereby increase the level of HUD subsidy for which the project owner would be eligible.

3. Assets

The comment about non-income producing assets was that only the assets in excess of $5,000 should be considered, instead of considering all assets, if the total exceeds $5,000. This treatment reflects longstanding Departmental policy, which we believe appropriately considers all the assets of families that have considerable assets. The comment also suggested that the value of realty that cannot be reasonably expected to produce income and that cannot be disposed of (e.g., because of title problems) should not be included. We have not revised the rule to address this narrowly drawn example but the Handbook does provide guidance in this vein (see paragraph 3–1a).

4. Welfare Rent Income Component

The comment related to welfare payments for housing was that HUD should count only the actual amount received by the family, even if the State welfare agency continually reduces that payment by a certain percentage after the owner establishes a rent based on the welfare level previously reported. Section 263.3(b)(6) includes in income the maximum the State agency could allow the family for expenses other than housing, plus the maximum for housing, reduced once, if the State applies a reduction factor. Similarly, § 236.735(b)(3) set the rent of a welfare tenant in the section 236 Rental Assistance Payments program who receives benefits based on actual housing cost, at the amount designated by the welfare agency, reflecting only one reduction if a reduction factor is applied, provided this amount is greater than two other alternatives. The commenter stated that these provisions result in a family paying for rent in a RAP unit more than the welfare agency pays the family for its housing cost, and more than 30 percent of its actual adjusted income. The Department has determined that only one reduction will be taken into account, because the income-based rent which is based on a rent-based welfare payment cycle would be perpetuated by recognition of all subsequent reductions, causing uncertainty and numerous redeterminations of lower rents and lower income. (See discussion of this issue of the rule defining income for the section 8 and Public Housing programs, 49 FR 19925, 19928.)

G. Definition of Income—221(d)(3) BMIR Program

The National Housing Law Project recommended that the definitions of Annual Income and Adjusted Income contained in this rule be applied to projects assisted under section 221(d)(3) of the National Housing Act, 12 U.S.C. 17151, at below market interest rate (BMIR). It referred to HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs.

The recently revised version of that Handbook (March 1985) does apply the definition of Annual Income (with one minor difference) to applicants and tenants to determine whether they are eligible for the assisted rent. However, the definition of Adjusted Income is generally used to determine the amount of the rent where rent is based on a percentage of adjusted income, as in the RAP program. In the BMIR program, at the time of initial occupancy, the tenant pays a rent determined by a HUD-approved rent schedule, which is based on the size of the unit and the cost of operating the project. When the tenant's income is recertified later, the tenant either pays that rent or an increased market rent, depending on whether the new Annual Income exceeds the income limits. Since there is no rent based on Adjusted Income in this program, the definition of adjusted income has no application.

Other Changes

A. Transition Provisions

In the interim rule defining income for the Rent Supplement and section 236 programs, published on July 23, 1984, the stated effective date was October 1, 1984. Sections 215.56 and 236.81 described how the new definitions of income and the revised rent calculations

were to be used at the next reexaminations of income to calculate not only prospective rents, but also to determine the rent the family would have paid from October 1, 1984 to the reexamination effective date, if the revisions had been implemented on October 1. If the revisions would have benefited the family, the owner was to arrange for an appropriate rent rebate.

On June 12, 1985, the Department published a final rule delaying implementation of the new income definitions and rent calculations until reexamination effective August 1, 1985 (50 FR 24616). The rule delayed effectiveness because development of implementing forms and instructions took longer than expected, and bacause the Housing and Community Development Technical Amendments Act of 1984 required additional changes in the definitions and, therefore, changes in the forms and instructions. That rule revised and transition provisions, §§ 215.56 and 246.81, which described how income reexaminationa were to be handled in the next few months. This final rule repeats those sections as they appeared on June 12, 1985.

One of the changes made by section 102(b) of the 1984 technical amendments was the requirement that the definition of income for the programs administered under the United States Housing Act of 1937 ("1937 Act"), i.e., the section 8 and Public Housing programs, be developed in consultation with the Secretary of Agriculture. The definition of income for the Rent Supplement and section 236 programs has been developed as a package with the rules for the 1937 Act programs. The consultation required by the technical amendments was underway in October 1984 when the 1984 technical amendments Act was passed by Congress. The final rule implementing this consultation requirement for the 1937 Act programs was published on June 24, 1985 (50 FR 25949) and was anticipated in the forms and instructions distributed in April and May 1985. This rule includes changes in the definition of income for the Rent Supplement and section 236 programs similar to those made for the 1937 Act programs in the rule published on June 24, 1985.

A second change made by section 102(b) of the 1984 technical amendments, was the addition of a deduction from income for a family's handicapped assistance expenses to the calculation of adjusted income. That change was implemented for the 1937 Act programs and for the Rent Supplement and section 236 programs, by a final rule published on September 27, 1985 (50 FR 39092). This rule includes the changes made in Parts 215 and 236 in that rule.

Sections 215.55(a) and 236.80(a) contain a sentence concerning submission of documentation of citizenship or eligible alien status that was inserted to be consistent with a final rule on that subject that was published on April 1, 1986, to become effective on July 30, 1986.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2) (C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productively, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because administrative burdens will not increase substantially under the rule. Small project owners who administer some section 8 assistance will use essentially the same procedures for tenants receiving assistance under the Rent Supplement or Section 236 Program.

This rule was listed as item number 871 under the Office of Housing in the HUD Semiannual Regulatory Agenda published on April 21, 1986 (51 FR 14035, 14061) under Executive Order 12291 and the Regulatory Flexibility Act.

Information collection requirements contained in §§ 215(a)–(e), 215.55, 236.55(a)–(c) and 236.80 of this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h) and have been assigned OMB control number 2502–0204. Information collection requirements contained in §§ 215.25(a), 215.45(f), 236.55(d), 236.70(a), 236.715, 886.126, and 886.326 of this rule have been approved by the Office of Management and Budget and have been assigned OMB control numbers 2502–0352 and 2502–0354.

The Catalog of Domestic Assistance Numbers are 14.103 and 14.149.

List of Subjects

24 CFR Part 215

Grant programs: Housing and community development, Rent subsides.

24 CFR Part 236

Low and moderate income housing, Mortgage insurance, Rent subsidies.

24 CFR Part 886

Grant progams: Housing and community development, Rent subsidies.

Accordingly, 24 CFR Parts 215, 236, and 886 are amended as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for Part 215 continues to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S..C. 3535(d)).

2. Section 215.1 is revised to read as follows:

§ 215.1 Definitions.

Act. The Housing and Urban Development Act of 1965.

Adjusted Income. Annual Income less the following allowances, determined in accordance with HUD instructions:

(a) $480 for each Dependent,

(b) $400 for any Elderly Family.

(c) For any Family that is not an Elderly Family but has a Handicapped or Disabled member other than the head of household or spouse, Handicapped Assistance Expenses in excess of three percent of Annual Income, but this allowance may not exceed the employment income received by Family members who are 18 years of age or older as a result of the assistance to the Handicapped or Disabled Person;

(d) For any Elderly Family.

(1) That has no Handicapped Assistance Expenses, an allowance for Medical Expenses equal to the amount by which the Medical Expenses exceed three percent of Annual Income;

(2) That has Handicapped Assistance Expenses greater than or equal to three percent of Annual Income, an allowance for Handicapped Assistance Expenses computed in accordance with paragraph

(c) of this section, plus an allowance for Medical Expenses that is equal to the Family's Medical Expenses;

(3) That has Handicapped Assistance Expenses that are less than three percent of Annual Income, an allowance for combined Handicapped Assistance Expenses and Medical Expenses that is equal to the amount by which the sum of these expenses exceeds three percent of Annual Income; and

(e) Child Expenses.

Annual Income. See § 215.21.

Child Care Expenses. Amounts anticipated to be paid by the Family for the care of children under 13 years of age during the period for which Annual Income is computed, but only where such care is necessary to enable a Family member who is 18 years of age or older to be gainfully employed or to further his or her education. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of Annual Income received from such employment.

Commissioner. The Federal Housing Commissioner or his or her authorized representative.

Contract Rent. The total monthly amount of rent approved by HUD in the project rent schedule as payable by HUD and the tenant to the owner for an assisted unit, *i.e.*, the Rent Supplement Unit Rent.

Dependent. A member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or a Full-time Student.

Dilapidated Housing. A housing unit that does not provide a safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of the occupants. Such a housing unit shall have one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. Such defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

Disabled Person. A person under a disability, as defined in section 223 of the Social Security Act (42 U.S.C. 423) or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 2691(l)).

Displacee. A person who has been displaced from an urban renewal area, or as a result of governmental action or as a result of a disaster determined by the President to be a major disaster.

Elderly Family. A family whose head or spouse (or sole member) is an Elderly, Disabled or Handicapped Person. It may include two or more Elderly, Disabled or Handicapped Persons living together, or one or more of these Persons living with one or more Live-in Aides.

Elderly Person. A person who is at least 62 years of age.

Family. Two or more persons related by blood, marriage, or operation of law, who occupy the same dwelling unit.

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

Gross Rent. The total monthly cost of housing a Qualified Tenant, which is the sum of the Contract Rent and any Utility Allowance for the assisted unit.

Handicapped Assistance Expenses. Reasonable expenses that are anticipated, during the period for which Annual Income is computed, for attendant care and auxiliary apparatus for a Handicapped or Disabled Family member, and that are necessary to enable a Family member (including the Handicapped or Disabled member) to be employed, provided that the expenses are neither paid to a member of the Family nor reimbursed by an outside source.

Handicapped Person. A person having a physical or mental impairment that (a) is expected to be of long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

Live-in Aide. A person who resides with an Elderly, Disabled, or Handicapped Person or Persons and who (a) is determined to be essential to the care and well-being of the Person(s); (b) is not obligated for the support of the Person(s); and (c) would not be living in the unit except to provide the necessary supportive services. (See § 215.21(d) for treatment of a Live-in Aide's income.)

Medical Expenses. Those medical expenses, including medical insurance premiums, that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance.

Net Family Assets. Value of equity in real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land. The value of necessary items of personal property such as furniture and automobiles shall be excluded. (In cases where a trust fund has been established and the trust is not revocable by, or under the control of any member of the family, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining Annual Income.) In determining Net Family Assets, owners shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Qualified Tenant. See § 215.20.

Secretary. The Secretary of Housing and Urban Development or the Secretary's authorized representative.

Substandard Housing. A unit that is either Dilapidated Housing or does not have one of the following plumbing facilities:

(a) Hot and cold piped water inside the unit.

(b) Usable flush toilet inside the structure for the exclusive use of the occupants of the unit.

(c) Usable bathtub or shower inside the structure for the exclusive use of the occupants of the units.

Tenant Rent. The amount payable monthly by the Qualified Tenant as rent to the owner. Where all utilities (except telephone) and other essental housing services are supplied by the owner, Tenant Rent equals Total Tenant Payment. Where some of all utilities (except telephone) and other essential housing services are not supplied by the owner and the cost thereof is not included in the amount paid as rent, Tenant Rent equals Total Tenant Payment less the Utility Allowance.

Total Tenant Payment. The portion of the Gross Rent payable by a Qualified Tenant, determined in accordance with § 215.45.

Utility Allowance. If the cost of utilities (except telephone) and other essential housing services for an assisted unit is not included in the rent paid to the housing owner but is the responsibility of the tenant occupying the unit, an amount equal to the estimate approved by HUD of the

monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.

Utility Reimbursement. The amount, if any, by which the Utility Allowance exceeds the Family's Total Tenant Payment.

Welfare Assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

§ 215.10 [Amended]

3. Section 215.10 is adopted as final as it was amended in the interim rule published on July 23, 1984, at 49 FR 29580, 29586.

§ 215.20 [Amended]

4. Section 215.20 is amended by adding a new paragraph (b)(3), to read as follows:

§ 215.20 Qualified tenant.

* * * * *

(b) * * *

(3) No rent supplement shall be offered where the amount of the assistance at admission would be less than 10 percent of the approved rent. The rent supplement payment shall not, regardless of the tenant's income, exceed 70 percent of the approved rent for the unit.

* * * * *

5. Section 215.21 is revised to read as follows:

§ 215.21 Annual income.

(a) Annual Income is the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of income that is temporary, non-recurring or sporadic as defined in paragraph (c) of this section, and exclusive of certain other types of income specified in paragraph (d) of this section.

(b) Annual Income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family. Where the Family has Net Family Assets in excess of $5,000, Annual Income shall include the greater of the actual income derived from all Net Family Assets or a percentage of the value of such Assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

(6) *Welfare Assistance.* If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance agency in accordance with the actual cost of shelter and utilities, the amount of Welfare Assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus

(ii) The maximum amount that the Welfare Assistance agency could in fact allow the Family for shelter and utilities. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

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

(8) All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the Family, spouse, or other family member whose dependents are residing in the unit (but see paragraph (c)(5) of this section); and

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

(c) Annual Income does not include such temporary, non-recurring or sporadic income as the following:

(1) Casual, sporadic or irregular gifts;

(2) Amounts that are specifically for or in reimbursement of the cost of Medical Expenses;

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans, not used for the above purposes that are available for subsistence are to be included in income; and

(5) The hazardous duty pay to a Family member serving in the Armed Forces away from home and exposed to hostile fire.

(d) Annual Income does not include:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Income of a Live-in Aide, as defined in § 215.1; and

(4) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of other assistance programs that includes assistance under the Housing and Urban Development Act of 1965. The following types of income are subject to such exclusion:

(i) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621–4638);

(ii) The value of the allotment provided to an eligible household for

coupons under the Food Stamp Act of 1977 (7 U.S.C. 2011–2029);

(iii) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5044(g), 5058);

(iv) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));

(v) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(vi) Payments or allowances made under the Department of Health and Human Services' Low-Income Energy Assistance Program (42 U.S.C. 8621–8629);

(vii) Payments received under the Job Training Partnership Act (29 U.S.C. 1552(b));

(viii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94–540, 90 Stat. 2503–2504); and

(ix) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407–1408) or from funds held in trust for an Indian tribe by the Secretary of the Inteior (25 U.S.C. 117).

(e) If it is not feasible to anticipate a level of income over a 12-month period, the income for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

§ 215.24 [Removed]

6. Section 215.24 is removed.

7. In § 215.25, paragraph (a) is revised and an OMB control number is added to the end of the section to read as follows:

§ 215.25 Determination of eligibility.

(a)(1) In the processing of applications for admission and in the processing of applications for assistance from tenants, the housing owner will determine eligibility following procedures prescribed by the Commissioner.

(2) The owner must use good faith efforts to admit tenants according to the following list, provided that the number of units authorized for a particular category would not be exceeded and provided that there is sufficient funding for the category:

(i) First: Applicants eligible for Rent Supplement;

(ii) Second: Applicants eligible to pay a below market rent under a project-based subsidy, if applicable (e.g., section 236 or section 221(d)(3) BMIR);

(iii) Third: Applicants who can pay the Market Rent.

(3) Before admitting an applicant who can pay the Market Rent, the owner must obtain written approval from HUD if at least 10 percent of the number of units authorized under a project-based subsidy program are already occupied by tenants paying Market Rent.

(4) Before admitting an applicant who will not receive the benefit of Rent Supplement assistance, the owner must obtain written approval from HUD if fewer than 90 percent of the number of units authorized under the Rent Supplement contract are already occupied by tenants receiving such assistance.

(5) Upon written request of the owner, the Commissioner may issue a written waiver of the requirements of paragraphs (a)(2) through (a)(4) of this section based on a finding of sufficient justification. Each such waiver shall be supported by a statement of the pertinent facts and grounds.

* * * * *

(Information collection requirements contained in paragraph (a) are approved by the Office of Management and Budget under control numbers 2502–0352 and 2502–0354)

8. Section 215.45 is revised to read as follows:

§ 215.45 Maximum payment under contract for each tenant.

(a) *Amount of assistance.* The rent supplement contract shall provide that the payment on behalf of a qualified tenant shall be that amount by which the Gross Rent for the unit exceeds the Total Tenant Payment, determined in accordance with paragraphs (b) or (c) and (d) of this section.

(b) *Total tenant payment for qualified tenants whose initial lease is effective on or after May 1, 1983.* The Total Tenant Payment rounded to the nearest dollar, shall be the greater of:

(1) 30 percent of one-twelfth of the tenant's Adjusted Income; or

(2) 30 percent of the Gross Rent for the unit.

(c) *Total tenant payment for qualified tenants whose initial lease was effective before May 1, 1983.* The Total Tenant Payment shall be calculated in accordance with paragraph (b) of this section, except that the percentage of income utilized in paragraph (b)(1) of this section, shall be in accord with the following table:

Effective date of recertification:	Percentage
May 1, 1983 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	28
Oct. 1, 1984 to Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(d) *Special Conditions.* (1) For purposes of this section, a family is considered to be a Qualified Tenant whose initial lease was effective before May 1, 1983 only if the family resided on April 30, 1983 in a unit under lease with assistance under the Rent Supplement Program or the Rental Assistance Program, and its assistance under those programs has been continuous thereafter; or the family resided on July 31, 1982 in a unit with the benefit of Section 8 Housing Assistance Payments, and its participation in the Section 8, Rent Supplement or the Rental Assistance Payments has been continuous thereafter. A Qualified Tenant or family shall not be disqualified if, after that date, it moved from one unit to another unit within the same project.

(2) So long as a Qualified Tenant whose initial lease was effective before May 1, 1983 continues to receive assistance in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of: (i) Application of the percentages in paragraph (c) of this section; (ii) application of the changes in the definitions contained in §§ 215.1 and 215.21 from definitions of comparable terms in regulations in effect immediately before October 1, 1984 and (iii) application of the new annual reexamination requirement in § 215.55 for assisted tenants at least 62 years of age.

(3) So long as a Qualified Tenant whose initial lease was effective on or after May 1, 1983 but which was in occupancy on September 30, 1984, continues to receive assistance in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of (i) application of the changes in the definitions contained in §§ 215.1 and 215.21 from definitions of comparable terms in regulations in effect immediately before October 1, 1984; and (ii) application of the new annual reexamination requirement in § 215.55 for assisted tenants at least 62 years of age.

(4) For the purpose of paragraphs (d)(1) through (3) of this section, the "same project" includes units in buildings located on adjacent sites that are managed as one project.

(5) The limitations contained in paragraphs (d)(2) through (3) of this section do not apply to portions of increases in Total Tenant Payment that are attributable to increases in the Contract Rent or decreases in the Utility Allowance for the unit or to increases in income or changes in family composition or family circumstances that are unrelated to the factors set out

in paragraphs (d) (2) through (3) of this section.

(6) In order to facilitate administration of the limitations provided in paragraphs (d) (2) through (3) of this section, upon any regular or interim reexamination of a tenant who was in occupancy on September 30, 1984, the owner shall continue to collect and verify information that would have been taken into account in calculating Annual Income and Adjusted Income as defined in regulations in effect immediately before October 1, 1984, as if such regulations were in effect at the date of such reexamination.

(7) The limitations prescribed in paragraphs (d) (2) through (3) of this section shall be applied in accordance with procedures prescribed by HUD.

(e) *Utility reimbursement.* Where applicable, the Utility Reimbursement shall be paid to the Qualified Tenant. If the tenant and utility company consent, the owner may pay the Utility Reimbursement jointly to the Qualified Tenant and the utility company, or directly to the utility company.

(f) *Adjustment in Utility Allowances.* When the project owner requests HUD approval of a rent increase, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption must be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the Secretary and request approval of new Utility Allowances. (See 24 CFR Part 245 for the procedure for tenant comment in the rent increase process, which includes changes in the Utility Allowances.)

(g) *Application of terms.* In the case of a cooperative project, the term Contract Rent as used in this part shall mean the charges under the occupancy agreement of members of the cooperative.

(Approved by the Office of Management and Budget under control numbers 2502-0204, 2502-0352 and 2502-0354

9. Section 215.55 is revised to read as follows:

§ 215.55 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and family composition of all Qualified Tenants at least once every 12 months. At reexamination the owner must require the tenant to submit evidence of citizenship or eligible alien status in accordance with § 200.182. After consultation with the Qualified Tenant and upon verification of the information, the owner shall make appropriate adjustments in the Total Tenant Payment in accordance with §215.45 and determine whether the family's unit size is still appropriate. The owner must adjust Tenent Rent and the Rent Supplement payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD.

(b) *Interim reexaminations.* The Qualified Tenant must comply with provisions in its lease regarding interim reporting of changes in income or family composition. If the owner receives information concerning a change in the Qualified Tenant's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the Qualified Tenant and make adjustments determined to be appropriate. Any change in the Qualified Tenant's income or other circumstances that would result in an adjustment in the Total Tenant Payment, Tenant Rent and the Rent Supplement Payment must be verified.

(c) *Termination of assistance.* A Qualified Tenant's eligibility for Rent Supplement Payments continues until the Total Tenant Payment equals the Gross Rent. The rent charged at that point shall not exceed the market rent approved by the Secretary. The termination of eligibility at such point will not affect the Qualified Tenant's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the contract. However, assistance also may be terminated in accordance with any requirements of the lease or with HUD requirements.

(Approved by the Office of Management and Budget under cotrol number 2502-0204)

10. Section 215.56 is revised to read as follows:

§ 215.56 Transition provision.

(a) *Admissions and reexaminations effective on or after August 1, 1985.* All regular and interim reexaminations and examinations for admission that are to be effective on or after August 1, 1985, and determinations of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, shall be made in accordance with the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55.

(b) *Optional interim reexamination.* To expedite use of the new calculations, each owner shall have the right, at its discretion, to require any Qualified Tenant who paid an assisted rent on or after October 1, 1984, that was based on the rule in effect before October 1, 1984, to undergo an interim reexamination and determination of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, in accordance with the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55, before the next regularly scheduled reexamination for such Qualified Tenant.

(c) *Calculation of retroactive adjustment.* For all Qualified Tenants, other than those whose examination for admission was based on the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55, or who paid 30 percent of Gross Rent, the owner shall make an additional calculation, at the first reexamination using the revised rule, with respect to the period between October 1, 1984 and the effective date of such reexamination. An adjusted Total Tenant Payment shall be calculated for such period, in accordance with HUD adminstrative instructions, on the basis of:

(1) The Annual Income determined for such period in accordance with regulations and procedures in effect immediately before October 1, 1984;

(2) The Dependent and Elderly Family deductions prescribed in the definition of Adjusted Income in § 215.1;

(3) Medical Expenses and Handicapped Assistance Expenses as prescribed in the definition of Adjusted Income in § 215.1;

(4) Unusual Expenses taken into account in the calculation of Adjusted Income for such period in accordance with regulations and procedures in effect immediately before October 1, 1984, but only if such Unusual Expenses qualify as Child Care Expenses as defined in § 215.1; and

(5) The percentage applied to one-twelfth of the tenant's Adjusted Income in accordance with regulations and procedures in effect immediately before October 1, 1984, to determine the actual monthly rental charge during such period.

(d) *Actual adjustments.* (1) If the adjusted monthly Total Tenant Payment calculated under paragraph (c) of this section is higher than or equal to the actual monthly Total Tenant Payment for the applicable period, no adjustment shall be made. If the adjusted monthly Total Tenant Payment calculated under paragraph (c) of this section is lower than the actual monthly Total Tenant Payment for the applicable period, the amount of such difference shall be offset first against any amounts due from the tenant to the owner, and any remaining

balance is the amount due the tenant. This amount due the tenant may be paid to the tenant; or it may be applied as a credit to the Tenant Rent due immediately after the effective date of the reexamination; or, if the amount due to a tenant exceeds 25 percent of the Total Tenant Payment due from such tenant, it may be applied as a credit in not more than four installments, as provided in HUD administrative instructions.

(2) If a Qualified Tenant vacates a unit on or after October 1, 1984, and before the first reexamination based on the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55, the owner shall notify the Qualified Tenant of the possibility of a rent adjustment for the period commencing October 1, 1984, subject to the requirement of a request therefor (made not later than 60 days after the owner sends the notice) together with notification of a current address to which any refund can be sent. For any tenant making such a timely request, the owner shall make all calculations necessary to determine whether an adjustment is due to the tenant under this paragraph (d) and, if so, the amount of any such adjustment shall be offset first against any amount due from the tenant to the owner, and any balance shall be refunded to the tenant.

(e) *Increased subsidy needs.* If an owner notifies HUD that its subsidy needs exceed the amount available under its contract with HUD as a result of reduced rental income caused by implementation of the July 1984 revisions to §§ 215.1, 215.21, 215.45 and 215.55, HUD will follow regular procedures appropriate to the circumstances.

11. Section 215.70 is adopted as final as it was amended in the interim rule published on July 23, 1984 at 49 FR 29580, 29589, and corrected on January 30, 1985 at 50 FR 4209. The text of that section is republished as below.

§ 215.70 Form of lease.

(a) *Lease form.* Qualified tenants shall be required to execute a lease in a form approved by the Commissioner.

(b) *Prohibited lease provisions.* Lease clauses of the nature described below shall not be included in new leases and shall be deleted from existing leases either by amendment thereto or by execution of a new lease:

(1) *Confession of judgment.* Prior consent by the tenant: (i) To any lawsuit the landlord may bring against the tenant in connection with the lease and (ii) to a judgment in favor of the landlord.

(2) *Distraint for rent or other charges.* Agreement by the tenant that the landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs an obligation which the landlord has determined the tenant has failed to perform.

(3) *Exculpatory clauses.* Agreement by the tenant not to hold the landlord or the landlord's agents liable for any acts or omissions, whether intentional or negligent, on part of the landlord or the landlord's authorized representatives or agents.

(4) *Waiver of legal notice by tenant before an action for eviction or money judgment.* Agreement by the tenant that the landlord may institute suit without notice to the tenant that the suit has been filed.

(5) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or determination by a court of the rights and liabilities of the parties.

(6) *Waiver of jury trial.* Authorization to the landlord's lawyer to appear in court on behalf of the tenant and waive the right to a trial by jury.

(7) *Waiver or right to appeal judicial error in legal proceeding.* Authorization to the landlord's lawyer to waive the tenant's right: (i) To appeal for judicial error in any suit brought against the tenant by the landlord or the landlord's agents or (ii) to file suit to prevent the execution of a judgment.

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs if the landlord brings legal action against the tenant even if the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant, as a party to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.

§ 215.75 [Amended]

12. Section 215.75 is amended by removing the phrase "receiving a report from a tenant" and replacing it with the phrase "verifying a report".

§ 215.80 [Removed]

13. The removal of § 215.80 as published in the interim rule on July 23, 1984, at 49 FR 29580, 29589, is adopted as final.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

14. The authority citation for Part 236 continues to read as follows:

Authority: Secs. 211 and 236, National Housing Act (12 U.S.C. 1715b and 1715z-1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. Section 236.2 is revised to read as follows:

§ 236.2 Definitions.

Adjusted Income. Annual Income less the following allowances, determined in accordance with HUD instructions:

(a) $480 for each Dependent;

(b) $400 for any Elderly Family;

(c) For any Family that is not an Elderly Family but has a Handicapped or Disabled member other than the head of household or spouse, Handicapped Assistance Expenses in excess of three percent of Annual Income, but this allowance may not exceed the employment income received by Family members who are 18 years of age or older as result of the assistance to the Handicapped or Disabled Person;

(d) For any Elderly Family

(1) That has no Handicapped Assistance Expenses, an allowance for Medical Expenses equal to the amount by which the Medical Expenses exceed three percent of Annual Income;

(2) That has Handicapped Assistance Expenses greater than or equal to three percent of Annual Income, an allowance for Handicapped Assistance Expenses computed in accordance with paragraph (c) of this section, plus an allowance for Medical Expenses that is equal to the Family's Medical Expenses;

(3) That has Handicapped Assistance Expenses that are less than three percent of Annual Income, an allowance for combined Handicapped Assistance Expenses and Medical Expenses that is equal to the amount by which the sum of these expenses exceeds three percent of Annual Income; and

(e) Child Care Expenses.

Adjusted Monthly Income. One-twelfth of Adjusted Income.

Assisted Admission. Admission to a unit in the program at a rent that is less than the HUD-approved market rental.

Annual Income. See § 236.3.

Basic Rent. The HUD-approved monthy rent for a unit in a section 236 project determined on the basis of operating the project with payments of principal and interest at the rate of one percent per anum. It includes the cost of utility services if such charges are paid by the project owner.

Child Care Expenses. Amounts anticipated to be paid by the Family for the care of children under 13 years of age during the period for which Annual Income is computed, but only where such care is necessary to enable a Family member who is 18 years of age

or older to be gainfully employed or to further his or her education. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of Annual Income received from such employment.

Commissioner. The Federal Housing Commissioner or his or her authorized representative.

Dependent. A member of the Family household (excluding foster children) other than the Family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or is a Full-time Student.

Disabled Person. A person under a disability, as defined in section 223 of the Social Security Act (42 U.S.C. 423) or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 2691(*l*)).

Displacee. A person who has been displaced from an urban renewal area, or as a result of governmental action or as a result of a disaster determined by the President to be a major disaster.

Elderly Family. A Family whose head or spouse (or sole member) is an Elderly, Disabled or Handicapped Person. It may include two or more Elderly, Disabled or Handicapped Persons living together, or one or more of these Persons living with one or more Live-in Aides.

Elderly Person. A Person who is at least 62 years of age.

Family. Two or more persons related by blood, marriage, or operation of law, who occupy the same dwelling unit.

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

Gross Rent. The total monthly cost of housing a Qualified Tenant, which is the sum of the Basic Rent and any Utility Allowance for the assisted unit.

Handicapped Assistance Expenses. Reasonable expenses that are anticipated, during the period for which Annual Income is computed, for attendant care and auxiliary apparatus for a Handicapped or Disabled Family member, and that are necessary to enable a Family member (including the Handicapped or Disabled member) to be employed, provided that the expenses are neither paid to a member of the Family nor reimbursed by an outside source.

Handicapped Person. A person having a physical or mental impairment that (a) is expected to be of long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

Live-in Aide. A person who resides with an Elderly, Disabled, or Handicapped Person or Persons and who: (a) Is determined to be essential to the care and well-being of the Person(s); (b) is not obligated for the support of the Person(s); and (c) would not be living in the unit except to provide the necessary supportive services. (See § 236.3(d) for treatment of Live-in Aide's income.)

Market Rent. The HUD-approved monthly rent determined on the basis of operating the project with payments of principal, interest and mortgage insurance premium that the mortgagor is obligated to pay under the mortgage (disregarding HUD's interest reduction and rental assistance payments). It includes the cost of utility services if such charges are paid by the project owner.

Medical Expenses. Those medical expenses, including medical insurance premiums, that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance.

Net Family Assets. Value of equity in real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land. The value of necessary items of personal property such as furniture and automobiles shall be excluded. (In cases where a trust fund has been established and the trust is not revocable by or under the control of any member of the family, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund should be counted when determining Annual Income.) In determining Net Family Assets, owners shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the twp years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Qualified Tenant. (a) For purposes of Subpart A, an individual or Family whose Annual Income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustment for smaller and larger families, except that HUD may establish income limits higher or lower than 80 percent of the median for the area on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low family incomes, or other factors.

(b) The benefits of the interest reduction payments are available only to an individual or a Family renting a dwelling unit in a project owned by an eligible housing owner or occupying such a dwelling unit as a cooperative member.

(c) For restrictions on eligibility for financial assistance of persons other than citizens or eligible aliens, see Part 200, Subpart G.

Tenant Rent. The amount payable monthly by a Qualified Tenant as rent to the owner. Where all utilities (except telephone) and other essential housing services are supplied by the owner, Tenant Rent equals Total Tenant Payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the owner and the cost thereof is not included in the amount paid as rent, Tenant Rent equals Total Tenant Payment less the Utility Allowance for tenants receiving the benefit of Rental Assistance Payments, and Tenant Rent is the monthly amount calculated under § 236.55 for section 236 tenants not receiving the benefit of Rental Assistance Payments.

Total Tenant Payment. For the Rental Assistance Payments Program, the monthly amount calculated under § 236.735.

Utility Allowance. If the cost of utilities (except telephone) and other essential housing services for an assisted unit is not included in the rent paid to the housing owner but is the responsibility of the tenant occupying the unit, an amount equal to the estimate approved by HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.

Utility Reimbursement. The amount, if any, by which the Utility Allowance exceeds the Family's Total Tenant Payment. This term is applicable only to the Rental Assistance Program under Subpart D.

Welfare Assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

16. Section 236.3 is revised to read as follows:

§ 236.3 Annual Income.

(a) Annual Income is the anticipated total income received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family from all sources, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of income that is temporary, non-recurring or sporadic as defined in paragraph (c) of this section and exclusive of certain other types of income specified in paragraph (d) of this action.

(b) Annual Income includes but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family. Where the Family has Net Family Assets in excess of $5,000, Annual Income shall include the greater of the actual income derived from all Net Family Assets or a percentage of the value of such Assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

(6) *Welfare Assistance.* If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance agency in accordance with the actual cost of shelter and utilities, the amount of Welfare Assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus

(ii) The maximum amount that the Welfare Assistance agency could in fact allow the family for shelter and utilities. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

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

(8) All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the Family, spouse, or other Family member whose dependents are residing in the unit (but see paragraph (c)(5) of this section); and

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

(c) Annual Income does not include such temporary, nonrecurring or sporadic income as the following:

(1) Casual, sporadic or irregular gifts;

(2) Amounts that are specifically for or in reimbursement of the cost of Medical Expenses;

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans, not used for the above purposes that are available for subsistence are to be included in income; and

(5) The hazardous duty pay to a Family member serving in the Armed Forces away from home and exposed to hostile fire.

(d) Annual Income does not include:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Income of a Live-in Aide, as defined in § 236.2; and

(4) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of other assistance programs that includes assistance under the National Housing Act. The following types of income are subject to such exclusion:

(i) Relocation payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621–4638);

(ii) The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. 2011–2029);

(iii) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5044(g), 5058);

(iv) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));

(v) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(vi) Payments or allowances made under the Department of Health and Human Services' Low-Income Energy Assistance Program or the Office of Community Services' Crisis Intervention Program (42 U.S.C. 8621–8629);

(vii) Payments received under the Job Training Partnership Act (29 U.S.C. 1552(b));

(viii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94–540, 90 Stat. 2503–2504); and

(ix) The first $2,000 of per capita shares received from judgement funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407–1408) or from funds held in trust for an Indian tribe by the Secretary of the Interior (25 U.S.C. 117).

(e) If it is not feasible to anticipate a level of income over a 12-month period, the income for a shorter period may be

annualized, subject to a redetermination at the end of the shorter period.

17. Section 236.55 is amended by removing paragraph (b)(3), redesignating paragraph (b)(4) as paragraph (b)(3), and by revising paragraphs (c)(7) and (d) to read as follows:

§ 236.55 Rental charges.

* * * * *

(c) * * *

(7) The limitations prescribed in paragraphs (c)(2)–(3) of this section shall be applied in accordance with procedures prescribed by HUD.

(d) *Adjustments in Utility Allowances.* When the project owner requests HUD approval of a rent increase, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption must be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the Secretary and request approval of new Utility Allowances. (See 24 CFR Part 245 for the procedure for tenant comment in the rent increase process, which includes changes in the Utility Allowances.)

(Information collection requirements in paragraph (d) are approved by the Office of Management and Budget under control numbers 2502–0352 and 2502–0354.

* * * * *

18. Section 236.60 is adopted as final as it was revised in the interim rule published on July 23, 1984 at 49 FR 24616, 24619. The text of that section is republished below.

§ 236.60 Excess rental charges.

The mortgagor shall agree to pay monthly to the Secretary the total of all rental charges collected in excess of the Basic Rent in accordance with instructions prescribed by the Secretary.

19. In § 236.70, paragraph (a) is revised and an OMB control number is added to the end of the section to read as follows:

§ 236.70 Occupancy requirements.

(a)(1) In the processing of applications for admission, the housing owner will determine eligibility following procedures prescribed by the Commissioner.

(2) If the owner has units authorized to be assisted under a tenant-based subsidy program (e.g., Rent Supplement, Rental Assistance Payments, section 8 Loan Management Set-aside), the owner must use good faith efforts to fill units first with applicants eligible for that type of subsidy, provided that the number of units authorized for that subsidy would not be exceeded and provided that there is sufficient funding for the unit.

(3) In the selection of applicants when there is no tenant-based subsidy available or when good faith efforts to find eligible tenants have been unsuccessful, the owner must use good faith efforts to admit first applicants who are eligible to pay a below market rent, and then applicants who can pay the Market Rent.

(4) Before admitting an applicant who can pay Market Rent, the owner must obtain written approval from HUD if at least 10 percent of the number of units authorized under the interest reduction contract are already occupied by tenants paying Market Rent.

(5) Before admitting an applicant who would not receive the benefit of a tenant-based subsidy, the owner must obtain written approval from HUD if fewer than 90 percent of the number of units authorized under the tenant-based subsidy contracts are already occupied by tenants receiving such assistance.

(6) Upon written request of the owner, the Commissioner may issue a written waiver of the requirements of paragraphs (a)(2) through (a)(5) of this section based on a finding of sufficient justification. Each such waiver shall be supported by a statement of the pertinent facts and grounds.

(Information collection requirements in paragraph (a) are approved by the Office of Management and Budget under control numbers 2502–0352 and 2502–0354)

* * * * *

20. Section 236.80 is revised to read as follows:

§ 236.80 Reexamination of Income.

(a) *Regular reexaminations.* The owner must reexamine the income and family composition of all Qualified Tenants at least once every 12 months. At reexamination the owner must require the tenant to submit evidence of citizenship or eligible alien status in accordance with § 200.182. After consultation with the Qualified Tenant and upon verification of the information, the owner shall make appropriate adjustments in the Tenant Rent (or Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) in accordance with § 236.55 or § 236.735 and determine whether the Qualified Tenant's unit size is still appropriate. The owner must adjust Tenant Rent and the Rental Assistance Payment, if applicable, to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD.

(b) *Interim reexaminations.* The Qualified Tenant must comply with provisions in its lease regarding interim reporting of changes in income or family composition. If the owner receives information concerning a change in the Qualified Tenant's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the Qualified Tenant and make any adjustments determined to be appropriate. Any change in the Qualified Tenant's income or other circumstances that would result in an adjustment in the Rental Assistance Payment or Tenant Rent must be verified.

(c) *Termination of assistance.* A Qualified Tenant loses eligibility for assistance when the Tenant Rent (Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) equals the Basic Rent (Gross Rent for RAP tenants). The termination of eligibility at such point will not affect the Qualified Tenant's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the contract. However, assistance or eligibility to pay below Market Rent also may be terminated in accordance with any requirements of the lease or with HUD requirements.

(Approved by the Office of Management and Budget under control number 2502–0204)

21. Section 236.81 is revised to read as follows:

§ 236.81 Transition provision.

(a) *Admission and reexaminations effective on or after August 1, 1985.* All regular and interim reexaminations and examinations for admission that are to be effective on or after August 1, 1985, and determinations of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, shall be made in accordance with the revisions to §§ 236.2, 236.3, 236.55 (or § 236.735, if applicable) scheduled to become effective August 1, 1985.

(b) *Optional interim reexamination.* To expedite use of the new calculations, each owner shall have the right, at its discretion, to require any Qualified Tenant who paid an assisted rent on or after October 1, 1984, that was based on the rule in effect before October 1, 1984, to undergo an interim reexamination and determination of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, in accordance with the revisions to

§§ 236.3, 236.55, and 236.735 scheduled to become effective August 1, 1985, before the next regularly scheduled reexamination for such Qualified Tenant.

(c) *Calculation of retroactive adjustment.* For all Qualified Tenants, other than those whose examination for admission was based on the revisions to §§ 236.2, 236.3, 236.55 and 236.735 scheduled to become effective August 1, 1985, or who paid the Basic Rent, the owner shall make an additional calculation, at the first reexamination using the revised rule, with respect to the period between October 1, 1984 and the effective date of such reexamination. An adjusted Tenant Rent (or Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) shall be calculated for such period, in accordance with HUD administrative instructions, on the basis of:

(1) The Annual Income determined for such period in accordance with regulations and procedures in effect immediately before October 1, 1984.

(2) The Dependent and Elderly Family deductions prescribed in the definition of Adjusted Income in § 236.2;

(3) Medical Expenses and Handicapped Assistance Expenses as prescribed in the definition of Adjusted Income in § 236.2;

(4) Unusual Expenses taken into account in the calculation of Adjusted Income for such period in accordance with regulations and procedures in effect immediately before October 1, 1984, but only if such Unusual Expenses qualify as Child Care Expenses as defined in § 236.2; and

(5) The percentage applied to one-twelfth of the tenant's Adjusted income in accordance with regulations and procedures in effect immediately before October 1, 1984, to determine the actual monthly rental charge during such period.

(d) *Actual Adjustments.* (1) If the adjusted Tenant Rent (or Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) calculated under paragraph (c) of this section is higher than or equal to the actual monthly Tenant Rent (or Total Tenant Payment) for the applicable period, no adjustment shall be made. If the adjusted monthly Tenant Rent (or Total Tenant Payment) calculated under paragraph (c) of this section is lower than the actual monthly Tenant Rent (or Total Tenant Payment) for the applicable period, the amount of such difference shall be offset first against any amounts due from the tenant to the owner, and any remaining balance is the amount due the tenant. This amount due the tenant may be paid to the tenant; or it may be applied as a credit to the Total Tenant Payment or Tenant Rent, as appropriate, due immediately after the effective date of the reexamination; or, if the amount due to a tenant exceeds 25 percent of the Total Tenant Payment or Tenant Rent, as appropriate, due from such tenant, it may be applied as a credit in not more than four installments, as provided in HUD administrative instructions.

(2) If a Qualified Tenant vacates a unit on or after October 1, 1984, and before the first reexamination based on the revisions to §§ 236.2, 236.3, 236.55 and 236.735, the owner shall notify the Qualified Tenant of the possibility of a rent adjustment for the period commencing October 1, 1984, subject to the requirement of a request therefor (made not later than 60 days after the owner sends the notice) together with notification of a current address to which any refund can be sent. For any tenant making such a timely request, the owner shall make all calculations necessary to determine whether an adjustment is due to the tenant under this paragraph (d) and, if so, the amount of any such adjustment shall be offset first against any amounts due from the tenant to the owner, and any balance shall be refunded to the tenant.

(e) *Increased subsidy needs.* If an owner notifies HUD that its subsidy needs exceed the amount available under its contract with HUD as a result of reduced rental income caused by implementation of the revisions to §§ 236.2, 236.3, 236.55 and 236.735, HUD will follow regular procedures appropriate to the circumstances.

22. Section 236.710 is adopted as final as it was amended in the interim rule published on July 23, 1984 at 49 FR 29580, 29593. The text of that section is republished below.

§ 236.710 Qualified tenant.

The benefits of rental assistance payments are available only to an individual or a family renting a dwelling unit in a project that is subject to a contract under this Subpart or occupying such a dwelling unit as a cooperative member. To qualify for such benefits, the individual or family shall satisfy the definition of Qualified Tenant found in § 236.2 of Subpart A. In order to receive rental assistance under this Subpart, it must have been determined that the income of the individual or family is too low to permit the individual or family to pay the approved Gross Rent with 30 percent of such individual's or family's Adjusted Monthly Income, as defined in Subpart A. For restrictions on eligibility for financial assistance of persons other than citizens or eligible aliens, see Part 200, Subpart G.

22. Section 236.715 is revised to read as follows:

§ 236.715 Determination of eligibility.

(a) In the processing of applications for admission and in the processing of applications for assistance from tenants, the housing owner will determine eligibility following procedures prescribed by the Commissioner.

(b) The owner must use good faith efforts to admit tenants according to the following list, provided that the number of units authorized for a particular category would not be exceeded and provided that there is sufficient funding for the category:

(1) First: Applicants eligible for Rental Assistance Payments;

(2) Second: Applicants eligible to pay a below market rent under Section 236;

(3) Third: Applicants who can pay the Market Rent.

(c) Before admitting an applicant who can pay the Market Rent, the owner must obtain written approval from HUD if at least 10 percent of the number of units authorized under the section 236 program are already occupied by tenants paying Market Rent.

(d) Before admitting an applicant who will not receive the benefit of Rental Assistance Payments, the owner must obtain written approval from HUD if fewer than 90 percent of the number of units authorized under the Rental Assistance Payments contract are already occupied by tenants receiving such assistance.

(e) Upon written request of the owner, the Commissioner may issue a written waiver of the requirements of paragraphs (b) through (d) of this section based on a finding of sufficient justification. Each such waiver shall be supported by a statement of the pertinent facts and grounds.

(Approved by the Office of Management and Budget under control numbers 2502–0352 and 2502–0354)

23. Section 236.735 is adopted as final as it was revised in the interim rule published on July 23, 1984 at 49 FR 29580, 29593–94. The text of that section is republished below.

§ 236.735 Rental assistance payments and rental charges.

(a) *Amount of rental assistance payments.* The rental assistance contract shall provide that the payment on behalf of a Qualified Tenant shall not exceed the difference between the Gross Rent and the Total Tenant Payment.

(b) *Total tenant payment for qualified tenants who first receive rental*

assistance on or after May 1, 1983. Notwithstanding § 236.55(b), the Total Tenant Payment payable for these Qualified Tenants shall be the highest of the following amounts, rounded to the nearest dollar:

(1) 30 percent of Adjusted Monthly Income as defined in Subpart A;

(2) 10 percent of one-twelfth of Annual Income as defined in Subpart A;

(3) If the family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the monthly portion of such payments which is so designated. If the family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(3) shall be the amount resulting from one application of the percentage.

(c) *Total tenant payment for qualified tenants who were receiving rental assistance on April 30, 1983 and whose assistance has been continuous thereafter.* Notwithstanding § 236.55(b), the Total Tenant Payment for these Qualified Tenants shall be calculated in accordance with paragraph (b) of this section, except that instead of 30 percent, the percentage applied to Adjusted Monthly Income shall be as follows:

Effective date of recertification:	Percentage
May 1, 1983 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	28
Oct. 1, 1984 to Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(d) *Special conditions.* (1) For the purposes of this section, a Qualified Tenant whose initial lease was effective before May 1, 1983 includes the following: A Qualified Tenant that resided in a unit assisted under the Rental Assistance Programs or Rent Supplement Program on April 30, 1983, and whose assistance under those programs has been continuous thereafter; and a family that resided in a unit with the benefit of section 8 Housing Assistance Payments on July 31, 1982 and whose participation in the section 8, Rent Supplement or the Rental Assistance Payment Program has been continuous thereafter. A Qualified Tenant or family shall not be disqualified if, after that date, it moved from one unit to another unit in the same project. For these purposes, units in buildings located on adjacent sites and managed as one project will be considered part of the same project even if they have separate project numbers and separate mortgages.

(2) Notwithstanding paragraphs (b) and (c) of this section, the Total Tenant Payment payable by a Qualified Tenant who continues to receive assistance in the same project shall not be increased by more than 10 percent during any 12-month period as a result of application of the percentages in paragraph (c) of this section, and application of the revised definitions in §§ 236.2 and 236.3. However, this 10 percent limit does not apply to Families subject to paragraph (b)(3) of this section, provided that the welfare agency includes as the housing component of the Family's grant an amount equal to their entire rent payment, without reduction. The Total Tenant Payment may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributable to increases in income or changes in family composition or family circumstances that are unrelated to the factors set out in this paragraph (d)(2).

(e) *Utility reimbursement.* Where applicable, the Utility Reimbursement shall be paid to the Qualified Tenant. If the tenant and the utility company consent, the owner may pay the Utility Reimbursement jointly to the Qualified Tenant and the utility company, or directly to the utility company.

24. Section 236.750 is adopted as final as it was amended in the interim rule published on July 23, 1984 at 49 FR 29580, 29589, and corrected on January 30, 1985 at 50 FR 4209. The text of that section is republished below.

§ 236.750 Form of lease.

(a) *Lease form.* Eligible tenants shall be required to execute a lease in a form approved by the Commissioner.

(b) *Prohibited lease provisions.* Lease clauses of the nature described below shall not be included in new leases or occupancy agreements covered by paragraphs (a) and (b) of this section and shall be deleted from existing leases and agreements either by amendment thereto or by execution of a new lease or agreement.

(1) *Confession of judgment.* Prior consent by the tenant: (i) To any lawsuit the landlord may bring against the tenant in connection with the lease and (ii) to a judgment in favor of the landlord.

(2) *Distraint for rent or other charges.* Agreement by the tenant that the landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs an obligation which the landlord has determined that tenant has failed to perform.

(3) *Exculpatory clauses.* Agreement by the tenant not to hold the landlord or the landlord's agents liable for any acts or omissions, whether intentional or negligent, on the part of the landlord or the landlord's authorized representatives or agents.

(4) *Waiver of legal notice by tenant before actions for eviction or money judgment.* Agreement by the tenant that the landlord may institute suit without notice to the tenant that the suit has been filed.

(5) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or determination by a court of the rights and liabilities of the parties.

(6) *Waiver of jury trial.* Authorization to the landlord's lawyer to appear in court on behalf of the tenant and waive the right to a trial by jury.

(7) *Waiver of right to appeal judicial error in legal proceeding.* Authorization to the landlord's lawyer to waive the tenant's right: (i) To appeal for judicial error in any suit brought against the tenant by the landlord or the landlord's agents or (ii) to file suit to prevent the execution of a judgment.

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs if the landlord brings legal action against the tenant even if the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant, as a party to lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM—SPECIAL ALLOCATIONS

25. The authority citation for Part 886 continues to read as follows:

Authority: Secs. 3, 5, and 8 United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

26. Section 886.126 is revised to read as follows:

§ 886.126 Adjustment of utility allowances.

When the owner requests HUD approval of adjustment in Contract Rents under § 886.112, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility

consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the owner must advise the Secretary and request approval of new Utility Allowances.

(Approved by the Office of Management and Budget under control numbers 2502–0352 and 2502–0354)

27. Section 886.326 is revised to read as follows:

§ 886.326 Adjustment of utility allowances.

When the owner requests HUD approval of an adjustment in Contract Rents under § 886.312, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the owner must advise the Secretary and request approval of new Utility Allowances.

(Approved by the Office of Management and Budget under control numbers 2502–0352 and 2502–0354)

Dated: June 9, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86–13532 Filed 6–13–86; 8:45 am]

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June 16, 1986

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 203 et al.

Single Family Mortgage Insurance on Indian Reservations and Other Restricted Lands; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200, 203, 204, 220, 221, 222, 226, 227, 237, and 240

[Docket No. R86-1208; FR-1921]

Single Family Mortgage Insurance on Indian Reservations and Other Restricted Lands

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements, in part, section 248 of the National Housing Act, which permits mortgage insurance on one- to four-family residences located on Indian trust or otherwise restricted land. The rule is limited to the insurance of mortgage on leaseholds where individual Indians are mortgagors. (The insurance of mortgages where the Indian tribe is the mortgagor will be covered in a separate rule making.)

EFFECTIVE DATE: August 1, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Acting Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street SW., Washington, DC 20410 Telephone: (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 422 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, approved November 30, 1983 (1983 Act) added a new section 248 to the National Housing Act (NHA) which authorizes the Secretary to insure mortgages covering single family properties located on Indian lands where either the Indian tribe or an individual member of an Indian tribe is the mortgagor. Because of the inexperience of most mortgagees in dealing with tribal governments, and their disinclination to finance housing having marketability restrictions, mortgagees have not lent money where alienation of the property is restricted and where mortgage insurance cannot be obtained. The enactment of section 248 has removed the nonmarketability of title as an impediment to mortgage insurance and has given the Secretary authority to waive any other limitation in the National Housing Act that the Secretary determines is contrary to promoting the availability of mortgage insurance on Indian reservations and trust lands.

On October 19, 1984, HUD published a proposed rule to implement that part of section 248 treating the insurance of mortgages where an individual member of an Indian tribe is the mortgagor (49 FR 41212). Section 203.43g of the proposed rule (here redesignated as § 203.43h) contains the requirements for single family mortgage insurance on leased Indian land. The purpose of this new section is to permit tribes to restrict the conveyance of leasehold interests to those specifically approved by the tribe, without denying the benefits of mortgage insurance.

As a result of public comment and HUD's own review of the proposed rule, this final rule contains several modifications to the proposed rule, more fully discussed below.

Discussion of Comments

HUD received four comments: One from a law firm representing seven Indian Housing Authorities, two from attorneys representing Indian tribes, and one from an Indian. The principal comments are summarized below, together with HUD's response to them.

A. Pledge of Assets (§§ 203.43g(c)(1) and 235.32(c)(1) in the Proposed Rule)

Two commenters strongly opposed the requirement that Indian mortgagors under this program pledge income from tribal assets. One commentor stated that the Secretary's authority to impose the requirement is elective, and that requiring such a pledge is punitive, excessive and unnecessary, since the mortgagee and HUD should look to the lease for security. The commenter stated that higher risks often exist in other programs where there is no similar requirement to pledge income. The commenter believes Indians may boycott the program because of this provision. The other commenter stated that he was not aware of non-Indians being required to pledge their wages, and the tribe he represents finds it offensive that Indian mortgagors are assumed to be bad credit risks. He went on to state that the tribe has a good experience record for families on their reservation paying their just mortgage obligations, and that many tribal members voluntarily agree to payroll deductions through the central tribal office to meet these mortgage obligations. This commenter believes the pledge of income does not provide for due process and constitutes a prejudgment assignment of wages, is prohibited by State statutes, Federal regulations pertaining to Indian traders, and the Indian Civil Rights Act. (This tribe is apparently located in Arizona, where deficiency judgments are barred, according to this commenter, on residences of 2.5 acres or less.)

While HUD does not agree with the rationale behind the commenters' suggestion, we have decided not to require a pledge of distributed income from tribal assets at this time, and the provision has been deleted from the final rule. If our later claim experience demonstrates a need for such a pledge, HUD will amend the regulations and impose such a requirement. (Any such requirement would only affect mortgages insured after the effective date of an amended regulation.)

B. Garnishment (§§ 203.43g(c)(2) and 235.32(c)(2) in the Proposed Rule)

One commenter stated that the accelerated garnishment proceedings authorized under section 248(f)(4) of the National Housing Act violate due process. The commenter asserts that garnishment should be allowed only in satisfaction of a judgment entered by a court of competent jurisdiction after a proper hearing and trial. Failure to reference the availability of multiple forums for institution of garnishment actions in the regulations indicates to the commenter that such proceedings are subject to existing law, *i.e.*, should be initiated in tribal court. Any other approach would be contrary to the Federal policy of recognizing tribal self-government.

Once again, while the Department does not agree that the garnishment provision as proposed is illegal, since we have decided not to require a pledge of assets unless experience indicates it is necessary, and since the garnishment provision is related to the pledge of assets procedure, the provision has been deleted from the final rule.

C. Judicial Forum (§§ 203.43g(g) and 235.32(g) in the Proposed Rule, now § 203.438(c))

Sections 203.43g(g) and 235.32(g) of the proposed rule closely paraphrased section 248(f)(5) of the National Housing Act by providing that foreclosure proceedings "may take place in a tribal court, a State court of competent jurisdiction, or a Federal district court." [1]

Two commenters strongly objected to foreclosure actions being instituted anywhere but in tribal court. One commenter believed Federal case law establishes that tribal courts have exclusive jurisdiction over property within their reservation boundaries. To

[1] Section 203.45g(g) as printed in the **Federal Register** contained a typographical error in that "or" was printed instead of "of".

hold otherwise, the commenter asserted, would infringe upon tribal self-government. The other commenter believed that section 248(f)(4) of the NHA authorizes the tribe to designate a court of competent jurisdiction. This commenter also argued that the judicial forum provisions appear to grant jurisdiction over foreclosure proceedings to courts that may not have it otherwise. Some States, the commenter asserts, have declined to exercise jurisdiction over Indian land. This commenter recommends that the Federal policy of tribal self-government be recognized by restricting the Commissioner to commencing foreclosure actions in tribal courts unless that forum is not available.

In essence, the principal thrust of these comments is that either the rule should be changed to limit foreclosure actions to tribal courts or, in the alternative, it should be silent on the issue, thus making jurisdiction subject to existing law.

We have carefully considered these comments and are sensitive to the concerns voiced. However, we have determined that the language of the proposed rule should be retained. Since tribal and Federal courts were specifically mentioned, we concluded that Congress was referring to State courts in using the term "court of competent jurisdiction". We are still of the same opinion, but in the final regulation we have deleted the word "State" so that the regulation reads exactly as the Act does. The language of section 248(f)(5) of the National Housing Act is the latest expression of congressional intent, and we believe that it is incumbent upon the Department to reflect it in the regulations, and not to ignore it. Further, HUD does not believe that the language of section 248(f)(4) of the NHA, which appears to authorize the tribe to designate a court of competent jurisdiction, is relevant to foreclosure actions under section 248(f)(5). Section 248(f)(4) relates only to garnishement of the mortgagor's distributed share of tribal or trust fund income, and we do not have the legal authority to extend this delegation concept to foreclosure actions.

The legal questions involved in determining which courts have jurisdiction are quite complex and might vary from case to case. We, therefore have concluded that it is in the Department's best interest not to restrict the government's options months and years in advance of actual foreclosure actions. Further, under current practice, HUD attorneys do not carry out single family foreclosure actions. HUD's practice is to assign a mortgage to a HUD-approved mortgagee which forecloses in its own name. Of course, an alternative always open to the Department is to request that the Justice Department foreclose in the name of the Secretary. Since in either case HUD attorneys would not be handling the foreclosure litigation, it would be better policy not to limit the discretion of the litigation attorneys.

If a tribal court has jurisdiction over foreclosures, the tribe *must* enact a mortgage priority law, or a law providing that priority of liens is governed by State law, as described in § 203.43h(f). The enactment of either law does not insure that future foreclosure actions will be brought in tribal court. However, absent a mortgage priority law or law providing for the application of State law, HUD cannot insure mortgages under this program.

D. Lien Priority—Recording (§§ 203.17(a), 203.43g(b), 235.22 and 235.32(b) in the Proposed Rule, now § 203.43h(f)

1. What interest is attached?

One commenter argued that since the lien created by leasehold mortgage applies only to the leasehold interest in the property, it should be limited to the term of the lease. Any lien of greater duration would be excessive, improper and in most cases, illegal. The commenter went on to object strongly to the proposed provisions as an attempt to create a permanent encumbrance on Indian trust land—which was perceived as representing a serious threat to tribal land interests.

The same commenter stated that the mortgage also secures all "improvements to the property made pursuant to the lease". Therefore, there is no reason to look beyond the leasehold to the property for satisfaction of any debt.

In referring to "property" the Department was referring to the *leasehold* interest in the property. The language has been revised to make that intent clearer. Furthermore, since by agreement with the Bureau of Indian Affairs, U.S. Department of the Interior (see section on Term of Lease), leases will be for 50 years and mortgages will be for 30, the lien should never extend beyond the term of the lease. Therefore, no lien of greater duration than the lease exists.

2. Priority.

Another commenter, while having no objection to establishing that insured mortgages would have a priority *second* only to tribal government liens (one example is the commenter's tribe's personal property leasehold tax), felt that requiring the mortgage lien to precede satisfaction of tribal government liens relegates tribal government to a status less than that enjoyed by State governments or the IRS—thus denigrating tribal self-government. The provision is claimed to conflict with the purpose behind the Indian Tax Status Act of 1982, Indian case law, and the Congressional policy of self-government and self-determination.

The rule has been amended to permit any law enacted by the tribe to include a provision for the satisfaction of tribal leasehold taxes before the mortgage. The tribe should also notify the mortgagee in all cases of the existence of leasehold taxes so that the mortgagee can include the payment of such taxes in the mortgage payment as is done currently with local property taxes. Tribes may also wish to record these liens in the State recording system. The tribe may also intervene in any foreclosure proceeding to ask that tribal taxes be paid.

3. Requirement for First Lien.

One commenter objected to the provisions requiring either that the mortgage be a first lien or that the tribe guarantee the satisfaction of such mortgages before other obligations against the property are satisfied. The commenter also stated that a first lien is not required by section 248 of the NHA, and that this requirement should therefore be eliminated.

While a first lien is not required by section 248, it is required by section 203, which is the general authority for insuring one- to four-family mortgages. HUD sees no basis for exempting these Indian mortgages from the first lien requirement, since the requirement for a first lien has no impact on the "availability of such insurance"—which is the statutory requisite for disregarding, for purposes of this special insuring authority, any provision under the National Housing Act.

When publishing the proposed rule, the Department was not sure that State recording offices would accept recording of mortgages under this program. HUD believed initially that first liens could not be established, and therefore the proposed rule provided tribes an alternative method to the traditional practice. Since publication of the proposed rule, HUD has learned through both the Bureau of Indian Affairs (BIA) and mortgagees currently making mortgage loans on tribal lands that the mortgages can be recorded in the State recording system and first liens can be obtained. HUD has therefore amended the provision to require State filing as

well as filing with the BIA. The requirement that there be a tribal enactment providing for lien priority is now only required of those tribes whose courts have jurisdiction over foreclosure actions. Accordingly, tribes will be in a position to participate immediately if they choose to do so.

E. Foreclosure (§§ 203.43g(g) and 235.32(g) in the Proposed Rule, now § 203.438(c))

One commenter stated that the proposed rule provides that foreclosures must be in conformity with State law, but that State law does not apply to Indian reservations.

The Department disagrees with the commenter as to the applicability of State law, since there are several instances where mortgages covering property on an Indian reservation *have* been foreclosed in State court.

One commenter noted that the regulations do not specify the nature of the Commissioner's powers and duties after a mortgage has been foreclosed and the remaining term of the lease has been transferred to the Commissioner. The commenter believes clarification of this point is so important that the rule should be republished for public comment before it is made final.

Upon foreclosure and conveyance to HUD of the remaining term of the lease, HUD intends to notify the tribe of the availability of the leasehold for occupancy and its sale price. Interested individuals would apply to the tribe for approval. Where an eligible purchaser comes forward who is approved by the tribe, HUD will sell the leasehold to him or her. Should no eligible purchasers be available, the tribe may identify a renter. Should the tribe not propose a renter, HUD may rent the property to *anyone* wishing to rent it. An eligible purchaser approved by the tribe may come forward at any subsequent time but would have to wait where the property is rented until the expiration of any current lease (never more than one year) before occupancy. This process is not yet definitive, and changes may be made before HUD acquires any of these leasehold interests. In no event, however, will HUD convey the leasehold to anyone not approved by the tribe. These properties have restrictions on their sale which require that they be handled differently from other foreclosed properties, as set forth above. More specific information will be available regarding HUD's procedures once the program becomes operational.

Another aspect of the program, not detailed in the regulations, is section 248(f)(3) of the NHA which states that:

> In the event that any default is cured, the Secretary shall seek to reinstate the loan with the mortgagee or another mortgagee. For purposes of this paragraph, the Secretary may provide appropriate financial incentives to reinstate the loan commensurate with sound management of the insurance fund.

It is not HUD's practice in the single family program to reassign Secretary-held mortgages to other mortgagees. Because of HUD's lack of experience in these matters, detailed procedures for implementing section 248(f)(3), as with the property disposition process, will be made available after the program becomes operational and there has been sufficient activity to develop such procedures.

With respect to leaseholds after foreclosure, one commenter agreed that leases should only be assumable with the consent of the tribe, and proposed that in the event of a sale or reassignment by the Commissioner, the remaining term of the lease be subject to a right of first refusal by the tribe and by enrolled members of the tribe who meet applicable asset requirements. Under this method, the commenter believes an effort would be made to discourage nontribal interest in the property, while still giving the Commissioner the ultimate ability to dispose of the property to non-Indians.

This final rule does *not* permit a permanent disposition of the leasehold to a purchaser not approved by the tribe, and therefore will discourage nontribal interest in the property. HUD would only rent a property on a short term basis to an Indian or non-Indian where no purchaser approved by the tribe is willing or able to purchase it. HUD's right to effect a short-term rental is merely a way to preserve an insurance fund asset. Tribes may welcome the flexibility of this procedure as a temporary measure to provide housing for people such as non-Indian doctors, teachers, etc., serving the reservation. Since the tribe will receive notification from HUD to propose or identify potential renters, it can control who actually rents the property by timely notifying the HUD Field Office of approved prospective purchases who want to buy the property or anyone willing to rent it.

F. Purpose

One commenter felt that while the rule provides some valuable benefits for Indians, it goes too far in its attempt to facilitate HUD's interest in making such mortgages attractive to non-Indian mortgagees. The commenter believed the overall laudatory purpose of the proposed rule would be to permit tribes to restrict leaseholds to Indians without denying them the benefit of mortgage insurance. However, while the commenter favored this concept, he was concerned over the perceived expense to tribal self-government, tribal court jurisdiction and tribal sovereignty over its members.

First, this is essentially an insurance program (although there may be assistance payments in conjunction with insurance under 24 CFR Part 235). From the insurance perspective, the Department must consider seriously what would be acceptable to mortgagees generally. If processing for these mortgages is substantially different from current processing, mortgagees may be disinclined to shoulder an additional administrative burden and may react by refusing to make such mortgage loans. If mortgagees decide not to make loans, there will be no mortgage lending for Indians. HUD is also planning training and outreach efforts to encourage mortgagee activity. Second, the Department must concern itself with the actuarial soundness of the program and the burden borne by the mortgagor. Concern with the burden borne by Indian mortgagors explains, in part, why the Department has decided not to exercise its right to charge the maximum three percent insurance premium permitted by statute. However, certain other requirements permitted by statute, discussed more fully in other sections, are regarded as necessary to protect the actuarial soundness of the program and to reduce risk and the amount of premium charged. While these requirements may result in tribes having to change their practices somewhat, no tribe is required to participate, and each may decide whether the changes required are worth the perceived benefit. (See also Judicial Forum section.)

G. Tribal Consent to Participate in the Program

While generally approving the intent of the regulation, one commenter believed the regulations should require tribal governments to analyze the long-term impact that the proposed program may have for the tribe and the reservation, presumably before being allowed to participate in the program. Further, the regulation should require express approval of the respective tribal governments before FHA can make the proposed mortgage insurance available to a reservation—because of the significant effect the program may have on tribal control of property and land use in reservations and the traditional social values of the tribes.

The Department believes that a tribe should make its own decision whether or not to participate, without the Department's telling it what it must consider. A tribe can delay participation, or not participate at all, by refusing to: (1) Certify to HUD that it has adopted eviction procedures and will enforce them; (2) permit HUD access for the purpose of servicing properties; (3) agree to the lease form that HUD prescribes; or (4) comply with any of the other requirements of the regulation. While there is no explicit requirement of tribal consent, many of the program's requirements cannot be fulfilled without the tribe's active participation. Therefore, no additional consent, or paperwork, is required.

One commenter believed that FHA insurance on an individual leasehold interest could eventually result in a diminution of trust land inside reservation boundaries. This commenter stated that since issues relating to State-versus-tribal jurisdiction frequently depend on how much land is in trust status, the diminution of trust land could also have an impact on a tribal government's efforts to regulate activity inside reservation boundaries. Because of this potential impact on a tribe's land base and governmental powers, the commenter opposed the regulation.

Insuring mortgages on leaseholds containing restrictions limiting conveyance to persons approved by the tribe in no way alienates the land from the tribe. Since no leasehold with an insured mortgage may be sold without the tribe's consent (except for a sale to the Secretary at foreclosure), the land remains under tribal control. Where there are no purchasers for a foreclosed leasehold, the Department will rent the property until a purchaser approved by the tribe is found, or until the term of the lease expires, whichever is first.

The lease will contain a provision prohibiting the lessor (the tribe in most cases) from terminating the lease without HUD approval while the mortgage insurance is in effect. The lease is the security for the mortgage. If the lease is terminated, the interest to which the mortgage attached is destroyed.

H. Eviction Procedures (§§ 203.43g(d) and 235.32(d) in the proposed rule, now §§ 203.43h(b)

One commenter believed that it is fair and appropriate to require that the tribe adopt acceptable eviction procedures to be used in the event of foreclosure. This commenter also believed that adequate enforcement procedures by the tribe should be maintained. However, the commenter believed that the provisions for a hearing on the adequacy of the enforcement procedures and the procedure for obtaining review of HUD's decision with respect to their adequacy should be clarified. Another commenter had no objection to the requirement, since eviction procedures in his tribe's court were already established.

In this final rule, HUD has further specified what activity on the part of tribes will constitute adequate eviction enforcement practices. The final rule (§ 203.43h(b)) establishes a three-stage appeals process beginning with the Field Office Manager and ending with the Secretary or his or her designee. The final rule provides for HUD to suspend further mortgage insurance activity and to give notice to the tribe of the reasons for the suspension and of the opportunity for a subsequent review, in contrast to the proposed rule's provision for suspension of activity based upon findings after a hearing. This rule's procedures are consistent with current HUD practice in other cases. Any other administrative action taken by HUD to debar a tribe from participating in this program will be subject to the formal debarment procedures contained in 24 CFR Part 24.

I. Disposition of Improvements

A commenter suggested that the leases should permit all improvements made by the lessee to be removable at the expiration of the lease and severable from the land. Such a provision, the commenter believes, would underscore the ownership of the house by the mortgagor, and would allow the Commissioner to dispose of improvements in order to satisfy the mortgage upon default without impairing the long-term tribal control of the land, which is of critical importance to the tribes.

First, at the expiration of the lease, tribal law would determine who will get the improvements. The Department believes it is unnecessary to attempt to interfere in a matter properly between the mortgagor and the tribe. Second, the value of a house severed from the property (not to mention moving costs in remote areas) would probably cover less of HUD's loss than would attempting to manage the property on-site. Therefore, removal of the structure in the event of default is not a practicable option.

J. Assumption

Two commenters suggested that the regulation expressly limit assumptions to enrolled members of the tribe. Another commenter suggested that the rule expressly prohibit the imposition of "assignment" fees as a condition precedent to assumption of a mortgage, and that the original conditions of the mortgage remain unchanged.

The Department believes that section 248 does not prohibit an assumption of a mortgage on a leasehold by a non-Indian, provided the tribe consents to the assumption. Our reading of the statute is that the insured mortgage must be executed by a member of an Indian tribe who will use the property as a principal residence, but that assumption of such a mortgage is subject only to tribal consent. A provision requiring tribal consent to sale or assumption will be included in the lease. The right of the lender to collect assumption fees will not be precluded, since mortgagees may not want to participate if they are not permitted to collect a charge to cover processing costs in approving an assumption.

K. Term of Lease

One commenter suggested that to (1) promote uniformity, (2) provide for minimum security to the lender, and (3) eliminate the need for both the pledge of assets and permanently encumbering trust property, the regulations should require that all leases should be for no less than 50 years.

This is, in effect, the existing state of affairs, given the Memorandum of Undrstanding that exists between BIA and HUD providing for a 25-year lease and a simultaneous 25-year extension. (As discussed earlier, the pledge of assets requirement has been deleted.)

L. Acceptability in the Secondary Market

One commenter stated that, in seeking a mortgage, he was repeatedly told that the reason financial institutions were unwilling to give a long-term fixed rate mortgage lies in the fact that they are unable to sell it on the secondary market.

Section 248 of the National Housing Act and these regulations should remove impediments to saleability in the secondary market. Mortgages insured pursuant to section 248 would be eligible for Government National Mortgage Association pools for mortgage-backed securities.

M. Reorganization

Section 235.32 in the proposed rule has been eliminated, since § 203.43g (now redesignated as 203.43h) is incorporated by reference into Part 235. Portions of § 203.43g of the proposed rule have been moved to Subparts B and C as new §§ 203.438 and 203.664, respectively, since these provisions concern contract rights and obligations and servicing.

Other Changes to the Rule.

HUD has made a number of changes to the rule, discussed below, which were promised in the preamble to the proposed rule.

N. Counseling Requirements

Amendments have been made to add counseling requirements. This rule revises § 203.604 of the existing regulations—the provision requiring interviews with mortgagors in default—by adding a new paragraph (e) to exclude, for purposes of this program, the "200-mile limit" as a reason for not having a face-to-face interview; to require that the mortgagee document its attempt to telephone the mortgagor; and to permit an agent to perform these tasks on behalf of the mortgagee. Given the sometimes isolated location of tribal lands, the 200-mile provision might have been used by mortgagees as a means of avoiding face-to-face interviews. Paragraph (e) also requires the mortgagee to (1) inform the mortgagor that HUD will make information regarding the status and payment history of the mortgagor's loan available to local credit bureaus and prospective creditors; (2) inform the mortgagor of available assistance, if any; (3) notify the mortgagor that if the mortgage remains in default for more than 90 days, the mortgagee will request the Secretary to accept an assignment; (4) notify the mortgagor of the qualifications for forbearance relief from the mortgagee (if any) and that forbearance relief may be available from the Secretary if the mortgage is assigned; and (5) provide the mortgagor with the names and addresses of HUD officials to whom further communications should be addresssed. These requirements reiterate the statutory requirements of section 248(f)(1) of the National Housing Act.

O. Forbearance

A new § 203.664, relating to forbearance procedures for mortgages insured under § 203.43h of this chapter, has been added. Section 203.664 provides that §§ 203.650 through 203.660—HUD's assignment program regulations—are inapplicable to mortgages insured under § 203.43h. This is because the new program provides for payment of insurance benefits at the time of the assignment of a defaulted mortgage, and foreclosure by the mortgagee is not required. Since the Secretary has no discretion regarding whether to accept assignment of a mortgage insured under § 203.43h when the statutory conditions are present, HUD's rules setting out the criteria for accepting assignment are inapplicable. However, § 203.664 provides for use, by HUD, of the same criteria in determining whether forbearance for an Indian mortgagor in default would be appropriate.

P. Tribal Consent to Sale or Assumption

Section 203.43h(e) in the final rule (§§ 203.43g(e) and 235.32(e) in the proposed rule) has been rewritten to clarify that the tribe must consent to every assumption of the leasehold, except where the title to the leasehold interest is obtained by the Secretary through foreclosure of the insured mortgage. A similar provision restricting assumption will be included in the lease itself. (See discussion under *Tribal Consent to Participate in the Program).*

Q. Approval of Lease and Mortgage

A New § 203.43h(c) has been added, stating that HUD shall prescribe lease and mortgage forms and that the Bureau of Indian Affairs, U.S. Department of Interior (BIA) must approve both the lease and the mortgage before a commitment to insure will be issued. This is in recognition of BIA's authority and is consistent with current commercial practice.

R. Affirmative Marketing

Section 203.43g(a) and 235.32(a) in the proposed rule have been redesignated and combined into § 203.43h(a) in the final rule and revised to add Subpart M of Part 200, which contains regulations concerning Affirmative Fair Housing Marketing, to the subparts which are not applicable to this program. Subparts I, J and M of Part 200 are excluded from applying *only* to those Indian Tribes covered by the Indian Civil Rights Act, *i.e.,* those exercising full governmental powers. (The proposed rule excluded the provisions unconditionally.) Tribes not covered by the Indian Civil Rights Act will be subject to the provisions of Subparts I, J, and M, but the rule explicitly provides that a tribe will not be considered to have violated these requirements if, in approving a sale or assumption, it favors an eligible Indian over a non-Indian.

S. Technical Amendments to Existing Regulations

Mortgages involving a dwelling unit in a cooperative housing development are excluded from the program, since mortgages on cooperative shares are not considered eligible for insurance under section 248 of the NHA.

Condominiums, while eligible under the statute, are not included in this program, based on HUD's view that there will be limited demand for insurance for such units. Should there be future significant indications of interest in mortgage insurance for condominium units on Indian land, the Department will reconsider this issue and possibly amend the regulations at 24 CFR Part 234.

In addition, four relatively inactive programs were excluded from the program. Part 222 is amended to exclude mortgage insurance on Indian land from eligibility under the Servicemen's Mortgage Insurance Program. This program is only available to active duty personnel where the Department of Defense (DOD) has agreed to pay the mortgage insurance premiums. DOD has announced its intention to stop participation in this program. Part 226 is amended to exclude mortgage insurance on Indian land from eligibility under the Armed Services Housing for Civilian Employees program. The land covered by the mortgage to be insured must be located in or near a military installation. The Department is not aware of any Indian land area that would qualify. Part 227 is amended to exclude mortgage insurance on Indian land from eligibility under the Armed Services Housing in Impacted Areas Program. This program provides mortgage insurance on units in projects not authorized under the Indian insured mortgage program. The Part 226 and Part 227 programs are "closed" programs with no new commitments to insure being issued. Amendment of these parts is purely technical. Part 240 is amended to exclude mortgage insurance on Indian land from eligibility under the Mortgage Insurance on Loans for Fee Title Purchase program, since the fee title purchase from the tribe is not contemplated by this program.

Findings

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291, issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the

National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, at the above address.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because it merely expands the types of mortgages eligible for HUD insurance to include leaseholds on one- to four-family residences located on Indian trust or otherwise restricted lands, where an Indian is the mortgagor.

This rule was listed as item number 860 in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 14036,14059) under Executive Order 12291 and the Regulatory Flexibility Act.

The collection of information requirements contained in this rule have been reviewed by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and have been assigned approval numbers 2502-0169 and 2502-0340.

The programs listed in the Catalog of Federal Domestic Assistance that are affected by this rule are as follows: 14.108, Rehabilitation Mortgage Insurance; 14.117, Mortgage Insurance—Homes; 14.119, Mortgage Insurance—Homes for Disaster Victims; 14.120, Mortgage Insurance—Homes for Low and Moderate Income Families; 14.121, Mortgage Insurance Homes in Outlying Areas; 14.122, Mortgage Insurance—Homes in Urban Renewal Areas; 14.123, Mortgage Insurance Housing in Older, Declining Areas; 14.130, Mortgage Insurance—Purchase by Homeowners of Fee Title From Lessors; 14.140, Mortgage Insurance—Special Credit Risks; 14.161, Single Family Home Mortgage Coinsurance; 14.163, Mortgage Insurance—Cooperative Financing; 14.165 Mortgage Insurance—Military Impacted Areas; 14.166 Mortgage Insurance—Homes for Members of Armed Services.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards, and Incorporation by reference.

24 CFR Part 203

Home improvement, Loan programs: Housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 204

Mortgage insurance.

24 CFR Part 220

Home improvement: Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 222

Condominiums, Military personnel, Mortgage insurance.

24 CFR Part 226

Government employees, Mortgage insurance, Single family housing.

24 CFR Part 227

Federally affected areas, Defense housing, Military personnel, Mortgage insurance, Projects, Rental housing, Single family housing.

24 CFR Part 237

Low and moderate income housing, Mortgage insurance.

24 CFR Part 240

Mortgage insurance, Fee title purchase.

Accordingly, HUD amends 24 CFR Parts 200, 203, 204, 220, 221, 235, 237 and 240 as follows:

PART 200—INTRODUCTION

1. The authority citation for Part 200 continues to reads as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart G is issued under sec. 214, Housing and Community Development Act of 1980, as amended by sec. 329, Housing and Community Development Amendments of 1981 (42 U.S.C. 1436a).

2. Section 200.163(a)(2) is revised to read as follows:

§ 200.163 Direct endorsement.

(a) * * *

(2) Single family mortgages insured under any of the programs listed in paragraph (a)(1) of this section pursuant to section 223, 225, 238(c), 244, or 248 of the National Housing Act are not eligible for processing under this section. The provision contained in 24 CFR 221.55 which permits a builder/mortgagor to sell a property to a displaced family on a deferred basis is not available in the Direct Endorsement Program.

* * * * *

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

3. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 203 and 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

4. Part 203 is amended by adding a new § 203.43h, to read as follows:

§ 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

A mortgage on a leasehold covering a one- to four-family residence located on Indian land where the mortgagor is an Indian who will occupy it as a principal residence shall be eligible for insurance pursuant to section 248 of the National Housing Act, notwithstanding otherwise applicable requirements related to marketability of title, if the mortgage meets the requirements of this subpart as modified by this section. Mortgage insurance on cooperative shares is not authorized under this section.

(a) *Exemptions.* (1) The provisions of Subparts I, J, and M of Part 200, and § 203.30, shall not apply to approval of mortgagors for mortgages insured under this section if the Indian tribe to which the prospective mortgagor belongs is subject to the Indian Civil Rights Act.

(2) In the case of an Indian tribe which is not subject to the Indian Civil Rights Act, the authorities cited in paragraph (a)(1) of this section shall apply, but any preference in the tribe's approval of the sale or assumption of a lease and mortgage under this section in favor of an eligible Indian over a non-Indian shall not be considered to be a violation of Subpart I, J or M.

(b) *Eviction procedures.* Before HUD will issue any commitment to insure a mortgage on Indian land, the tribe having jurisdiction over such property must certify to the HUD Field Office that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the insured mortgage has been foreclosed.

(1) *Enforcement.* If HUD's Field Office Manager determines that the tribe has failed adequately to enforce its eviction procedures, HUD will cease issuing

commitments for the insurance of mortgages to tribal members. Adequate enforcement is demonstrated where prior evictions have occurred within 60 days after the date of the notice by HUD that foreclosure was completed.

(2) *Review.* If HUD's Field Office Manager ceases issuing commitments to insure in accordance with paragraph (b)(1), above, HUD will notify the tribe of the reasons for such action and that the tribe may, within 60 days after notification of HUD's action, file a written appeal with the Field Office Manager. Within 60 days after notification of an adverse decision by the Field Office Manager, the tribe may file a written request for review with the Regional Administrator. Upon notification of an adverse decision by the Regional Administrator, the tribe has 60 additional days to file an appeal with the Secretary. The determination of the Secretary shall be final, but the tribe may resubmit the issue to the Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration. (Any other administrative actions determined to be necessary to debar a tribe from participating in this program will be subject to the formal debarment procedures contained in 24 CFR Part 24.)

(c) *Approval of Lease and Mortgage.* The lease and mortgage must be on forms prescribed by HUD. Before HUD will insure any mortgage under this section, the mortgagee must demonstrate that the Bureau of Indian Affairs, U.S. Department of the Interior, has approved both the lease and mortgage.

(d) *Construction advances.* The Commission may issue a commitment for the insurance of advances made during construction. The Commissioner will insure advances made by the mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgage shall be a first lien on the leasehold;

(2) The mortgagor and the mortgagee execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which advances will be made;

(3) The advances are made only as provided in the commitment;

(4) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement;

(5) The mortgage shall bear interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor; and

(6) The Secretary had determined that no feasible financing alternative is available.

(e) *Assumption or sale of leasehold.* The form of lease must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Secretary through foreclosure of the insured mortgage. A mortgagee other than the Secretary must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Secretary, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is insured or held by the Secretary.

(f) *First lien.* The first lien requirement under this part is implemented where the mortgage is filed in the State recording system and is a first lien under that system, even though the leasehold interest securing the mortgage is located on Indian land and filed with Bureau of Indian Affairs, U.S. Department of the Interior. Any tribal government whose courts have jurisdiction to hear foreclosures must also (1) enact a law sastisfactory to the Commissioner providing for the satisfaction of FHA-insured and Secretary-held mortgages before other obligations other than tribal leasehold taxes against the property assessed after the property is mortgaged) are satisfied; or (2) enact a law providing that State law shall determine the priority of liens against the property.

(g) *Definitions.* As used in this section and elsewhere in this part, the term:

(1) "Indian" means and individual member of any Indian tribe and that member's family.

(2) "Indian land" means trust or otherwise restricted land (i) as defined by the Secretary of the Interior, over which an Indian tribe is recognized by the United States as having governmental jurisdiction; (ii) held in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation; or (iii) acquired by Alaska natives under the Alaska Native Claims Settlement Act or any other land acquired by Alaska natives pursuant to statute by virtue of their unique status as Alaska natives.

(3) "Indian tribe" means any Indian or Alaska native tribe, band, nation, or other organized group or community of Indians or Alaska natives recognized as eligible for the services provided to Indians or Alaska natives by the Secretary of the Interior because of its status as such an entity, or that is an eligible recipient under chapter 67 of title 31, United States Code.

(Approved by the Office of Management and Budget under control number 2502-0340)

5. Section 203.350 is revised to read as follows:

§ 203.350 Assignment of defaulted mortgage.

(a) *In general.* The Commissioner may approve the assignment to the Commissioner of any mortgage covering a one- to four-family residence if the Commissioner finds that the default was caused by circumstances beyond the mortgagor's control.

(b) *Assignments pursuant to section 248, National Housing Act.* Notwithstanding the provisions of paragraph (a), the Commissioner shall, upon application by the mortgagee, approve the assignment to the Commissioner of any mortgage insured pursuant to section 248 of the National Housing Act (see § 203.43h) where the mortgagor has been in default for more than 90 days. The mortgagee may not request the Commissioner to accept an assignment until the mortgagee has submitted documents to the Commissioner showing that the requirements of § 203.604 have been met. HUD shall then notify the mortgagee of its approval of the mortgagee's actions under § 203.604 and that the mortgagee may assign the mortgage to the Secretary, or HUD will specify what further action the mortgagee must take to meet the requirements of § 203.604.

(The information collection requirements in paragraph (b) are approved by the Office of Management and Budget under control number 2502-0169)

6. Part 203 is amended by adding a new undesignated center heading and a new § 203.438, to read as follows:

Mortgages on Property Located on Indian Land

§ 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

(a) *Exemptions.* The provisions of § 203.366 shall not apply to mortgages insured pursuant to section 248 of the National Housing Act.

(b) *Claim Procedure.* In addition to other actions which the mortgagee may take pursuant to this subpart in order to receive insurance benefits, a mortgagee shall be entitled to receive such benefits on a mortgage insured under § 203.43h

when (1) the mortgagor is more than 90 days in default; (2) the mortgagee has submitted appropriate documentation to the Secretary in accordance with § 203.350(b); and (3) the Secretary has approved the assignment of the mortgage.

(c) *Foreclosure by Secretary.* Subject to consideration of forbearance in accordance with § 203.664, the Secretary may initiate foreclosure proceedings with respect to any mortgage acquired under this section in a tribal court, a court of competent jurisdiction or Federal district court. If the mortgagor remains on the property following foreclosure, the Secretary may seek an eviction order from the court hearing the foreclosure action.

7. Section 203.604 is amended by revising paragraph (b) and by adding a new paragraph (e), to read as follows:

§ 203.604 Contact with the mortgagor.

* * * * *

(b) The mortgagee must have a face-to-face interview with the mortgagor, or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are unpaid. If default occurs in a repayment plan arranged other than during a personal interview, the mortgagee must have a face-to-face meeting with the mortgagor, or make a reasonable attempt to arrange such a meeting, within thirty days after such default and at least thirty days before foreclosure is commenced, or thirty days before assignment is requested if the mortgage is insured pursuant to section 248 of the National Housing Act.

* * * * *

(e)(1) For mortgages insured pursuant to section 248 of the National Housing Act, the provisions of paragraphs (b), (c) and (d) of this section are applicable, except that a face-to-face meeting with the mortgagor is required, and a reasonable effort to arrange such a meeting shall include at least one trip to see the mortgagor at the mortgaged property, notwithstanding that such property is more than 200 miles from the mortgagee, its servicer, or a branch office of either. In addition, the mortgagee must document that it has made at least one telephone call to the mortgagor for the purpose of trying to arrange a face-to-face interview. The mortgagee may appoint an agent to perform its responsibilities under this paragraph.

(2) The mortgagee must also (i) inform the mortgagor that HUD will make information regarding the status and payment history of the mortgagor's loan available to local credit bureaus and prospective creditors; (ii) inform the mortgagor of other available assistance, if any; (iii) notify the mortgagor that if the mortgage remains in default for more than 90 days, the mortgagee shall request the Secretary to accept an assignment of the mortgage; (iv) notify the mortgagor of the qualifications for forbearance relief from the mortgagee, if any, and that forbearance relief may be available from the Secretary if the mortgage is assigned; and (v) inform the mortgagor of the names and addresses of HUD officials to whom further communications may be addressed.

(Approved by the Office of Management and Budget under control number 2502-0340)

8. Part 203 is amended by adding a new undesignated center heading a new § 203.664 to read as follows:

Forbearance Relief on Property Located on Indian Land

§ 203.664 Forbearance relief on Indian land insured pursuant to section 248 of the National Housing Act.

The provisions of §§ 203.650 through 203.660 shall not apply to mortgages insured pursuant to section 248 of the National Housing Act (see § 203.43h) if the mortgagee assigns the mortgage in accordance with § 203.350(b).

(a) *Forbearance relief.* (1) The Secretary will make forbearance relief available to a mortgagor when the mortgage has been insured pursuant to section 248 of the National Housing Act where the mortgage is assigned if:

(i) The mortgagor does not own other property subject to a mortgage insured or held by the Secretary except where the income from such other property is the mortgagor's principal source of income;

(ii) The mortgagor's default has been caused by circumstances beyond the mortgagor's control which render the mortgagor unable to correct the delinquency within a reasonable time or make full mortgage payments;

(iii) There is a reasonable prospect that the mortgagor will be able to resume full mortgage payments after a period of reduced or suspended payments not to exceed 36 months and will be able to pay the mortgage in full by its maturity date as extended, if necessary, by up to ten years;

(iv) The mortgagor and mortgagee furnish the Secretary all the information requested to assist in a preliminary determination of whether or not to forbear within 15 days of the date of the Secretary's request.

(v) The property is the mortgagor's principal place of residence. This criterion may be waived by the Secretary if the property has been leased or rented and the rental income has been applied to the mortgage delinquency or to effect repairs necessary to maintain the property in a safe and habitable condition or if such waiver is determined to be in the best interests of the Department.

(2) The Secretary will not forbear where:

(i) The mortgaged property has been abandoned or vacant for more than 60 days;

(ii) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he or she has no intention of fulfilling his or her obligation under the mortgage; or

(iii) The mortgagor owns two or more properties occupied by tenants who are paying rent, and the rental income from the property under review is not being applied to the mortgage on that property.

(3)(i) If after review of the documents, the Secretary determines forbearance should not be approved, the Secretary will notify the mortgagor of the reasons for the determination and will advise the mortgagor that he or she may request further consideration. The mortgagor may present additional information or argument by mail or by telephone within 15 days of the notice or, alternatively, the mortgagor shall be entitled to present such information or argument in person at a conference which must be held within 25 days of the notice;

(ii) The conference provided in paragraph (3)(i) shall be conducted by the Secretary's representative and shall not be an adversary proceeding or subject to formal rules of evidence. The mortgagor may be represented by an attorney or other representative and may call witnesses and present oral and documentary information. However, the Secretary's representative may not compel the attendance of witnesses or pay expenses of witnesses called by the mortgagor or on the mortgagor's behalf. Cumulative, repetitious or immaterial arguments or materials shall not be presented. The mortgagor shall be permitted to examine the material on which the Secretary's preliminary negative decision is based at or before the conference. The conference shall be held at the HUD office or at a mutually convenient place; and

(iii) The Secretary shall promptly advise the mortgagor of the final decision in writing. If the Secretary determines not to forbear, the mortgagor shall also be advised of the findings and the specific criteria not met by the mortgagor.

(4)(i) All time limits provided in this subsection shall be deemed to be calendar days unless otherwise expressly stated. When the last day for taking the required action falls on a Saturday, Sunday or legal holiday, the last day for taking such action shall be the next following regular working day.

(ii) If a mortgagor fails to take required action with the time limits specified in this section he or she thereby loses his or her right to further consideration for forbearance relief.

PART 204—COINSURANCE

8. The authority citation for Part 204 is revised to read as set forth below and any citation following any section in Part 204 is removed:

Authority: Secs. 244 and 211, National Housing Act (12 U.S.C. 1715Z–9 and 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 204.1 [Amended]

9. Section 204.1 is amended by adding, in the list of excepted provisions, immediately after "203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.", the following:

* * * * *

Sec.

* * * * *

203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

10. Section 204.400 is revised to read as follows:

§ 204.400 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter concerning the responsibilities of servicers of mortgages insured under section 203(b) of the National Housing Act apply to mortgages covering one- to four-family dwellings to be insured under section 203(b) pursuant to the coinsurance authority of section 244 of the National Housing Act, except that § 203.502(a), §§ 203.650 through 203.660, and § 203.664 of this chapter shall not apply during the period of coinsurance.

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

11. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 220.1 [Amended]

12. Section 220.1(a) is amended by adding, in the list of excepted provisions, immediately after "203.42 Rental properties.", the following:

* * * * *

Sec.

* * * * *

203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

§ 220.251 [Amended]

13. Section 220.251(a) is amended by adding at the end of the list of excepted provisions the following:

* * * * *

Sec.

* * * * *

203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

14. Section 220.900 is revised to read as follows:

§ 220.900 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter concerning the responsibilities of services of mortgages insured under section 203 of the National Housing Act apply to mortgages covering 1- to 11-family dwellings insured under section 220 of the National Housing Act, except § 203.664.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

15. The authority citation for Part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act, (12 U.S.C. 1715b, 1715l); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

§ 221.1 [Amended]

16. Section 221.1(a) is amended by adding, in the list of excepted provisions, immediately after "203.42 Rental properties.", the following:

* * * * *

Sec.

* * * * *

203.43 Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

§ 221.251 [Amended]

17. Section 221.251(a) is amended by adding to the end of the list of excepted provisions, the following:

* * * * *

Sec.

* * * * *

203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

18. Section 221.800 is revised to read as follows:

§ 221.800 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mortgages covering one- to four-family dwellings insured under section 221 of the National Housing Act, except § 203.664.

PART 222—SERVICEMEN'S MORTGAGE INSURANCE

19. The authority citation for Part 222 is revised to read as set forth below and any citation following any section in Part 222 is removed:

Authority: Secs. 211, 222, National Housing Act (12 U.S.C. 1715b, 1715m); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 222.1 [Amended]

20. Section 222.1 is amended by adding in the list of excepted provisions, immediately after "203.38 Location of dwelling", the following:

* * * * *

Sec.

* * * * *

203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

§ 222.251 [Amended]

21. Section 222.251(a) is amended by adding in the list of excepted provisions, immediately after "203.425 Finality of determination", the following:

* * * * *

Sec.

* * * * *

203.438 Mortgages on Indian land insured pursuant to § 248 of the National Housing Act.

* * * * *

22. Section 222.400 is revised to read as follows:

§ 222.400 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 222 of the National Housing Act, except § 203.664.

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES [SEC. 809]

23. The authority citation for Part 226 is revised to read as set forth below and any citation following any section in Part 226 is removed:

Authority: Secs. 211, 807, 809, National Housing Act (12 U.S.C. 1715b, 1748f, 1748h-1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 226.1 [Amended]

24. Section 226.1(a) is amended by adding, in the list of excepted provisions, immediately after "203.43a Eligibility of housing in declining urban areas", the following:

* * * * *

Sec.

* * * * *

203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

§ 226.251 [Amended]

25. Section 226.251(a) is amended by adding in the list of excepted provisions, immediately after "203.425, Finality of determination," the following:

* * * * *

Sec.

* * * * *

203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

26. Section 226.300 is revised to read as follows:

§ 226.300 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 220 of the National Housing Act, except § 203.664.

PART 227—ARMED SERVICES HOUSING—IMPACTED AREAS [SEC. 810]

27. The authority citation for Part 227 is revised to read as set forth below and any citation following any section in Part 227 is removed:

Authority: Secs. 211, 807, 810, of the National Housing Act (12 U.S.C. 1715b, 1748f, 1748h-z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 227.501 [Amended]

28. Section 227.501(b) is amended by adding, in the list of excepted provisions, immediately after "203.43a Eligibility of housing in declining urban areas", the following:

* * * * *

Sec.

* * * * *

203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

§ 227.751 [Amended]

29. Section 227.751(a) is amended by adding in the list of excepted provisions, immediately after "203.425 Finality of determination," the following:

* * * * *

Sec.

* * * * *

203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

30. Section 227.800 is revised to read as follows:

§ 227.800 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter concerning mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 810 of the National Housing Act, except § 203.664.

PART 237—SPECIAL MORTGAGE INSURANCE FOR LOW AND MODERATE INCOME FAMILIES

31. The authority citation for Part 237 is revised to read as set forth below and any citation following any section in Part 237 is removed:

Authority: Secs. 203, 211, 237, National Housing Act (12 U.S.C. 1709, 1715b, 1715z-2); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

32. Section 237.5 is revised to read as follows:

§ 237.5 Cross-reference.

To be eligible for insurance under this subpart, a mortgage shall meet all of the eligibility requirements for insurance under Part 203, Subpart A of this chapter, except § 203.51; or under Part 220, Subpart A of this chapter; Part 221, Subpart A of this chapter; or under Part 234, Subpart A of this chapter, except that in addition to meeting such eligibility requirements, the mortgage shall comply with the special requirements of this subpart. Mortgages and loans processed under the Direct Endorsement program set forth in § 200.163, or mortgages on Indian land insured pursuant to section 248 of the National Housing Act shall not be eligible under this part.

PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

33. The authority citation for Part 240 is revised to read as set forth below and any citation following any section in Part 240 is removed:

Authority: Secs. 211, 240, National Housing Act (12 U.S.C. 1715b, 1715z-5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 240.1 [Amended]

34. Section 240.1 is amended by adding, in the list of excepted provisions, immediately before "203.45 Eligibility of graduated payment mortgages", the following:

* * * * *

Sec.

* * * * *

203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

35. Section 240.400 is revised to read as follows:

§ 240.400 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act shall apply to loans for the purchase of the fee simple title to property which are insured under section 240 of the National Housing Act, except § 203.664.

Dated: June 9, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

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CFR CHECKLIST

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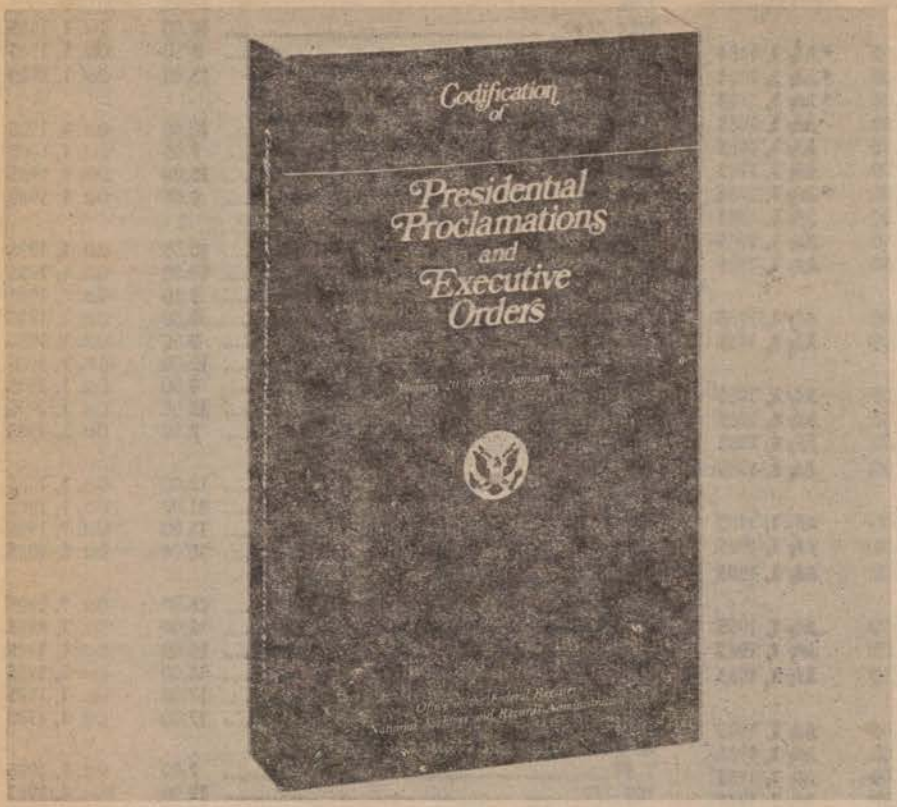
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